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New Complaint

RE: Honourable Justice Lyle Zuk

Court of Queen's Bench for Saskatchewan

Judicial Centre of Battleford
291 23 Street West
Battleford SK S0M 0E0

Q.B. No. 230 of 2019 2019 / 09 / 26

Description of Complaint

Background

The Plaintiff – Suffern Lake Regional Park Authority (SLRPA or the Park Authority, also known as the Board):

The Suffern Lake Regional Park Authority is described as an **Other Legislated Entity**, a public body performing a function of Government. The Saskatchewan Provincial Auditor confirmed in January 2020 that amendments to the *Regional Parks Act 2013* make Regional Park Authorities a form of local government. Saskatchewan's Minister of Parks Culture and Sport is responsible for Regional Parks with the Ministries of Government Relations and Environment also playing significant oversight roles. Legislated administration of property taxes is assigned to one of the Rural Municipalities involved in the creation of the park. In the case of Suffern Lake, the Rural Municipality of Senlac (RM 411) holds taxation jurisdiction.

The Respondents – John Danilak and Joanna Ritchot self-represented as funding a stream of legal defences against an extension of the Government of Saskatchewan was unaffordable. There has been long-term discord between a group of cottage owners who have attempted to hold SLRPA accountable for financial and operational management including issues of environmental oversight, failure to follow lottery regulations and taxation concerns, all concerns which have been proven valid.

Court Action Summary

We were respondents to Writ of Possession actions launched under s. 50 of *The Landlord and Tenant Act* by Suffern Lake Regional Park Authority ostensibly for a breach of lease clause allowing termination for tax arrears.

Saskatchewan's QB 230 of 2019 sought vacant possession of Danilak's cabin on lot #27 in Suffern Lake Regional Park. We appeared before Honourable Judge Zuk in Chambers on September 26, 2019. He reserved his decision.

Justice Zuk provided his summary decision **eight** months later on May 26, 2020. The application was **dismissed** as the plaintiff, SLRPA, failed to meet the notification requirements of the *Landlord and Tenant Act* S.10(2).

Rationale for request of a JUDICIAL CONDUCT REVIEW

Amended Originating Applications for QB230 and 231 of 2019 are virtually identical. Yet, the written decisions are decidedly different. (OA QB230, OA QB231, Zuk Decision QB230, Goebel Decision QB231: Attachments 1 – 4)

1. Justice Zuk's decision on QB230 of 2019 states that Danilak's cabin owner lease remains in force and effect [31]. In her decision on QB231 of 2019, Madam Justice Goebel accepts the lease termination as she rules that the Park reinstate the cabin owner lease [65].
2. Justice Zuk does not address the Plaintiff's attempt to translate tax arrears into rent. Madame Justice Goebel clearly states that tax arrears do not give the Park indicia of rent [44].
3. Justice Zuk calls respondents to QB230 at best, **disingenuous** [38] in their claim of assessments being manipulated by the plaintiff. Madam Justice Goebel states the claim of manipulated taxes has been **debunked** [65] which by definition means contesting of the tax billing was an exaggerated claim now proven to be untrue. Respondents to QB230 were not being insincere in defense of their belief that SLRPA affected assessments nor had the theory of tax manipulation been disproven when Madam Justice Goebel heard QB231. **SLRPA's manipulation of taxes using assessment reporting was exposed and acknowledged by the Saskatchewan Assessment Management Agency in February 2020 with the Ministry of Justice being apprised at the time.*

Understandably, these distinctly different decisions have created dilemmas giving rise to efforts by the plaintiff, SLRPA, to use the divergent decisions as an opportunity to invoice retroactive charges and to initiate further attempts to deny leases.

The lease clause under which SLRPA made application to the court is invalid and the lease contains no severability clause. SLRPA has indicated they are redrafting lease agreements, however, are only offering the invalid lease which contains clauses that, while they would not stand the test of law, currently allow opportunity for SLRPA to now deny pending lease renewal.

SLRPA meeting minutes (LA FOIP Rural Municipality of Senlac 25/09/2020) indicate the intent to initiate a new court action was being discussed in November and December of 2019, **months prior to receiving the decisions on QB230 and 231.**

Any additional action filed will be **the fourth publicly funded effort** SLRPA has launched in the same vein. A preceding Saskatchewan court action, QB174 of 2019 SLRPA vs Wildman et al, was for writ of possession against five respondents involving three properties in June 2019. It was discontinued on procedure by Madam Justice Zerr August 15, 2019.

SLRPA's Annual General Meeting minutes show discrediting and defamation of the respondents continues with a current SLRPA representative, Dale Rushinko, stating that had the respondents not cost the Park \$60,000 in legal fees, the local water system could have been improved. (LA FOIP Rural Municipality of Senlac 25/09/2020)

While both decisions denied SLRPA writs of possession, they did not address or resolve stated concerns as defined in Respondents Response to Originating Applications (Attachment 5)

Courtroom Behaviour of Justice Zuk

At the opening of Chambers Hearings September 26, 2019, and before any cases were heard, Justice Zuk briefly spoke to all those in attendance. He commented that one problem with being a Chambers Judge was that he was unable to read all the materials that had been presented for the numerous actions to be heard that day. While that might be the reality, it does little for the confidence of those hoping to have fair and complete consideration by the court.

Justice Zuk further shook respondents' confidence by complimenting Counsel for the Plaintiff on his Brief materials being very well prepared. The time spent before Justice Zuk was short, in the order of 30 minutes. During that time, he did not refer to any written materials provided by the Respondents.

Justice Zuk's commentary did not seem grounded in a clear understanding of the circumstances.

QB230 had to do with the Applicant attempting to take possession of a cottage owned by Respondent John Danilak and situated on land sub-leased from Suffern Lake Regional Park Authority (SLRPA) who holds the parent lease of Crown land under the Ministry of Environment. The dispute centered around Danilak's lease which had been terminated without notice by SLRPA for unpaid taxes. At the time of termination, Danilak's taxes of \$516.50 were 90 days in arrears and being disputed.

The Respondents were part of a group that had raised concerns about taxes somehow being manipulated at the local level through the assessment process. SLRPA does not hold taxation jurisdiction; their sole role is to set the mill rate consistent with budget needs. The Rural Municipality of Senlac (RM411) is legislated taxation authority for Suffern Lake Regional Park.

During the hearing Justice Zuk stated "*the Board has nothing to do with assessments*". **This statement is simply wrong.**

The property assessment process for Regional Parks relies on information related to ownership changes, property upgrades and sales values being supplied to the Saskatchewan Assessment Management Agency (SAMA) by the local park administrators. (correspondence 21/02/2020 SAMA CEO Irwin Blank Attachment 6)

Justice Zuk apparently did not know how the Regional Parks property taxation process worked but he made a definitive statement on it anyway. His comment set the tone for the hearing and carried over into his written judgement.

Assessment/taxation related materials presented by the Plaintiff should have caused Justice Zuk to at least consider that something was amiss with assessments and therefore, taxation, at Suffern Lake Regional Park:

1. SLRPA Secretary Kiefer acknowledges (Reply Affidavit 20/09/2019 [31] Attachment 7) that he understands why sales and improvement **information is required by Saskatchewan Asset Management Agency and admits that he had not supplied any** because he was unsure of all sale price information and “*erred on the side of caution*” to supply none. Kiefer’s Exhibit A shows 4 pages of sales and improvement information sent to SAMA.

Kiefer’s failure to provide sale values is confusing. SLRPA has, since at least 2012, required a witnessed bill of sale form in advance of re-assignment of an existing lease to a cabin or lot purchaser.

2. In an email exchange with Minister Makowsky of Parks Culture and Sport Government of Saskatchewan, SLRPA Secretary David Kiefer **boasts how cabin owners would never agree to sell properties at their assessed prices**. The Minister thanks him. (QB230 Affidavit David Kiefer 05/09/2019 point 9 Exhibit M, Exhibit N, Attachment 8).
3. SLRPA openly acknowledged the Chairman’s extended family had gone several years without paying taxes on a Suffern Lake property. Respondents presented official documentation (LA FOIP RM of Senlac) showing the length of time for the **noted arrears was five years** and no penalties beyond accrued interest had been applied. The LA FOIP response further showed the Plaintiff **had presented false information to the court** regarding the circumstances surrounding the arrears. The Chairman’s brother-in-law did not “*fall into arrears in 2016*” as SLRPA Secretary David Kiefer swears to (QB230 Reply Affidavit of David Kiefer 20/09/2019 [76]). Those taxes actually went unpaid from **2012 until September 13, 2019**.

A nepotism-based, five-year tax arrears should qualify as manipulation of taxes.

By determining materials directly related to tax concerns irrelevant, Justice Zuk ignored substantive indicators of the plaintiff’s intentional wrongdoing regarding taxation, as well as dismissing acts of nepotism and perjury. He chose instead to portray us as insincere.

In courtroom discussion with Justice Zuk, Danilak attempted to point out the inequities in the process used by SLRPA to bring the action to the courts. When Danilak pointed out the Chairman's brother-in-law had gone five years tax free, Justice Zuk's angry response was "*why are you telling me this?*", he went on to say "*you got caught*", then rambled on about how some people get caught for speeding while others do not.

Justice Zuk disregarded that SLRPA was the Plaintiff meaning Chairman Harvey Leer authorized the legal action based on tax arrears while condoning his relative's tax offense. Danilak chose not to argue with Justice Zuk; he did not point out that while police officers may exercise discretion in applying certain traffic laws, tax authorities do not have that same leeway.

Justice Zuk's comment "*you got caught*" demonstrates how little attention Justice Zuk gave to the respondents' materials. Danilak did not "*get caught*", he was one of the first people to raise concerns about unfair taxation within Suffern Lake Regional Park and among those who demanded an explanation for the tax disparities from SLRPA and its oversight bodies. He openly confronted the taxation process and was willing to present his concerns to a court of law. He did not expect to be harangued by a Judge for doing so.

Written Decision

Justice Zuk's contention that the Plaintiff (SLRPA) had no influence over tax assessments carried over into his written decision. Several statements in Kiefer's Reply Affidavit and the evidence he presented as Exhibit A belie Justice Zuk's comment. Yet, Justice Zuk writes the Respondents were "*knocking on the wrong door*" [36] when suggesting tax assessments were being manipulated at the local level.

Justice Zuk wrote other troubling statements. He stated it was not his job to determine whether tax assessments were correct, "*It is not necessary for me to make any determination... whether The Saskatchewan Assessment Management Agency's [SAMA] assessment of Lot 27 is accurate*" [6]. However, he then went on to write that "*the Tenants' argument that their property assessment increased as a result of false information provided by the Park is, at best, disingenuous*" [38]. If he felt it was not his responsibility to identify tax assessments as being correct, what method did he use to determine claims made by the Respondents were disingenuous?

Justice Zuk disregarded much of the information supplied by the Respondents as irrelevant. He instead narrowed the issue down to a single consideration between a landlord and tenant. **This was not a simple landlord vs tenant issue. This was an arm of government filing a court action seeking to dispossess a tenant for a contested tax bill of less than \$600. An arm of government using public monies to fund court actions. An arm of government with influence on the assessment process but no taxation jurisdiction. An arm of government now proven to have manipulated taxation through the assessment process.**

Justice Zuk showed no interest in questioning the validity of SLRPA's motives. Yet, SLRPA Secretary David Kiefer dedicates 5 pages of his QB230 Affidavit to expanding on reasons why the Park does not want the Respondents as tenants. Beginning in paragraph 59 with, *"The Park respectfully does not desire to continue any tenancy any relationship with the occupants of Lot 27"*. He completes their reasoning in paragraph 81, *"the Park respectfully declines to continue any tenancy relationship, for the reasons shown above."* The reasons include many considerations in addition to tax arrears and support our belief that SLRPA saw the tax arrears as a convenient opportunity to remove tenants who held them to account for questionable management.

How is the plaintiff's own statement of intent to sever our tenancy by proceeding with QB230, after the failure of QB174, irrelevant? Further, the affidavit of Gordon Hollman is, in its entirety, a documented admission that SLRPA was actively campaigning to remove us from the Park. The petition is defamatory and inflammatory, and Hollman failed to make any mention of the tax arrears of the Chairman's brother-in-law when he circulated it. (Hollman affidavit Attachment 9)

We see no evidence of underlying fairness in this process.

Justice Zuk considered it irrelevant that the Plaintiff failed to provide required assessment information, presented false evidence sworn to be true, demonstrated a long history of tax-related nepotism and defamed the Respondents.

Most disappointing of all was Justice Zuk's statement about the Respondents' claims being disingenuous. By doing this he suggests the Respondents were not being honest or sincere with the materials they presented. Justice Zuk made this statement **after** having been supplied an LA FOIP response showing SLRPA had, in more than one instance, presented the court with taxation-relevant damaging and false evidence. He does not address the plaintiff's perjury or nepotism.

Justice Zuk's decision does say the lease for Mr Danilak's cabin is in force and effect. SLRPA is now claiming Danilak owes almost \$3000 for retroactive and current fees, although he went over two years without services following the termination of his lease.

Justice Zuk did not award costs to respondents. His reason was they had provided extraneous information which required the Board to pay extra legal fees for examination of the materials. *"Once the Park commenced its application, the Tenants responded with lengthy affidavits raising old grievances and irrelevant issues... and put the Park to the added expense of responding to each allegation"* (37). **We were Respondents replying to 253 pages of documents received. Respondents' submitted 79 pages. The tax considerations were neither old grievances nor irrelevant to an action based on taxation.**

To summarize, SLRPA launched two legal actions against us. One was discontinued on procedure and the other dismissed by Judge Zuk himself. SLRPA used public money to conduct these actions while we paid their own way. Being innocent is an expensive proposition when an arm of Government acts against individuals, but it remains a cost-free undertaking for individuals within the agency that initiated the action.

When Government and its agents use the justice system and the tax system to their own advantage and subsequently the court refuses to consider valid evidence showing wrongful behaviours, where does one then go to find the true justice we were taught to believe in?

The Respondents were penalized for identifying faults within a Government structure. Justice Zuk's decision shows that having the courage and tenacity to stand up against the wrong actions of a government body means you get attacked personally by the judge and only lose *some* of your money, not your whole house. The decision, in particular the way it portrays us, is incentive for ordinary citizens to ignore wrongdoings and just pay what is demanded because it is far cheaper than being right.

Judge Zuk castigates us [36 and 37] blaming us for forcing SLRPA to take court action over the minimal amount of tax increase we were billed. This fails to recognize our attempts to mediate concerns. SLRPA, the government body, chose to go to the expense of litigation over minor tax arrears planning to confiscate a cabin worth approximately \$150,000 which would effectively remove us from the Park, pay off their lawyer fees, feed their operating budget and discourage other cabin owners from taking a stand against unjust practices.

Again, we do not see any underlying fairness in this process. How does this serve the public interest in a society where the judicial system claims to be fair and just?

Post-hearing investigation shows that **we were correct in our claim that assessments had been manipulated at the local level**. Saskatchewan Asset Management Agency has acknowledged SLRPA's failure to provide necessary assessment information and is currently conducting a community-wide reassessment of Suffern Lake Regional Park properties. **SAMA has thanked us and our friends for exposing the inequitable assessments. SAMA has committed to working with the appropriate Ministries to change legislation and regulations to ensure this cannot happen again in Suffern Lake or elsewhere.** Suffern Lake represents only 54 cabins of the more than 3,000 cabin properties in Saskatchewan's Regional Park system. (comprehensive background document Attachment 10)

Justice Zuk's decision resolved nothing. Minutes from SLRPA general meetings show that planning for new lawsuits has begun. SLRPA and counsel have implied that they will deny lease renewals. We have requested mediation with SLRPA's oversight Ministries hoping to forestall SLRPA's latest foray into punitive and unjust actions. (correspondence Min GR Attachment 11)

It simply does not seem consistent with Canadian values that respondents, who have identified wrongdoing perpetrated by an arm of Government, should experience financial loss while identified nepotism and perjury perpetrated by the Government Plaintiff are not addressed by the court.

We are aware of some of the parameters under which the Review Committee works. We ask that Justice Zuk be encouraged to correct the insulting and wrong statements he made in his written decision. We should not be portrayed as insincere and untruthful in court records.

We would willingly provide the Judicial Conduct Committee with any additional materials that would be helpful in conducting this review and will make ourselves available for discussions.

Respectfully,

John Danilak and Joanna Ritchot

List of Attachments

1. Originating Application QB230 (Amended)
2. Originating Application QB231 (Amended)
3. Zuk Decision QB230 SLRPA v Danilak May 26, 2020
4. Goebel Decision QB231 SLRPA v Wildman May 15, 2020
5. Response to Originating Application QB230
6. Saskatchewan Assessment Management Agency (SAMA) CEO Irwin Blank correspondence dated February 21, 2020
7. Reply Affidavit of David Kiefer sworn September 20, 2019
8. Affidavit of David Kiefer sworn September 5, 2019
9. Affidavit of Gordon Hollman sworn September 4, 2019
10. Comprehensive Taxation Manipulation Background Document prepared for this submission
11. Request for Mediation Ministry of Government Relation dated September 17, 2020