

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 117

Date: 2026 06 19
Docket: KBG-BF-00155-2025
Judicial Centre: Battleford

BETWEEN:

DONNA WOODS

APPLICANT

- and -

RURAL MUNICIPALITY OF WILTON 472

RESPONDENT

Counsel:

Mustafa Ghorl
Gerald Heinrichs

for Donna Woods
for the Rural Municipality of Wilton 472

JUDGMENT
June 19, 2026

MESCHISHNICK J.

[1] The Respondent passed Resolution 118/2025 on July 18, 2025
[Resolution]. It reads:

WHEREAS Lloyd Ludwig and Donna Woods are each a current member of the Organized Hamlet Board (OHB) of Lone Rock;

AND WHEREAS each has failed to file a disclosure statement as required by section 142 of The Municipalities Act, and section 31.1 of The Municipalities Regulations;

AND WHEREAS each is now disqualified from office by reason of section 31.2 of The Municipalities Regulations, and has failed to resign from their position as required by that provision;

NOW THEREFORE BE IT RESOLVED THAT:

- 1. The Council of the RM of Wilton No. 472 hereby declares that Ms. Wood's and Mr. Ludwig's offices are vacant pursuant to section 148(2)(a) of The Municipalities Act and section 31.2 of the Regulations thereunder.*
- 2. The resolution shall be entered into the RM's official records and posted publicly to ensure transparency and accountability in local governance.*
- 3. Pursuant to subsection 148(2.1) of The Municipalities Act, each of Mr. Ludwig and Ms. Woods may, within 10 business days from the date of this resolution, appeal the decision to a judge of the Court of King's Bench in the prescribed manner.*

CARRIED

[2] The provisions in *The Municipalities Act*, SS 2005, c M-36.1 [Act] referred to in and underlying the Resolution are:

142(1) Subject to the regulations, every member of council shall, within 30 days after being elected, file a public disclosure statement with the administrator in the form provided by the council.

147(1) A member of council is disqualified from council if the member:

...

(e) contravenes:

...

(ii) section 142 or 144 of this Act;

148(1) A member of council who is disqualified must resign immediately.

(2) If a member of council who is disqualified does not resign as required by subsection (1):

(a) the council may, by resolution, declare the person's office vacant; or

(b) the council or a voter may apply to a judge of the court in the prescribed manner for

- (i) an order determining whether the person was never qualified to be or has ceased to be qualified to remain a member of council; or
- (ii) an order declaring the person to be disqualified from council.

...

(2.1) The person whose office has been declared vacant pursuant to clause (2) (a) may, within 10 business days after the passing of the resolution by council, appeal the resolution to a judge of the court in the prescribed manner.

Summary of the Parties Positions

[3] The Applicant, Donna Woods, applies using three procedures to challenge the Resolution raising the same two grounds under each procedure:

- a. By way of an application for judicial review alleging:
 - i. That the Respondent did not have the jurisdiction to pass the Resolution; and
 - ii. That she was denied procedural fairness when the Respondent failed to give her notice that the Respondent was going to consider the Resolution at the July 17, 2025 meeting and thereby provide her with the opportunity to respond to the allegation that she had not filed a public disclosure statement; and
- b. By way of statutory appeal under s. 148(2.1) and s. 358 of the *Act* arguing the same two grounds – that the Respondent denied the Applicant procedural fairness when it passed the Resolution without notice to her and that the Respondent did not have the jurisdiction to declare her seat on the Organized Hamlet Board [OHB] of Lone Rock vacant.

[4] In response the Respondent raises a number of factual and legal issues.

[5] The legal issues engage a number of procedural questions suggesting that this application ought to be dismissed because the Applicant did not bring an appeal under s. 148(2.1) within ten days. As will be seen from the analysis that follows it is important to carefully identify the decision made in the Resolution and test it against the grounds advanced by the Applicant.

[6] As mentioned, the grounds advanced by the Applicant are that the Respondent did not have the jurisdiction to pass the Resolution and as well that it breached the rules of procedural fairness in doing so.

[7] I will begin by analyzing the jurisdictional objection to the Resolution.

[8] I pause at this point to note that while there are a number of facts in dispute, the jurisdictional objection can be decided on the facts that are not in dispute.

Jurisdiction to Challenge the Resolution: Missed Limitation Period

[9] In this case the Respondent made the finding that the Applicant had not filed the public disclosure statement as required by s. 142 of the *Act*. Relying on s. 147, that such a finding disqualified the Applicant from sitting on the OHB it moved by resolution under s. 148(2)(a) to declare the Applicant's seat on the OHB, vacant. It is this resolution that engaged the appeal process under s. 148(2.1) of the *Act*. That process puts the onus on the Applicant to bring a court application to appeal the Resolution rather than respond to a court application which would have been the case if council had employed one of the other two options set out in s. 148(2)(b) which were to apply to court for:

(i) an order determining whether the person was never qualified to be or has ceased to be qualified to remain a member of council; or

(ii) an order declaring the person to be disqualified from council.

[10] Not appealing the Respondent's declaration that the Applicant's seat vacant, gives rise to the Respondent's position that an application under s. 358 to quash the Resolution or an application by way of judicial review is not available for a variety of reasons including that the more specific challenge procedure must be the one that applies or that she had an adequate alternate remedy.

[11] However, the law on challenges for want of jurisdiction does not always require compliance with statutory limitation periods. The availability of this defence depends on where a resolution is void or voidable.

[12] The distinction between void and voidable bylaws or resolutions has been recognized by the court on a number of occasions and the identification of whether the resolution is one or the other will determine the available challenges.

[13] In *Marion v Regina (City)*, 1982 CanLII 2400, 22 Sask R 72 (SKQB), the court considered various grounds for quashing a bylaw and the provision in the legislation at that time requiring that applications to quash a bylaw were to be brought within two months of the passing of the bylaw or resolution. The court held:

4 The *Urban Municipality Act*, R.S.S. 1978, c. U-10, provides in s. 128(1) that an application to quash a bylaw must be made within two months after the passing of the bylaw or resolution of the council.

5 There are many cases that hold that if a motion is not made within the time prescribed by the statute then the remedy ceases to be available (*Bearss v. Regina City*, 17 W.W.R. 489).

6 Moss, C.J.A., in *Vandecar v. East Oxford* (1878), 3 O.A.R.

131, at page 148 stated:

The manifest object of the legislation relative to proceedings for quashing a bylaw was, to establish a period of limitation within which it should be liable to be impeached on proper grounds but after which, *where it was within the competence of the Council* to pass it, it should be absolute and incontrovertible.

7 In the same case, Patterson, J.A., stated at page 144:

The matter itself ... being clearly within the power of the Council, the restriction being upon the particular exercise of the power, I think the bylaw cannot be treated as void, but would become valid and binding if not attacked within the year.

8 This approach has been tempered by our courts, in that a distinction must be made as between:

(i) a *voidable* bylaw, which is one that is defective for non-observance or want of compliance with the statutory formality, or an irregularity in the proceedings relating to its passing; and

(ii) a *void* bylaw, being one that is beyond the competence to enact, either because of complete lack of power to legislate upon the subject matter, or because of a non-compliance with the prerequisite to its passing.

Thus, where it is alleged that a bylaw is illegal and is not quashed within the time limited by s. 128(1), it is essential to determine whether the defect renders the bylaw a nullity or merely voidable. It is very clear from the cases that a lapse of time cannot confer jurisdiction or make valid a bylaw which a council has no power to pass. This, then, brings us to the position as to the manner a void bylaw might be brought before the court. I am satisfied that a voidable bylaw is one which, if not brought within the statutory time period, as set out in s. 128(1) of the *Urban Municipality Act*, becomes valid by the passage of time. A void bylaw, on the other hand, being a nullity, may be subject to attack above and beyond the procedure provided in s. 128 of the *Urban Municipality Act*.

9 In the case of *Pappenfus v. Pearce*, 5 Sask. R. 100, 116 D.L.R. (3d) 555, Chief Justice Culliton stated at page 558:

The right to question the validity of a municipal bylaw or resolution, other than by motion to quash, in my opinion, is correctly stated in Rogers, *The Law of Canadian Municipal Corporations*, 2nd ed. (1971) vol. 2, pp. 1001-2, para. 192.1, as follows:

It is well established that the validity of municipal bylaws and resolutions may be incidentally questioned otherwise than by a motion to quash. In particular, a bylaw may be brought into question in the following ways: by a motion to quash or an appeal from a conviction thereunder; by an action for a declaration that a bylaw is invalid; incidentally in the trial of an action; by an action to declare assessments invalid under the bylaw attacked; in proceedings to obtain mandamus; in proceedings to obtain prohibition or certiorari; by an action for trespass against an officer acting under its authority; or in an action for an Injunction to restrain the breach of a bylaw or to restrain the municipality from enforcing or acting under the bylaw; in an action for replevin; or in an arbitration to determine compensation for expropriated land.

[14] In *Jolea Hotels Ltd. v Saskatchewan (Liquor & Gaming Authority)*, 1998 CanLII 13612, 170 Sask R 143 (SKQB), dealt with an application to quash a bylaw for want of jurisdiction. In response to the argument that the bylaw was saved because there was no challenge within the statutory limitation period the court said:

41 The Village submitted that the Bylaw on its face is within the Village's powers under the *NMA* [*The Northern Municipalities Act*, SS 1983, c N-5.1], and therefore cannot be challenged because s. 79(2) of the *NMA* deems the same "valid and binding according to its purport". In my view the submission is inconsistent with the governing principles of law as set out in *Brown v. Caledonia (Rural Municipality No. 99)*, [1972] 4 WWR 303 (Sask QB). There, the Court reviewed the impact of s. 183 [akin to s. 79(2)] where the validity of a municipal bylaw is challenged and concluded that the comments

in *Rogers on The Law of Canadian Municipal Corporations*, vol. 2, 2d ed. (Toronto: Carswell, 1995-Rel.1) at para. 191.6 applied:

It has been said that the “manifest object of the legislation relative to proceedings for quashing a bylaw was, to establish a period of limitation within which it should be liable to be impeached on proper grounds, but after which, where it was within the competence of the council to pass it, it should be absolute and incontrovertible.” Unless a by-law is quashed in whole or in part upon an application launched within a year from the date of its passing or within such shorter periods as are prescribed ... it is clear that it is protected from subsequent attack by motion to quash. In other words, if a by-law is within the power of the council and remains unimpeached within the time limited, it is validated by the effluxion of time.

It must be stressed, however, that the curative effect of a failure to quash a by-law is limited to by-laws which are merely voidable and not void. The courts have made a distinction between these two classes of illegal by-laws. A voidable by-law is one that is defective for non-observance or want of compliance with a statutory formality or an irregularity in the proceedings relating to its passing, and is therefore liable to be quashed, whereas a void by-law is one that is beyond the competence to enact either because of complete lack of power to legislate upon the subject matter or because of a non-compliance with a prerequisite to its passing. ...

and at para. 193.1:

... This means that some by-laws, for instance, those which are *ultra vires* the council, are absolute nullities and will be treated as such without being quashed. On the other hand, the failure to adhere to statutory formalities with respect to the passing of a by-law does not necessarily render the by-law a nullity but may render it liable to be quashed within the limitation prescribed by statute after the expiration of which it becomes valid. So a voidable by-law may become cured by lapse of time whereas an *ultra vires* or void by-law may not. ...

I conclude that s. 79(2) does not bar the application before me.

[15] In *Shell Lake Holdings Ltd. v Shell Lake (Village)*, 2000 SKQB 272 the court was dealing with a challenge to a resolution passed at a special meeting of council.

The challenge alleged that the special meeting was not called with the consent of all councillors which was a statutory requirement. The first question was whether the alleged noncompliance would render the resolutions passed at the meeting void or voidable. The court noted:

12 In the text *The Law of Canadian Municipal Corporations* 2d ed. Vol. II (Toronto: Carswell)(looseleaf; Rel. 1995-1 at § 191.6) the author states, “A voidable bylaw is one that is defective for non-observance or want of compliance with a statutory formality...”. This issue was dealt with in Saskatchewan by McIntyre J. in *Marion v. Regina (City)* (1982), 22 Sask. R. 72 (Sask. Q.B.) at page 74:

This approach has been tempered by our courts, in that a distinction must be made as between:

- (i) a *voidable* bylaw, which is one that is defective for non-observance or want of compliance with the statutory formality, or an irregularity in the proceedings relating to its passing; and
- (ii) a *void* bylaw, being one that is beyond the competence to enact, either because of complete lack of power to legislate upon the subject matter, or because of a non-compliance with the prerequisite to its passing. [Emphasis added s. (i)]

...

16 The effect lapse of time has on a voidable bylaw was dealt with in *Marion v. Regina (City)*, (*supra*) where McIntyre J. held at p.75: “I am satisfied that a voidable bylaw is one which, if not brought within the statutory time period, as set out in s. 128(1) of *The Urban Municipality Act*, becomes valid by the passage of time”.

[16] The court concluded at paras. 19-20 that the resolution in that case was only voidable and that it was saved from attack by the curative provision perfecting it by the passage of time.

[17] Similar analysis was undertaken in *Shiers v Moose Jaw (City)*, 1990 CanLII 7316 at paras 14-16, 88 Sask R 255 (SKQB), and *E.C. Argue Holdings Ltd. v Edenwold (Rural Municipality No. 158)*, 1999 CanLII 12500, 179 Sask R 142 (SKQB), where the court said:

12 In *Pearce v. Pappenfus* (1980), [1981] 2 W.W.R. 291 (Sask. C.A.) states as follows at 295:

The right to question the validity of a municipal by-law or resolution other than by motion to quash, in my opinion, is correctly stated in Rogers, *The Law of Canadian Municipal Corporations*, 2nd ed. (1971), vol. 2, para 192.1, as follows:

It is well established that the validity of municipal by laws and resolutions may be incidentally questioned otherwise than by a motion to quash. In particular, a by-law may be brought into question in the following ways: by a motion to quash or an appeal from a conviction thereunder; *by an action for a declaration that a by-law is invalid*; incidentally in the trial of an action; by an action to declare assessments invalid under the by-law attacked; in proceedings to obtain *mandamus*; in proceedings to obtain prohibition or *certiorari*; by an action for trespass against an officer acting under its authority; or in an action for an injunction to restrain the breach of a by-law or to restrain the municipality from enforcing or acting under the by-law; in an action for replevin; or in an arbitration to determine compensation for expropriated land. (The italics are mine.)

13 Section 183 of *The Rural Municipality Act, 1989* is a curative provision. It deems to be valid, any bylaw or resolution of a council that may have been defective when it was first adopted if it now conforms to legislative requirements.

14 The distinction that the applicants must seek to make is the distinction between those bylaws or resolutions of council that are void and those that are merely voidable. The law in this regard is stated by Rogers in *The Law of Canadian Municipal Corporations*, vol. 2 (Toronto: Carswell, 1959) at 894:

It must be stressed, however, that the curative effect of a failure to quash a by-law is limited to by-laws which are merely voidable and not void. The courts have made a distinction between these two classes of illegal by-laws. A voidable by-law is one that is defective for non-observance or want of compliance with a statutory formality or an irregularity in the proceedings relating to its passing and is therefore liable to be quashed whereas a void by-law is one that is beyond the competence to enact either because of complete lack of power to legislate upon the subject matter or because of a non-compliance with a prerequisite to its passing....

[18] In another case where the avenues of attack to a bylaw were considered, the court in *Rural Municipality of Edenwold No. 158 v Murray*, 2017 SKQB 15 [Edenwold] pointed out the limits on the nature and scope of the court's power in review of municipal powers:

28 A bylaw that purports to have been enacted under competent authority is presumed to be valid, but that does not mean that the bylaw is immune from challenge. There are, however, limited ways to bring such a challenge. One is by an application for a prerogative remedy such as *mandamus*, *certiorari*, or prohibition. The other is through a statutory mechanism; in this case, s. 358 of *The Municipalities Act*: see *Goodtrack v. Waverley No. 44 (Rural Municipality)*, 2012 SKQB 413, 408 Sask. R. 36 [Goodtrack]; *E.C. Argue Holdings Ltd. v. Edenwold (Rural Municipality) No. 158*; *Markwart v. Blaine Lake No. 434 (Rural Municipality)*, 2006 SKQB 355, 290 Sask. R. 173.

29 As Justice Iacobucci noted in *R. v. Greenbaum*, [1993] 1 S.C.R. 674, municipalities are creatures of provincial statute, and can exercise only those powers conferred upon them by provincial statutes. The exercise of municipal power is reviewable by the court, but only to the extent of determining whether the municipality's actions were within the scope of the authorizing statute: *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231. Where the court is called upon to review the legality of the actions of the state or a municipality, it is exercising a function of judicial review: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1

S.C.R. 5; *Baker v. Sherwood No. 159 (Rural Municipality)*, 2015 SKQB 301, 483 Sask. R. 48 [*Baker*]. The standard of review, in such circumstances, is correctness: *Baker*, at para 30.

[19] The conclusion then is that an application to have the Resolution declared void or for “a declaration of invalidity” is available on an application for judicial review so long as that application is brought within a reasonable period of time. It has not been argued that the Applicant’s Originating Application issued September 18, 2025, was not brought within a reasonable period of time.

[20] However, this line of case law did not consider the application of the doctrine of adequate alternate remedy and the manner in which it is applied to exercise discretion to deny an application founded in judicial review.

Adequate Alternate Remedy In the Face of Jurisdiction and Procedural Fairness Objections

[21] It is not disputed that this application comes before the court by way of Originating Notice issued September 18, 2025. The Resolution was passed July 18, 2025.

[22] Where a council passes a Resolution vacating a seat held by a councillor, s. 148(2.1) says that applications to appeal the Resolution must be made within ten days of the passing of the Resolution. It is not disputed that the combined effect of s. 31.1(1), s. 31.2(1)(d) and s. 31.2(3) of *The Municipalities Regulations*, RRS c M-36.1 Reg 1 [*Regulations*] which will be discussed in greater detail later in these reasons require hamlet board members to file public disclosure statements, provides that hamlet board members are disqualified if they fail to do so and that the enforcement provisions found in s. 148 of the *Act* apply if such a board member fails to resign.

[23] The jurisdictional objection engages the question of whether it is the hamlet board or council who has the authority to trigger enforcement. That question need not be decided if the availability of an adequate alternate remedy prevents the question from being raised.

[24] Despite the Applicant relying on s. 148(2.1) of the *Act* as a basis for her appeal, it has clearly been taken outside the time allowed by that provision. The application for relief under s. 148(2.1) must be dismissed.

[25] The next question then is whether the application for relief sought by way of judicial review and by way of appeal under s. 358 on both the jurisdictional and procedural fairness grounds should be dismissed because of an available alternate remedy.

[26] The issue of adequate alternate remedy in the face of an application for judicial review and a challenge under s. 358 of the *Act* recently came before this court in a case with very similar facts.

[27] In *Baran v Rural Municipality of Dundurn No. 314*, 2022 SKQB 182 [*Baran*] the applicants had their seats on council declared vacant and did not challenge the resolution declaring their seats vacant within the 10-day appeal period found in s.148(2.1) of the *Act*. The applicants applied for an order in the nature of *certiorari* and under s. 358 to quash the resolution on the basis that the resolution did not comply with the *Act* or a Council Procedures Bylaw.

[28] In *Baran*, Justice Currie dismissed the application on the basis that the applicants had failed to avail themselves of the adequate alternate remedy found in s. 148(2.1). In doing so, he considered at para. 6, *Saskatoon (City) v Walmart Canada Corp.*, 2019 SKCA 3 [*Walmart*] which noted, among other things, at paras. 40-44 that:

- a. An adequate alternate remedy is a discretionary ground for refusing to undertake judicial review.
- b. Canadian courts have vigorously enforced the availability of adequate alternate remedy as a reason to deny all sorts of applications.
- c. The adequate alternate remedy principle applies even in the face of an appeal based in procedural fairness or substantial jurisdictional error.
- d. Failure to utilize a statutory right of appeal normally results in the denial of an order in the nature of *certiorari*.

[29] Justice Currie considered and applied *Strickland v Canada (Attorney General)*, 2015 SCC 37 [*Strickland*] and *Walmart* in determining that s. 148(2.1) provided an adequate alternate remedy to an appeal under s. 358 and to judicial review:

13 Both of these characteristics — a review on the standard of reasonableness (which is the default standard applied in a judicial review) and the exercise of the court’s discretion in conducting the review — are hallmarks of judicial review. I conclude that the court’s review of a council’s resolution under s. 358 is a judicial review as contemplated by the adequate alternative remedy principle. The adequate alternative remedy principle applies to a s. 358 review.

...

15 In this context the most prominent characteristic of the s. 148 appeal is that, as with a judicial review by this court, the appeal would proceed as a review *by this court*. Furthermore, there is no restriction in a s. 148 appeal as to the basis on which the court might set aside the resolution. Thus the alternative of the s. 148 appeal is equivalent to judicial review in terms of the items listed by the Supreme Court.

16 In particular, an appeal under s. 148 would not have been any less convenient to the parties. It reasonably can be expected

that they would have put the same evidence and the same arguments before the court on that appeal as they have on this application. The council error alleged by the applicants is that the resolution was passed without regard for proper procedure or for fairness, and that the lack of proper grounds for the resolution indicates bad faith. This court could have dealt with those allegations under s. 148 appeal.

17 The other factors listed by the Supreme Court relate to the nature of the court, which is unchanged whether it is conducting a s. 148 appeal or a judicial review.

18 Aside from the two questions that I address below, no other relevant factors are apparent. Accordingly, subject to my consideration of those questions I conclude that an appeal to this court under s. 148 is an adequate alternative remedy to this court conducting judicial review.

[Emphasis in original]

[30] After reaching the conclusion that the principle of adequate alternate remedy applied when considering judicial review and s. 358 appeals in the face of a failure to appeal under s. 148(2.1), Justice Currie once again looked at *Strickland* and *Walmart* and concluded that judicial review and s. 358 appeals are not appropriate to challenge a resolution declaring a councillor's seat vacant:

21 In addition to his remarks at para. 51, in *Wal-Mart* Justice Whitmore addressed this topic at para. 43, quoting para. 44 of the Supreme Court's decision in *Strickland v Canada (Attorney General)*, 2015 SCC 37, [2015] 2 SCR 713:

43 . . .

[44] This balancing exercise should take account of the purposes and policy considerations underpinning the legislative scheme in issue: ... David Mullan captured the breadth of the inquiry well:

While discretionary reasons for denial of relief are many, what most have in common is a concern for balancing the rights of affected individuals against the imperatives of the process under review. In particular, the courts focus on the question of

whether the application for relief is appropriately respectful of the statutory framework within which that application is taken and the normal processes provided by that framework and the common law for challenging administrative action. Where the application is unnecessarily disruptive of normal processes ... the courts will generally deny relief ...

22 It is an established principle of statute interpretation that the Legislature is presumed to have included a provision in a statute for a reason. Here, in s. 148 the Legislature has selected a council resolution *declaring a council seat vacant* as being subject to a ten-day appeal period. This short appeal period contrasts starkly with the six-month period, set out in s. 358, within which other council resolutions may be reviewed.

23 The context of the s. 148 appeal period is that the business of a municipality can be conducted only when there is a validly-constituted council directing that business. Where there is uncertainty as to who constitutes the council, the business of the municipality may grind to a halt. In this context I conclude that the Legislature included the ten-day appeal period for the purpose of ensuring that any uncertainty that might be created by a resolution declaring a council seat vacant would not be long-lasting. That is, the Legislature intended that the validity or otherwise of the resolution would be established in relatively short order. It was to this end that the Legislature included the specific ten-day appeal provision in the section that sets out the provision permitting a council to pass such a resolution.

24 Given this circumstance, I am not persuaded by the applicants' argument that no harm has been done by the appeal period passing. The Legislature's purpose in including the ten-day appeal period would be frustrated if the judicial review were conducted. If the court were to conduct the judicial review s. 148(2.1) would be rendered ineffective.

25 In the same vein, I conclude that if the court were to conduct a judicial review under s. 358 then s. 148(2.1) would be rendered ineffective. If a s. 358 review remained available to an "ousted" councillor for six months, there would be no point to s. 148(2.1).

26 Judicial review, then, whether it is the common judicial review or a review under s. 358, is not appropriate in the circumstances.

[Emphasis in original]

[31] In my view the facts in this case cannot be distinguished from the facts and the law applied to them in *Baran*. I conclude that the Applicant's application by way of judicial review and under s. 358 must, subject to the court's discretion and the existence of exceptional circumstance, be dismissed. The Applicant had an adequate alternate remedy to bring her jurisdictional and procedural fairness objections to the Resolution under s. 148(2.1). And, the Applicant has in fact brought those objections forward by appeal under s. 148(2.1), but that appeal has been dismissed because of her failure to bring the appeal within ten business days of the date of the Resolution.

[32] I will turn to the question of whether I should exercise my discretion to determine the application for judicial review despite the existence of an adequate alternate remedy.

Discretion to Hear the Judicial Review Application Despite the Existence of an Adequate Alternate Remedy

[33] *Baran*, acknowledged at para. 27 that judicial review is a discretionary remedy and that despite an adequate alternate remedy the court can, in appropriate or exceptional circumstances, still proceed with review.

[34] I note that in many of the cases considered in *Strickland* on this issue at paras. 83-91, which determined that exceptional circumstance must exist before judicial review will be heard, were situations where the judicial review application was made within an ongoing proceeding. In some instances, it was determined that a continuation of the proceeding itself was the adequate alternate remedy.

[35] For example, in *Walmart* the court determined at para. 91 that the issues of procedural fairness could be raised in the existing administrative process and no exceptional circumstances existed to intervene.

[36] In *Toth Equity Limited v Ottawa (City)*, 2011 ONCA 372, which was one of the cases referred to in *Walmart*, the court described the reasons why there must be exceptional circumstances before the court will intervene, but it did so in the context of interlocutory judicial review within an administrative process:

34 With respect, the Divisional Court erred in principle in so concluding. It is an important principle of administrative law that, absent exceptional circumstances, a party must exhaust any available adequate alternative remedy within the administrative process before pursuing an application for judicial review: see *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561.

35 The Canadian courts have enforced this general principle vigorously. In the recent decision of *C.B. Powell Ltd. c. Canada (Agence des services frontaliers)*, 2010 FCA 61, at paras. 31-32, Stratas J.A. of the Federal Court of Appeal, usefully describes the principle and its rationale.

[31] Administrative law judgments and textbooks describe this rule in many ways: the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation of administrative proceedings, the rule against interlocutory judicial reviews and the objection against premature judicial reviews. All of these express the same concept: absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. This means that, absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they proceed to court. Put another way, absent exceptional circumstances, courts should not interfere with ongoing

administrative processes until after they are completed, or until the available, effective remedies are exhausted.

[32] This prevents fragmentation of the administrative process and piecemeal court proceedings, eliminates the large costs and delays associated with premature forays to court and avoids the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway... Further, only at the end of the administrative process will a reviewing court have all of the administrative decision-maker's findings; these findings may be suffused with expertise, legitimate policy judgments and valuable regulatory experience... Finally, this approach is consistent with and supports the concept of judicial respect for administrative decision-makers who, like judges, have decision-making responsibilities to discharge. [citations omitted]

[37] A case that is somewhat more analogous to the situation before me is *Volochay v College of Massage Therapists of Ontario*, 2012 ONCA 541 [*Volochay*]. There, a member of College of Massage Therapists was the subject of a professional misconduct investigation. The lower court found that there had been a denial of procedural fairness and quashed decisions of the complaints committee to commence an investigation and later the appointment of an investigator. The Court of Appeal overturned that decision concluding that the member had an alternate right of appeal under the legislation that would have called into question the complaints about a lack of procedural fairness.

[38] Along the way the court commented at paras. 64 to 67, on the change in the law regarding adequate alternate remedy made in *Canadian Pacific Ltd. v Matsqui Indian Band*, 1995 CanLII 145. [1995] 1 SCR 3 (SCC) and *Harelkin v University of Regina*, 1979 CanLII 18, [1979] 2 SCR 561 (SCC):

64 In *Harelkin* the majority held that the court should exercise its discretion to refuse judicial review for a breach of

natural justice if the aggrieved individual — there a student — had an "adequate alternative remedy" — there an internal appeal. In so holding, the majority said that a decision made in breach of the rules of natural justice is not a nullity, as the application judge held in the present case, but is curable on appeal.

65 The more significant case is *Matsqui*. *Matsqui* was decided after *Howe*. It affirmed *Harelkin* and extended its reach to true questions of jurisdiction. Canadian Pacific challenged assessments levied by Indian bands on land on which its railways ran. The company contended that the land was not "in the reserve" and thus not within the taxing authority of the bands. Instead of raising this issue before the various tribunals established under the legislation to hear assessment appeals, Canadian Pacific went to court and sought judicial review of the initial assessments. The trial judge denied relief on the ground that Canadian Pacific had resort to an adequate alternative remedy.

66 All members of the court accepted that the issue was jurisdictional — a true question of jurisdiction in the *Dunsmuir* sense. Relying on *Harelkin*, Lamer C.J.C. for the majority of the court held that despite the jurisdictional nature of the inquiry, Canadian Pacific did not have automatic access to the court. The court maintained discretion to refuse to deal with the issue because the internal appeals provided an adequate alternative remedy that ought to have been pursued. It was therefore not an unreasonable exercise of the trial judge's discretion to deny relief.

67 In *C.B. Powell Ltd. v. Canada (Agence des services frontaliers)*, 2010 FCA 61, [2011] 2 F.C.R. 332, at para. 42, Stratas J.A. of the Federal Court of Appeal commented that "the use of the label 'jurisdiction' to justify judicial interference with ongoing administrative decision making processes is no longer appropriate." I agree. Even a true question of jurisdiction is not, by itself, an exceptional circumstance justifying judicial review before administrative proceedings are completed. A "jurisdictional" ground of review does not, standing alone, deprive a reviewing court of its discretion to refuse relief.

[39] Like the situation in this case, *Volochay* missed taking an alternate statutory appeal. Unlike this case, in *Volochay* the investigation continued and a finding

that Volochay was not guilty of professional misconduct was still available. Here, if judicial review is denied the Applicant has no further recourse to challenge her disqualification from holding a seat on the OHB or in any municipality for 12 years as set out in s. 147(2) of the Act.

[40] In *Volochay*, the court described the exceptional circumstances in this language:

80 But, as I have found that a review before the HPARB was an adequate alternative remedy, Volochay must be able to point to some exceptional circumstance to justify resort to the courts instead of review by the Board. He has not been able to do so. And I can see none. For example, I see no evidence of hardship, or prejudice, or costs, or delay that would support Volochay's decision to bypass the HPARB and apply for judicial review. Indeed, Volochay invoked the administrative review process for 15 months, only to withdraw his request shortly before the hearing date. He must, therefore, accept responsibility for the delay and any increased costs.

[41] With these comments I return to *Baran*.

[42] The Applicants in *Baran* argued, among other things, that because there was no ongoing proceeding there was no manner in which the issues could be raised and a remedy sought.

[43] Justice Currie's reasons for concluding that the circumstances were not exceptional and declined to hear the application are found at paras. 31 to 42. Among them were findings that:

33 It is unlikely that any of the applicants had an encyclopedic knowledge of *The Municipalities Act*. I conclude, though, that each of the applicants was aware of the existence of the Act as the statute that governed their rights and responsibilities as councillors. The applicants could not have fulfilled their roles as councillors properly without being aware of the Act as the fundamental rule book for those roles. They

must be presumed to have been aware of the *Act* as the law that governs municipalities and councillors.

34 That being the case, once the applicants knew that council had passed a resolution purporting to declare their council seats vacant, the applicants reasonably can be expected to have referred to the *Act* to see what it says about such a situation. They reasonably can be expected to have determined, from that review, that the declaration that their seats were vacant was subject to a ten-day appeal period.

35 None of the applicants swears that he did not know about the ten-day appeal period in December 2021. In any event, I conclude that as councillors on an RM council, within that ten-day period the applicants knew or ought to have known about the ten-day appeal period.

[44] That the Applicants in *Baran* would not have the opportunity to challenge the resolution vacating their seats on council was of their own doing. They knew or ought to have known of the ten-day appeal period and did not act within it.

[45] What distinguished this case from *Baran* is that it came about after amendments to the *Act* to expand the jurisdiction to make regulations and the corresponding amendments to the regulations which, among other things, gave organized hamlets the authority to make policies. These amendments are then tied into the *Act* through necessary modifications to certain provisions of the *Act* including the provisions regarding enforcement of disqualifications.

[46] It is not surprising that the Applicant concluded that an appeal under s. 148(2.1) was not the avenue to appeal the Resolution especially in light of s. 22.2(1)(e) of the *Regulations* which purported to allow hamlet boards to make regulations respecting the “disqualification of hamlet board members”. Indeed, that was the legal advice she says she received.

[47] This is the first occasion that the court has had an opportunity to provide some guidance on the scope, interpretation and application of the *Regulations* and the necessary modifications to the *Act*.

[48] I am not convinced in this case that the Applicant knew or ought to have known that she was restricted to s. 148(2.1) and its ten-day appeal period to appeal the Resolution.

[49] I have also considered that the Applicant's case on a want of jurisdiction to pass the Resolution poses, as will be seen, a challenging statutory interpretation analysis.

[50] Whatever the standard might be for exercising discretion to hear an application for judicial review despite the existence of an adequate alternate remedy, I find that in the circumstance of this case it has been met.

[51] I will consider the Applicant's jurisdictional and procedural fairness challenges to the Resolution.

Jurisdiction to Pass the Vacating Resolution

[52] This question engages a review of amendments made to the *Act* and the *Regulations* made in August of 2023.

[53] An Information Bulletin which appears to have been published by Municipal Advisory Services, which is found at Exhibit J to the Affidavit of Tracy Kashuba sworn January 20, 2026, summarizes the amendments to the *Regulations* saying at the outset:

In August of 2023, Order in Council 410/2023 was issued implementing multiple amendments to Part IV of The Municipalities Regulations (Regulations) pertaining to

organized hamlets (OH). The amendments focused on clearly defining the roles and responsibilities for organized hamlets boards and rural municipality councils to improve local governance, accountability and increased transparency....

[54] Among other things the amendments direct that hamlet boards are to establish policies prior to a 2024 annual general meeting for notice of meetings, nomination, election of and term of office for board members, budget submissions to the municipality and filling vacancies on the board.

[55] The amendments also clarify that members of a hamlet board are subject to the same public disclosure statement filing and conflict of interest rules as councillors. The *Regulations*, as amended, also makes the same disqualification and removal provisions of the *Act* applicable to councillors, applicable to hamlet board members:

31.1(1) Subsections 142(1), (2) and (6) ... of the *Act* apply to hamlet board members, with any necessary modification.

(1.1) A hamlet board member shall complete a public disclosure statement at the start of the member's term and amend that statement as necessary in accordance with subsections 142(1), (2) and (6) of the *Act*, with any necessary modification.**31.2(1)** A member of the hamlet board is disqualified from the board if the member:

...

(d) contravenes subsection 31.1(1.1) or (2).

(2) A member of the hamlet board who is disqualified must resign immediately.

(3) If a member of the hamlet board who is disqualified does not resign as required by subsection (2), sections 148 and 150 of the *Act* apply with any necessary modification.

[56] The provision of the *Regulations* setting the scope of a hamlet board's policy making responsibility is found in s. 22.2. It provides:

Board policies for organized hamlet

22.2(1) A hamlet board shall establish policies respecting the following:

- (a) notices in accordance with section 24;
- (b) hamlet board meeting requirements in accordance with section 27, including:
 - (i) rules of order, including quorum;
 - (ii) scheduling of meetings, including procedures for rescheduling a meeting; and
 - (iii) appearances by residents;
- (c) election of hamlet board members, including:
 - (i) the manner of voting; and
 - (ii) nominations;
- (d) filling of vacancies of hamlet board members;
- (e) disqualification of hamlet board members;
- (f) duties of the hamlet board secretary;
- (g) remuneration of hamlet board members.

(2) The hamlet board shall submit the policies mentioned in subsection (1) to the municipality, and the municipality shall make the policies available for public inspection in accordance with section 117 of the Act.

(3) The policies mentioned in subsection (1) must be approved by the hamlet board before the annual general meeting in 2024.

[57] Of particular note is s. 22.2(1)(e) which provides that hamlet boards must establish policies with respect to the “disqualification of hamlet board members... ”.

[58] It does not appear to be in dispute that the OHB established policies as required by and in accordance with the *Regulations*. They provide, in part:

1. Disqualification of Hamlet Board members shall be in accordance with Municipalities Act and Regulations

2. As per the Municipalities Regulations disqualification can only occur with the agreement of 2 board members and included in the resolution of the OHB meeting minutes.
3. In keeping with the legislation if a hamlet board member is disqualified all owning indemnity payments to the board member must be paid in full to the Board member with 2% per month interest accruing on all outstanding amounts owing to the board member till fully paid

[59] In this case there is a dispute on the evidence as to whether the Applicant filed a Public Disclosure Statement with the Respondent's administrator which is the basis for her disqualification by the Respondent. The Applicant says she did sometime in November of 2024, but each of the Administrator of the Respondent and all others working in the office of the Respondent at that time have sworn affidavits that they did not receive at any time a Public Disclosure Statement from the Applicant in November of 2024 or at any other time and have not seen such a document anywhere in the office.

[60] However, the Applicant and two other affiants also say that the Applicant did sign a Public Disclosure Statement on October 20, 2024, which was the date she was re-elected to the OHB. One of the affiants says it was placed in the OHB minute book.

[61] This factual dispute does not need to be resolved to answer the objection to jurisdiction which involves two questions:

- a. Was the Applicant required to file a Public Disclosure Statement with the Respondent's administrator pursuant to s. 142(1). If the answer is no, then the Respondent had no basis to pass the Resolution?
- b. If the answer to the first question is yes, did the Respondent have the authority under s. 148(2)(a) to declare the Applicant's seat on the OHB vacant?

[62] To bring these issues into focus I repeat the provisions relevant to deciding if the Respondent had the authority to declare the Applicant's seat on the OHB vacant for want of filing a Public Disclosure Statement:

a. In the *Act*:

142(1) Subject to the regulations, every member of council shall, within 30 days after being elected, file a public disclosure statement with the administrator in the form provided by the council.

...

147(1) A member of council is disqualified from council if the member:

...

(e) contravenes:

(ii) section 142 of this Act;

...

148(1) A member of council who is disqualified must resign immediately.

(2) If a member of council who is disqualified does not resign as required by subsection (1):

(a) the council may, by resolution, declare the person's office vacant; or

(b) the council or a voter may apply to a judge of the court in the prescribed manner for:

(i) an order determining whether the person was never qualified to be or has ceased to be qualified to remain a member of council; or

(ii) an order declaring the person to be disqualified from council.

(2.1) The person whose office has been declared vacant pursuant to clause (2) (a) may, within 10 business days after the passing of the resolution by council, appeal the resolution to a judge of the court in the prescribed manner

b. In the *Regulation*:

22.2(1) A hamlet board shall establish policies respecting the following:

...

(e) disqualification of hamlet board members;

31.1(1) Subsections 142(1), (2) and (6) ... of the Act apply to hamlet board members, with any necessary modification.

(1.1) A hamlet board member shall complete a public disclosure statement at the start of the member's term and amend that statement as necessary in accordance with subsections 142(1), (2) and (6) of the Act, with any necessary modification.

31.2(1) A member of the hamlet board is disqualified from the board if the member:

(d) contravenes subsection 31.1(1.1) or (2).

(2) A member of the hamlet board who is disqualified must resign immediately.

(3) If a member of the hamlet board who is disqualified does not resign as required by subsection (2), sections 148 and 150 of the Act apply with any necessary modification.

[63] Answering these questions engages the principles of statutory interpretation. In *R v Penunsi*, 2019 SCC 39 [*Penunsi*] the court applied the modern rule of statutory interpretation:

36 Accordingly, whether Part XVI applies to peace bond proceedings depends on the proper interpretation of the statutory language in the incorporating provision, s. 795. The interpretation must be guided by the modern rule of statutory interpretation, that “the words of an Act must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Rizzo & Rizzo Shoes Ltd.*, *Re*, [1998] 1 S.C.R. 27, at para. 21, citing E. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87; *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26).

[64] Applying the modern rule of statutory interpretation, I will begin by addressing the question of whether the Applicant was required to file a Public Disclosure Statement with the administrator.

Filing of the Public Disclosure Statement

[65] In *Kashuba v Wilton No. 472 (Rural Municipality)*, 2022 SKQB 180 [Kashuba], I reviewed the relationship between an organized hamlet and the municipality in which it resides:

27 An organized hamlet is an unusual creature. It is created by the Act and its functions and powers are set out in s. 68 to s. 78 of that legislation.

28 Perhaps its most unique operating feature is that it sets a budget for expenditures but does not generate revenue by taxation or otherwise directly from the residents of the organized hamlet. It depends entirely on the municipality in which it is located to collect the tax revenue assessed by the municipality and any special levy requested by the hamlet and to pay the expenditures approved in the budget.

29 Governance of an organized hamlet is also unique. In some instances, expenditures are controlled by the hamlet board through its budgeting process and in others, expenditures can only be made in consultation with the municipality. Services like sidewalks, streetlights and water and sewer within the hamlet are some examples. Special assessment to be levied against an organized hamlet's residents for some projects must be approved by the municipality.

30 For other comments on the governance of organized hamlets see *Indian Point Golden Sands (Organized Hamlet) v Parkdale (Rural Municipality No. 498)* 2002 SKQB 362, 224 Sask R 233 [Parkdale]; *Organized Hamlet of Candiack v Montmartre (Rural Municipality)*, 2008 SKQB 496, 328 Sask R 187 [Candiack] and *Heney v Rural Municipality of Wilton No. 472* 2021 SKQB 19 [Heney].

31 I provide this oversimplified summary of the relationship between an organized hamlet and the municipality in which it is located not as any definitive statement of the legal relationship but simply for the purposes of showing that the *Act* and the regulations made pursuant to the *Act* provide a statutory code controlling the relationship. It also provides some context for the manner in which disputes between an organized hamlet and a municipality are to be resolved.

[66] In that case that analysis assisted in determining the manner in which disputes between an organized hamlet and a municipality were to be resolved and whether the organized hamlet had the authority to initiate legal proceedings. More will be said about an organized hamlet's ability to bring court applications later in these reasons.

[67] To state the obvious then, the duties, authority and obligations of organized hamlets and municipalities and by extension the members of council and the boards of organized hamlets are found in and limited by the *Act* and the *Regulations*.

[68] A review of the code now set out in the *Act* shows that s. 142 is found in Part VII of the *Act* and s. 148 is found in Part VIII.

[69] Section 68 – 78 which are found in Division 6 of Part I of the *Act* are the provisions setting out the requirements necessary for an organized hamlet to be established and recognized, generally for the management of organized hamlets and how they interact with the municipality in which they are located.

[70] Section 78 sets out the scope of the regulations that can be made in relation to organized hamlets. Section 78(f.1) enables the making of some of the amendments to the *Regulations* under consideration. It reads:

(f.1) respecting which sections of Part VII apply to a hamlet board

[71] This wording does not nor do any of the other provisions setting out the regulation making power in relation to organized hamlets infer that regulations can be made regarding the filing of documents like public disclosure statements, nor do they infer that an exemption can be created from doing so. To the contrary, regulations directing which sections of Part VII “apply” to a hamlet board is more consistent with the conclusion that s. 31.1 of the *Regulations* is intended to make it clear that hamlet board members must file public disclosure statements in the manner provided in s. 142(1) which is with the administrator of the municipality in which it is located.

[72] The express wording of s. 142(1) requires that a public disclosure statement be filed with the Respondent’s administrator. A person must be qualified to hold that office as “administrator” is a defined term in the *Act*. The definition found in s. 2(1)(a.1) says an administrator is a person appointed pursuant to s. 110 and that section requires that only people who are qualified, in this case, under *The Rural Municipal Administrators Act*, RSS 1978, c R-25 can be appointed to the position of administrator. That Act sets out the regime for attaining qualification and being able to hold oneself out as being qualified to act as an administrator in Saskatchewan. To become qualified candidates are trained and tested.

[73] Requiring that certain documents are to be filed with an administrator can not be easily overlooked as the *Act* imposes on an administrator, a person who has to be qualified to hold that role, a multitude of responsibilities that include those set out in s. 111, two of which are keeping the records of the municipality and advising council of its legislative responsibilities.

[74] It is also important to note that the *Regulations* do not directly impose an obligation on hamlet board members to file public disclosure statements with anyone. It appears that the necessity of filing public disclosure statements by hamlet board members did not exist before the amendments to the *Regulations* were made in 2023.

That filing obligation exists because of s. 31.1 of the *Regulations* which directs that s. 142 shall apply to the filing of public disclosure statements by hamlet board members. Even though s. 142(1), by its express wordings, says that it is “subject to the regulations” it is difficult to read into s. 142 an obligation by a hamlet board member to file the public disclosure statement with anyone other than the administrator and that is especially so when the *Regulations* do not provide an alternate filing requirement.

[75] To file public disclosure statements with someone other than the administrator would mean that the person that it is to be filed with would be acting in place of the administrator. The *Regulations* now imposes on a hamlet the obligation to keep appropriate records and, as importantly, obliges the hamlet board to ensure minutes of hamlet board meetings are sent to the municipality to be posted for public inspection. Thus, the administrator of the municipality is made aware of the activities and actions of the hamlet board and with that information can fulfill the obligation to advise municipal council of its legislative responsibilities. However, the notifications the OHB is obliged to send to the Respondent do not appear to include notification that public disclosure statements have been filed, much less to provide copies of the public disclosure statements to the administrator.

[76] It is clear from the evidence in this case that the OHB did not provide notice to the Respondent that the Applicant had filed a public disclosure statement with the OHB in October of 2024.

[77] It cannot be overlooked that a municipality has an interest in knowing, for instance, the relationships of hamlet board members with those who might be employees of or contractors dealing with not only the organized hamlet but also the municipality when approving spending related to the organized hamlet or otherwise.

[78] Overlaying the responsibility of a hamlet board member to file a public disclosure statement is the wording in s. 31.1(1) that s. 142(1) of the *Act* applies with “any necessary modification”.

[79] In *Penunsi* the court also considered the meaning of the phrase “with any necessary modification” and phrases similar to it:

49 Prior to 1985, what are now ss. 795 and 810(5) both included the phrase “*mutatis mutandis*”. Following the 1985 statute revision and consolidation, the language was changed to “with such modifications as the circumstances require” in the English version of both provisions (in the French version, the language was changed to “*compte tenu des adaptations de circonstance*” and later to “*avec les adaptations nécessaires*” in s. 795 and “*compte tenu des adaptations de circonstance*” in s. 810(5)). As explained by Professor Sullivan, there is a strong presumption against any change in the law following a revision, “because the purpose of a revision is to restate the law, not change it” (*Sullivan on the Construction of Statutes* (6th ed. 2014), at p. 741, citing *Parrill v. Genge* (1997), 148 Nfld. & P.E.I.R. 91(Nfld. C.A.), at paras. 40-42). In 2011, the phrase “with such modifications as the circumstances require” in s. 795 was amended to read “with any necessary modifications” (there were no changes to the French version). In recent years, Parliament has preferred the more concise phrase, which bears the same meaning (for example, the same amendment was made to the English version of s. 83.3(14) in 2013; see also *Criminal Code*, ss. 83.29(4) and 715.37(4)). Accordingly, the traditional interpretation of *mutatis mutandis* should inform the interpretation of “with any necessary modifications”.

50 The definition of *mutatis mutandis* was recently articulated by this Court in *Bessette v. British Columbia (Attorney General)*, 2019 SCC 31, meaning:

... “[w]ith the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like” (*Black’s Law Dictionary* (6th ed. 1990), at p. 1019; see also the *British Columbia Interpretation Act*, s. 44 (“mutatis mutandis”) and *Samograd v. Collison* (1995), 17 B.C.L.R. (3d) 51(C.A.)). “[W]ith the necessary changes and so far as applicable”

therefore cannot be stretched to mean “to the extent that another source of law does not contradict the *Criminal Code*.

[80] It is arguable that s. 31.1(1) which directs hamlet board members via the direction that s. 142(1) of the *Act* are to file public disclosure statements “with any necessary modification” to s. 142(1) would modify the office of “administrator” to some other office. However, considering:

- a. The role and responsibilities of administrators and the mandatory qualifications required to be an administrator,
- b. That the *Regulations* do not provide for the filing of public disclosure statements with someone other than the administrator,
- c. That hamlet board members are now bound by the conflict of interest rules and to file public disclosure statements, and
- d. That it will be important for the municipality to know if a hamlet board member has interests that may affect decisions of the municipality in its dealings that affect spending in the organized hamlet or otherwise

I am of the view that the “necessary modifications” to s. 142 does not include a modification of requirement to file the public disclosure statement with the administrator.

[81] To conclude that the words “with all necessary modification” found in s. 31.1(1) of the *Regulations* permit a hamlet board member to file a public disclosure statement with someone like the secretary of the organized hamlet, does not fit harmoniously within the scheme of the *Act* when those words are read in their entire context and in their grammatical and ordinary sense.

[82] What is modified in s. 142 is that OHB board members are included with councillors in the group of people who must file a public disclosure statement with the administrator. That, in my view, was the intention in enacting s. 31.1 of the *Regulations* as it was necessary to impose that obligation once hamlet board members were required to file public disclosure statements.

[83] This analysis does not end the jurisdiction analysis. Even though a hamlet board member is required to file a public disclosure statement with the administrator and the failure to do so results by virtue of s. 147(1)(e)(ii) in disqualification, it remains to be determined who has the jurisdiction to enforce the disqualification if the board member does not resign.

Authority to Pass a Vacant Seat Resolution

[84] I will begin the analysis of this question by once again identifying the options available to the Respondent when it determined that the Applicant had not filed a public disclosure statement as required by s. 142(1).

[85] When a council is presented with circumstances where a member of council is or may be disqualified, council has three options under s. 148(2). In the context of this case council could:

- a. Make a findings of fact that the Applicant had not filed the public disclosure statement with the administrator as required by s. 142 in which case the Applicant is disqualified by virtue of s. 147(1)(ii) from being a member of the OHB and declare by resolution, as it did in this case, the Applicant's seat on the OHB is vacant;
- b. Apply to this court for an order determining if the Applicant ceased to be qualified to remain a member of the OHB for failing to file the public

disclosure statement as required by s. 142; or

- c. Apply to this court for an order declaring the Applicant to be disqualified from sitting on the Lone Rock OHB.

[86] In the latter two cases the council asks the court to make the findings of fact necessary to make a determination of qualification or disqualification, as the case may be.

[87] The important point for the purpose of analyzing this issue within the context of the modern principle of statutory interpretation is that the latter two options are exercised by an application to court.

[88] In *Kashuba* at paras 31-47 I referred to the caselaw that determined that an organized hamlet does not have standing because of the limits of the authority granted to it in the *Act* to bring court applications or other legal proceedings.

[89] In other words, the second and third options found in s. 148(2) both of which require someone to “...apply to a judge...for ...an order...” could not be triggered by the OHB unless the amendments made to the *Act* and *Regulations* had the effect of amending the *Act* to provide an organized hamlet with the authority and standing to bring legal proceedings. That is, they would be granting an organized hamlet jurisdiction that it did not have before the amendments.

[90] The question of whether the amendments to the *Regulations* that purport to amend provisions in the *Act* by “necessary modification” was within the mandate of the Lieutenant Governor in Council was not argued by the parties. Without the opportunity for counsel to address that question and without the assistance of their submissions it is not one that I will take on. In passing though I will note that of the cases that I have reviewed where the phrase “with all necessary modifications” have

been considered, they were dealing with situations where the phrase was found in legislation and not in a regulation.

[91] I will proceed on the basis that the amendments to the *Regulations*, and in particular, their ability to modify provisions in the *Act* like s. 148 are effective. That is, s. 31.2(3) of the *Regulations* through the clause “with all necessary modifications” allows for the operation of s. 148 to enforce a disqualification and s. 22.2(e) of the *Regulations* allows hamlet boards to make policies regarding the “disqualification of hamlet board members”. I will apply the principles of statutory interpretation to come to a conclusion on the scope of the Respondent’s jurisdiction to pass the Resolution.

[92] As noted earlier, an amendment was made to s. 78 of the *Act* by *The Miscellaneous Municipal Statutes Amendment Act, 2020*, SS 2020, c 30 which expanded the power to make regulation by adding paragraph (f.1) which reads “respecting which provisions of Part VII apply to a hamlet board”. In *The Miscellaneous Municipal Statutes Amendment Act, 2024*, SS 2024, c 6 two additional amendments were made to the mandate to make regulations. They are now found in paragraphs (a) and (f.2). They have no bearing on whether the Respondent had the jurisdiction to pass the Resolution.

[93] I cannot glean from the wording of the *Act* or the *Regulations*, or any amendments made to them since *Kashuba* was decided, an intention to give an organized hamlet the authority to commence legal proceedings. Thus, an organized hamlet could not exercise the options of bringing a court application under s. 148(2)(b) if a hamlet board member who was disqualified for failure to file a public disclosure statement refused to resign.

[94] However, I am also cognizant of the fact that the authority of a hamlet board to bring a legal proceeding under s. 148(2)(b)(i) or (ii) is not directly before me

as the question in this case is whether in light of these amendments it was the Respondent who retained the authority to declare the Applicant's seat on the OHB vacant under s. 148(2)(a).

[95] This question of jurisdiction pivots on the statutory interpretations of s. 148(2)(a) after considering these changes made in 2023:

- a. The right of a hamlet board to make policies regarding the "disqualification of hamlet board members" under s. 22.2(1)(e) of the *Regulations*;
- b. That portion of OHB board policy which says:
 - i. Disqualification of Hamlet Board members shall be in accordance with the *Municipalities Act* and *Regulations*.
 - ii. As per the *Municipalities Regulations* disqualification can only occur with the agreement of 2 board members and included in the resolution of the OHB meeting minutes.
- c. The words found in s. 31.2(3) of the *Regulations* that says s. 148 applies "with any necessary modification" when a hamlet board member who is disqualified does not resign.

[96] That is, does the proper interpretation of the *Act* and the *Regulations* allow the OHB to determine if a seat on the OHB is vacant because of a disqualifying event or does that power continue to rest with the Respondent?

[97] First a comment on the OHB board policy.

[98] It opens by saying the disqualification shall be in accordance with the *Act* and *Regulations* but then goes onto say that "as per Municipal Regulations

disqualification can only occur with the agreement of 2 board members and included in the resolution of the OHB meeting minutes.”

[99] The first statement is an understandable acknowledgement. Disqualification is governed by the *Act* and the *Regulations*.

[100] The second statement arguably conflicts with the first when it says disqualification cannot occur without an OHB resolution as s. 147 of the *Act* directs that disqualification automatically occurs on the occurrence of certain events like the failure to file a public disclosure statement. What is left to be determined is how the disqualification will be enforced under s. 148 if the board member refuses to resign.

[101] It cannot be argued that an organized hamlet policy can amend the *Act*.

[102] The same analysis applies to the effect of the words found in s. 22.2(1)(e) of the *Regulations* where it says an organized hamlet has the authority to make policy regarding the “disqualification of hamlet board members”. In this case the disqualification was determined by s. 147 and, without more, a hamlet board could not determine that a board member was not disqualified for failing to file a public disclosure statement.

[103] What ever that wording might mean it cannot by itself amend s. 148 to leave it to an organized hamlet to determine if a disqualified board member’s seat should be declared vacant when the member who is disqualified by virtue of s. 147 refused to resign.

[104] The only avenue left to the Applicant on the question of whether the OHB and not the Respondent’s council has the authority to vacate by resolution the seat of a disqualified board member is found in s. 31.2(3) of the *Regulations*, where it says s. 148 which lays out the options for enforcing a disqualification applies “with any necessary

modifications”.

[105] I refer back to my earlier analysis of the power to make regulations regarding organized hamlets set out in s. 78 of the *Act*:

78 The Lieutenant Governor in Council may make regulations:

- (a) prescribing additional matters that may be submitted to be resolved pursuant to section 392 for the purposes of section 77;
- (b) governing the construction, operation and maintenance of waterworks systems and sewage systems for organized hamlets;
- (c) respecting the revenues arising from the operation of waterworks systems and sewage systems of organized hamlets;
- (d) requiring and governing reports to be given by councils of rural municipalities to hamlet boards;
- (e) governing the meetings of voters of organized hamlets;
- (f) respecting the members and officers of hamlet boards and governing the procedures of hamlet boards;
- (f.1) respecting which sections of Part VII apply to a hamlet board;
- (f.2) respecting procedures, processes and policies for preparing and submitting the budget to the council pursuant to section 69.1;
- (g) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent of this Division.

[106] Section 78 is found in Division 6 of Part I of the *Act*. Division 6 is comprised of ss. 68-78.

[107] Other than possibility s. 78(g) there is no provision in the section that could enable a regulation to be made that would modify the express operation of s. 148 which leaves it to council of a municipality to pass a resolution vacating the seat of a

disqualified board member or a hamlet board member.

[108] Nor can I identify a provision in Part 6 of Division I of the *Act* (ss. 68-78) that expresses an intention to do so, as would be required to make such a regulation under s. 78(g).

[109] It must be assumed that the Lieutenant Governor in Council knows the scope of its authority to make regulations.

[110] As noted earlier as well, s. 142 of the *Act* which is found in Part VII contains the requirement to file a public disclosure statement. It is specifically mentioned in s. 78:

(f.1) respecting which sections of Part VII apply to a hamlet board

[111] There is no mention of a regulation making power to modify s. 148 in s. 77. Its interaction with the disqualification of hamlet board members comes about through the *Regulations* when it effectively and expressly said in s. 31.2(3) that the provision of the *Act* applying to the disqualification of councillors apply to hamlet board members.

[112] In my view the modifications to s. 148 that are necessary to give effect to the *Regulations* are to substitute “member in council” with “hamlet board member” so that it is clear that the mechanisms to enforce a disqualification apply to hamlet board members.

[113] To substitute “organized hamlet board” for “council” in s. 148(2)(a) is not a necessary modification for the disqualification regime to operate.

[114] The conclusion then is that the proper interpretation of the *Act*, the *Regulations* and the policy of the OHB when they are considered in their grammatical and ordinary sense and read in their entire context is that they are in harmony with the scheme of the *Act* and the *Regulations*, and their intention, when it is left with council acting under s. 148 to declare the seat of a disqualified organized hamlet board member vacant.

[115] This conclusion is also consistent with the finding that public disclosure statements are to be filed by hamlet board members with the administrator. It will leave the decision maker the ability to make the findings of fact necessary to act. That is, it will be the administrator who will know whether a public disclosure statement is filed by a hamlet board member.

[116] The application for judicial review to quash the Resolution on the basis that the Respondent did not have jurisdiction to pass the Resolution is dismissed.

[117] I will now move to the question of whether the Respondent denied the Applicant procedural fairness when it passed the Resolution.

The Obligation to Provide Notice and the Consequences of Failure

[118] It is not disputed that the Resolution was passed without notice to the Applicant that it was going to be considered at the Respondent's council meeting on July 18, 2025. The Applicant argues that because this Resolution was directed specifically at the Applicant that she was entitled to be advised that it was to be considered by the Respondent and have an opportunity to respond to it.

[119] This was the very issue that was before the court in *Wushke v Rocanville No. 151 (Rural Municipality)*, 2025 SKKB 19 [*Wushke*].

[120] In that case, the applicant was disqualified for failing to declare conflicts of interest in voting on resolutions to pay certain invoices received by the respondent. At a meeting on July 11, 2024, the applicant was present for about 12 minutes when one of the expenditures which was approved at an earlier meeting was discussed. He acknowledged that the expenditure was improperly invoiced to the respondent, and he mistakenly did not recuse himself when it was approved. He then left the meeting when he was asked to do so and when he returned to the meeting, he was advised that council had passed a resolution disqualifying him from council and a second resolution declaring his seat vacant because of other undeclared conflicts.

[121] On July 24, 2024, the applicant filed the originating application to quash or set aside the resolutions disqualifying him and declaring his seat vacant. The case report says that the applicant appealed the passing of the resolutions pursuant to s. 148(2.1). It does not appear that the question of whether the applicant had brought an appeal within the ten-day limitation period set out in s. 148(2.1) was raised.

[122] On the question of whether the applicant was entitled to some degree of procedural fairness Justice Sinclair wrote:

31 In *Oberg v Saskatchewan Board of Education of the South East Cornerstone School Division*, 2020 SKQB 96, 84 Admin LR (6th) 315, the Court cited with approval the Chambers judge's synopsis of the five factors from *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 [*Baker*], for assessing the degree of procedural fairness owed to an individual as follows:

[21] Five important factors assist in determining the degree of procedural fairness owed by a public body to someone affected by its decision. The following factors are not comprehensive, but they provide a basic framework for assessing procedural fairness:

(a) The nature of the decision and the process used to make it. The more the process provides for a decision

resembling judicial decision-making, the more likely it is that procedural protections closer to the trial model will be required;

(b) The nature of the statutory scheme and the terms of the statute under which the body operates. Greater procedural protections are required when no appeal procedure is provided in the statute or when the decision will finally determine the issue;

(c) The importance of the decision to the individual affected. The greater the impact on the lives of those it affects, the more stringent the procedural protections;

(d) The legitimate expectations for procedural fairness of the person challenging the decision, which is often informed by any policy the public body has in place respecting processes for decision-making; and

(e) The choices of procedure made by the body itself, particularly when the statute gives the decision-maker the ability to choose its own procedures, or when the body has expertise in determining what procedures are appropriate.

32 Much like the case of *Maharaj v Rosetown (Town)*, 2020 SKQB 254, 94 Admin LR (6th) 127 [*Maharaj*], I find that a moderate level of procedural fairness is required in this case.

33 There is nothing explicit in the *Act* about the process that Council should employ to determine that a councillor has acted in a manner that would lead to disqualification. However, the fact that there is a statutory appeal of such decision (at ss. 148(2.1) and 148(2.2) of the *Act*) leads to an appearance of quasi-judicial decision-making. Disqualifying a councillor is not a policy-driven decision.

34 The fact that there is the right to an appeal leads to a lower degree of procedural fairness, particularly, where as here, there is the ability to lead further evidence on the appeal.

35 The decision is of vital importance to Mr. Wushke, but also to those who were represented by Mr. Wushke. Removing a councillor from office and determining that he can no longer represent the people of his constituency for 12 years is a severe consequence, which leads to more procedural protection. The

allegations against Mr. Wushke could also lead to reputational harm, which militates towards more procedural fairness.

36 As noted by Megaw J. in *Kaiser v Baildon No. 131 (Rural Municipality)*, 2023 SKKB 50, 41 MPLR (6th) 210:

[52] The applicant is a duly elected member of council. What council is doing is removing him from the position to which he has been elected and to which office he is entitled to hold. Rural municipality council members are elected in a general election to hold office. The democratic will of citizens cannot be interfered with lightly and cannot be interfered with on the whim of any authority such as a council or any other elected body.

37 In short, I find that because Council's decision is highly important to Mr. Wushke and the electors, and because the appeal rights set out in the *Act* suggest some similarity to judicial decision-making, a moderate degree of procedural fairness is required. I would not put the matter at the high end of procedural fairness given that the decision is made by a municipal council which is entitled to deference by the Court; there is no express statutory scheme setting out how Council is to make its decision; and there is a right to appeal.

38 In *Maharaj*, the Court found that the four basic cornerstones of procedural fairness are: (1) the right to know what the accusations are; (2 and 3) the right to make representations and to have those representations heard — the *audi alteram partem* principle; and (4) the right to know the reasons for the decision.

39 In *Baker*, the Supreme Court indicated:

28 ... The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision.

40 Thus, at minimum, Mr. Wushke was entitled to: (1) know, in advance of a decision, the allegations against him, (2) an opportunity to speak to those allegations, (3) decision-makers with an open mind, and (4) know the reasons for any decision.

[123] After finding that the respondent had breached its duty of procedural fairness Justice Sinclair turned to the consequences. He cited this passage from *Dunsmuir v New Brunswick*, 2008 SCC 9:

[108] It is true that the remedy of reinstatement is not available for breach of contract at common law. In this regard, it might be argued that contractual remedies, on their own, offer insufficient protection to office holders (see *de Smith, Woolf & Jowell: Judicial Review of Administrative Action* (5th ed. 1995), at p. 187). However, it must be kept in mind that breach of a public law duty of fairness also does not lead to full reinstatement. **The effect of a breach of procedural fairness is to render the dismissal decision void *ab initio* (*Ridge v. Baldwin* [[1963] 2 All ER 66], at p. 81). Accordingly, the employment is deemed to have never ceased and the office holder is entitled to unpaid wages and benefits from the date of the dismissal to the date of judgment** (see England [*Employment Law in Canada*, 4th ed. Markham, Ont.: LexisNexis Butterworths, 2005 (loose-leaf updated March 2007, release 10)], at para. 17.224). However, an employer is free to follow the correct procedure and dismiss the office holder again. A breach of the duty of fairness simply requires that the dismissal decision be retaken. It therefore is incorrect to equate it to reinstatement (see *Malloch* [[1971] 2 All ER 1278], at p. 1284).

[Emphasis added]

[124] The resolutions were accordingly ruled *void ab initio*.

[125] On the material facts there is nothing to distinguish *Wushke* from this case. No notice was given to the Applicant of the intention to consider a resolution declaring her seat on the OHB vacant at the July 18, 2025 meeting. She was not given an opportunity to speak to the alleged reasons for the disqualification.

[126] The Resolution is *void ab initio*.

[127] Because of this conclusion, it is not necessary to decide the factual dispute as to whether the Applicant filed a public disclosure statement with the administrator.

[128] It will be for the Respondent to decide if it is still of the view that the Applicant is disqualified from holding the office on the OHB and if it will take action to enforce the disqualification following the required procedure.

J.
G.A. MESCHISHNICK