

**KING’S BENCH FOR SASKATCHEWAN**

**Citation: 2024 SKKB 4**

Date: **2024 01 10**  
Docket: QBG-RG-00917-2016  
Judicial Centre: Regina

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**BETWEEN:**

**JUDITH MAY**

**PLAINTIFF/APPLICANT**

- and -

**SASKATCHEWAN POWER CORPORATION**

**DEFENDANT/RESPONDENT**

**Counsel:**

John M. Williams  
Eileen V. Libby, K.C.

for the plaintiff/applicant  
for the defendant/respondent

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FIAT  
January 10, 2024

**KUSKI BASSETT J.**

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**I. INTRODUCTION**

[1] More than six years after pleadings closed, Judith May applies for leave to amend the statement of claim in her wrongful dismissal action against Saskatchewan Power Corporation [SaskPower]. She wants to include claims for moral damages and solicitor-client costs, plead more particulars of SaskPower’s alleged bad faith, and correct some pleaded facts.

[2] SaskPower opposes the amendments. It argues they are improper pleadings that are sought too late in the proceeding and expand the issues in the

litigation. As a result, it says the amendments are prejudicial and would not survive an application to strike.

[3] The outcome of this application turns on the following issues:

(a) Are the amendments prejudicial?

(b) Are the amendments replete with opinion, argument, or descriptions of evidence, or are they otherwise immaterial, redundant, or unnecessarily lengthy?

(c) Do the amendments seek to relitigate an issue already decided?

[4] For the reasons that follow, Ms. May has leave to amend the claim for some of her proposed amendments. While the amendments are not prejudicial and do not unduly expand the issues in this action, some are impermissible recitations of evidence. None of the proposed amendments seek to relitigate an issue that has already been decided.

## **II. LEGAL FRAMEWORK**

[5] The law relating to pleading amendments is well-established.

[6] A chambers judge has discretion under Rule 3-72 of *The Kings Bench Rules* to allow pleading amendments. This Rule requires parties to make amendments necessary to determine the real questions in issue and permits amendments as late as at trial if they will not cause non-compensable prejudice to the opposing party.

[7] In *Cupola Investments Inc. v Zakreski*, 2021 SKCA 86, Leurer J.A. (as he then was) confirmed the law “broadly favours allowing amendments if the result is a

pleading that would have been proper in first instance unless the introduction of the amendment at a later stage of the litigation will cause undue non-compensable prejudice” (para. 63). He outlined three key principles that underpin the exercise of discretion in amendment applications. They are summarized as follows:

- a) The overarching purpose for allowing amendments is to enable the court to determine the true points of controversy between the parties. Amendments are liberally granted when required for this reason (paras. 45-47);
- b) An amendment must be a proper pleading, meaning it should not be allowed if the result would be a pleading that could be struck pursuant to Rule 7-9(2) of *The King’s Bench Rules* or would be “undone” for other reasons (para. 48); and
- c) An amendment will not be allowed if material prejudice will be caused by the change in the pleading that cannot be sufficiently ameliorated by an award of costs or an adjournment (paras. 49-52).

[8] In *Casbohm v Winacott Spring Western Star Trucks*, 2018 SKQB 15 at paras 26-33, 30 CPC (8<sup>th</sup>) 175, Kalmakoff J. (as he then was) confirmed the threshold to obtain leave to amend is low. He also confirmed, when amendments are opposed, the court must consider them as if the opposing party had applied to strike the pleadings under Rule 7-9(2) of *The King’s Bench Rules*. Rule 7-9 reads as follows:

7-9(1) If the circumstances warrant and one or more conditions pursuant to subrule (2) apply, the Court may order one or more of the following:

(a) that all or any part of a pleading or other document be struck out;

(b) that a pleading or other document be amended or set aside;

[...]

(2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:

(a) discloses no reasonable claim or defence, as the case may be;

(b) is scandalous, frivolous, or vexatious;

(c) is immaterial, redundant or unnecessarily lengthy;

(d) may prejudice or delay the fair trial or hearing of the proceeding; or

(e) is otherwise an abuse of process of the Court.

(3) No evidence is admissible on an application pursuant to clause 2(a).

[9] *Beemer v Brownridge*, [1934] 1 WWR 545 (CanLII) (Sask CA), is the oft-cited case regarding the court’s generous approach to proposed amendments. The court confirmed amendments should generally be allowed “however negligent or careless may have been the first omission and however late the proposed amendment, if it can be done without injustice to the other side; and there is no injustice if the other side can be compensated by costs” (para. 10). See also: *Harvey v Western Canada Lottery Corporation*, 2015 SKQB 102 at para 22, [2015] 9 WWR 391.

[10] With these principles in mind, I now turn to my analysis.

### III. ANALYSIS

#### (a) Are the Amendments Prejudicial?

[11] The first issue is whether the amendments should not be allowed because they would cause non-compensable prejudice to SaskPower or would otherwise prejudice or delay the fair trial of this matter.

[12] SaskPower says the amendments should be disallowed because they cause prejudice by raising new claims that would expand the litigation late in the proceeding after untenable delay. It argues the amendments would result in a pleading that would be struck pursuant to Rule 7-9(2)(d) of *The King's Bench Rules* because they may prejudice or delay the fair trial or hearing of the proceeding. In para. 49 of its brief of law, its position on this point is set out:

49. SaskPower submits that in the current circumstances, there is actual prejudice as the proposed amendments have been advanced late in the proceedings, and would expand the scope of litigation. The proposed amendments include matters and issues that were clearly known to the [plaintiff] prior to the close of pleadings and throughout the last six years of these proceedings and has advanced no reason for the delay in requesting any amendment with respect to the same. Conversely, there is evidence before this Honourable Court that, in the absence of the proposed amendments, SaskPower was fully prepared to proceed to a pre-trial conference.

[13] The party opposing amendments bears the onus of satisfying the court that the proposed amendments are, among other things, prejudicial: *Granitewest Developments Ltd. v Saskatchewan*, 2015 SKQB 320 at para 44, 116 LCR 272 (leave to appeal refused: *Granitewest Developments Ltd. v Saskatchewan (Highways and Infrastructure)*, 2016 SKCA 3, 472 Sask R 251); see also *Castledowns Law Office Management Ltd. v FastTrack Technologies Inc.*, 2012 ABCA 219 at para 17, 533 AR 287.

[14] Amendments may be denied if they would materially alter the course of an action late in a proceeding by raising new, unexpected issues. New issues may cause untenable delay if they require further steps such as additional document disclosure, production, and questioning when the opposing party is ready for trial. See *Royal Bank of Canada v Roles*, (1992), 98 Sask R 146 (Sask QB) and *Koroluk v Kostiuk*, 1999 SKQB 270, 192 Sask R 284.

[15] Amendments may be allowed when they are sought at a late stage in the proceeding or after delay by the party seeking to amend if they satisfy the well-established legal test, including that they will not cause non-compensable prejudice to the opposing party. See *Branco v American Home Assurance Company*, 2010 SKQB 267, 357 Sask R 274 and *L. (G.) v Canada (Attorney General)*, 2003 SKQB 448, 240 Sask R 31.

[16] To assess whether allowing Ms. May's amendments would alter the course of the action at the late stage of the proceeding, I must determine if they raise new, unexpected issues that may prejudice or delay the fair trial or cause non-compensable prejudice to SaskPower.

[17] The current pleadings and the proposed amendments raise issues relating to moral damages. In a wrongful dismissal action, an employer's bad faith in the context of an employee's termination may result in a moral damages award: *Wallace v United Grain Growers Ltd.*, [1997] 3 SCR 701, *Honda Canada Inc. v Keays*, 2008 SCC 39 at paras 49-60, [2008] 2 SCR 362. Moral damages are akin to aggravated damages in a wrongful dismissal action: *Capital Pontiac Buick Cadillac GMC Ltd. v Coppola*, 2013 SKCA 80 at para 26, 364 DLR (4<sup>th</sup>) 351 [*Capital Pontiac*]. The conduct of an employer relevant to a claim for moral damages is not necessarily limited to the moment of the

termination: *Porcupine Opportunities Program Inc. v Cooper*, 2020 SKCA 33 at para 24.

[18] SaskPower first raised the issue of its good faith and fair dealing in its defence that was filed in 2016 even though Ms. May did not assert it acted in bad faith nor claim moral damages. On this point, SaskPower’s defence states:

11. SaskPower expressly denies that it breached any duty of good faith or fair dealing in respect of the Plaintiff. At all times material to the Claim, SaskPower treated the Plaintiff fairly and acted in good faith.

12. SaskPower has met all obligations it owed to the Plaintiff at law and/or at equity. SaskPower has no liability to the Plaintiff as a result of her employment, the termination of her employment, the loss of any employment benefit, the loss of existing or future job opportunity, the loss of reputation or opportunity for the Plaintiff to enhance her reputation, or at all.

[19] In her reply also filed in 2016, Ms. May put SaskPower’s good faith in issue. She claimed entitlement to moral damages and solicitor-client costs based on its alleged bad faith in the context of her termination.

[20] SaskPower correctly asserts that Ms. May’s claims for moral damages and solicitor-client costs are improperly pleaded in her reply. The learned authors of *Bullen & Leake & Jacob’s Precedents of Pleadings* 18<sup>th</sup> ed, vol 1, (UK: Sweet & Maxwell Ltd., 2016) at para 1-37 [*Precedents of Pleadings*] make it clear that a plaintiff “should not introduce new claims or causes of action within the reply; if he wishes to do so he should amend his particulars of claim”. This includes new claims for damages: see *Panchal v Wal-Mart Canada Corp.*, 2022 BCSC 71 [*Panchal*] and *Fortin v Hope*, [1996] OJ No 2850 (QL) (Ont Ct J) at paras 28-29 [*Fortin*].

[21] This stands to reason. A defendant who receives a reply with new relief claimed, or a new cause of action asserted, does not have an automatic right to plead in defence. The only available option is to amend their defence, which may require a court application. This would undoubtedly be untenable and justifies the general rule described in *Precedents of Pleadings*, that new claims and new causes of action are not properly advanced in a reply.

[22] If a reply asserts a new claim for damages, an adverse party may apply to strike it and/or the pleading party may apply to amend. See *Panchal and Fortin*. In *Bell Mobility Inc. v Anderson*, 2012 NWTCA 4, [2012] 9 WWR 89, the court noted in the context of an application to strike a reply, courts must consider whether the impugned portion “should be put elsewhere in the pleadings” by way of an amendment (para. 28).

[23] SaskPower argues that the portions of the reply that reference claims for moral damages and solicitor-client costs are to be taken only as factual assertions and are ineffectual for advancing the relief sought. In essence, it submits the claims in the reply are to be disregarded as irrelevant to the application to amend. I am not persuaded by this argument. A reply that has been filed and has not been struck should not be disregarded. In *Morgan v Macdonald*, [1924] 4 DLR 457 (Sask CA), the court overturned the trial judge’s decision to disregard the plaintiff’s reply that was filed in breach of the Rules of Court. The court held the filed reply should not have been disregarded if it was not struck and noted it ought not to be struck if it put substantial rights in issue and the opposing party could be compensated in costs.

[24] In these circumstances, I have no difficulty concluding Ms. May properly seeks leave to assert her claims for moral damages and solicitor-client costs by amending the claim. While the reply improperly includes claims for damages and solicitor-client costs, it is relevant in assessing whether the proposed amendments are

prejudicial for raising new, unexpected issues that would cause a significant shift in the proceeding.

[25] The reply makes it obvious that SaskPower had notice Ms. May was seeking moral damages and solicitor-client costs since pleadings closed in 2016. It highlights these claims are real points of controversy or questions in issue in this action. The fact moral damages have been a real question in issue since pleadings closed is confirmed by the uncontradicted evidence that SaskPower's proper officer was questioned in 2017 about its alleged bad faith without objection: Affidavit of Judith May sworn January 16, 2023, at para. 8. Overall, it is clear the amendments relating to SaskPower's bad faith, moral damages, and solicitor-client costs do not raise new issues that will unduly expand the scope of the litigation.

[26] In addition, SaskPower did not provide any evidence of prejudice if the amendments are allowed. It did not suggest its ability to defend will be compromised. It did not submit it is taken by surprise by the proposed amendments. It did not assert the amendments would require it to take further, unanticipated steps before pre-trial or trial, such as further document disclosure, production, and/or questioning.

[27] In these circumstances, I conclude the proposed amendments do not raise new, unexpected issues that unduly expand the scope of the litigation. Allowing the amendments will not require further steps that would cause untenable delay at the late stage of the proceeding. I am satisfied the proposed amendments are not prejudicial to SaskPower, and that granting leave to amend will not prejudice or delay the fair trial of this action. The amendments will not result in a pleading to be struck pursuant to Rule 7-9(2)(d) of *The King's Bench Rules*.

**(b) Are the Amendments Replete with Opinion, Argument, or Descriptions of Evidence, or Are They Otherwise Immaterial, Redundant or Unnecessarily Lengthy?**

[28] The second issue is whether the proposed amendments are replete with opinion, argument, or descriptions of evidence, or are otherwise immaterial, redundant, or unnecessarily lengthy such that they would result in a claim to be struck pursuant to Rule 7-9(2)(c) of *The King’s Bench Rules*.

[29] SaskPower argues the amendments are improper pleadings because they are redundant and irreparably intertwine arguments, opinions, and evidence with material facts. It also submits the amendments result in a pleading to be struck pursuant to Rule 7-9(2)(c) because they are “immaterial, redundant, or unnecessarily lengthy”.

[30] To determine if the amendments would result in an improper pleading that would be struck, it is important to consider the purpose and function of pleadings as articulated in *The King’s Bench Rules* and case law.

[31] Pleadings serve an important purpose in litigation. They are the vehicle by which parties embroiled in a legal dispute convey to each other the nature of their claims: *Chisum Log Homes & Lumber Ltd. v Investment Saskatchewan Inc.*, 2007 SKQB 368 at para 15, [2008] 2 WWR 320. A pleading must describe the actionable conduct including what the defendant did and why the plaintiff says the conduct is actionable: *Country Plaza Motors Ltd. v Indian Head (Town)*, 2005 SKQB 442 at para 8, 272 Sask R 198.

[32] Rule 13-8 of *The King’s Bench Rules* requires that a pleading contain a summary of the material facts, and not evidence, on which a party relies. A plaintiff’s claim must allow the defendant to know the case it has to meet so that it may “respond

with an intelligible statement of defence”: *Hill v Wiess (Estate)*, 2010 SKQB 193 at para 15.

[33] In *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98, the court explained that Rule 13-8 reflects the jurisprudence about the function of pleadings, which include:

- a) Clearly defining the questions in issue;
- b) Giving notice to the opposing party of the case asserted against them so they may appropriately direct their evidence; and
- c) Establishing a record of the questions in issue to prevent future litigation.

[34] Pleadings “should not be prolix, garrulous, argumentative or replete with opinions, speculation or descriptions of evidence”: *Mallard v Killoran*, 2005 SKQB 203 at para 26 [*Mallard*]. Passages of a claim may be struck if they describe activity of the defendant that constitutes evidence or contains speculative opinion which have “no place in a pleading”: *Mallard* at para 31.

[35] I am mindful that pleadings may survive an application to strike even if they contravene the requirements of Rule 13-8. In *Reisinger v J.C. Akin Architect Ltd.*, 2017 SKCA 11, 411 DLR (4<sup>th</sup>) 687, the defendants appealed the chambers judge’s ruling to not strike the plaintiff’s 20-page claim that was a rambling and unfocused narrative and included evidence, argument and opinion which strayed far from the requirements of Rule 13-8. Among other things, they argued the claim should be struck pursuant to Rule 7-9(2)(c) because it was redundant and unnecessary lengthy. The court noted the chambers judge focused on the “core concept” that the purpose of the claim

was to inform the party opposite of the material facts so that they had a fair opportunity to know the case they were required to meet (para. 8). In the result, the court allowed the appeal in part and struck portions of the claim, but not because it was immaterial, redundant, or unnecessarily lengthy contrary to Rule 7-9(2)(c). The court struck portions for failing to disclose a cause of action. It allowed the “undoubtedly prolix” (para. 47) and “copious specific and detailed allegations of fact” (para. 48) to remain because they potentially bore on the claims that were advanced (para. 54).

[36] I am also mindful that a claim for aggravated damages must be pleaded with specified misconduct in order to, among other things, avoid taking the opposing party by surprise: *MacKinnon v Devine*, 2003 SKQB 548 at paras 20-22, [2004] 7 WWR 695. Moral damages are akin to aggravated damages in the wrongful dismissal context: *Capital Pontiac* at para 26. Thus, Ms. May’s claim for moral damages must be pleaded with specified misconduct of SaskPower to support this relief.

[37] Based on the governing legal principles, I am satisfied the proposed amendments in paras. 31, 32, 33(a)-(h), 34, and 35(c) and (e) of the proposed amended claim in Exhibit “A” to Ms. May’s affidavit fulfil the purpose and function of pleadings. These portions of the amendments articulate Ms. May’s claim for moral damages and provide a detailed factual foundation of SaskPower’s alleged bad faith to support it. While some portions are somewhat repetitive of prior pleadings, contain argument, and/or stray into evidence, they overall provide SaskPower with fair notice of the assertions lodged against it so that it may intelligibly defend and direct its evidence appropriately. I conclude these proposed amendments, which are set out in Appendix “A” to this decision, are allowed because they are not “replete” with descriptions of evidence, argument and/or opinion nor immaterial, redundant, or unnecessarily lengthy.

These amendments will not result in a pleading to be struck pursuant to Rule 7-9(2)(c) of *The King’s Bench Rules*.

[38] In addition, I am satisfied that the proposed amendments in paras. 6 and 14 of the amended claim serve to correct or clarify previously pleaded facts and ought to be permitted.

[39] In contrast, I do not allow the proposed amendments in subparas. 33(h)(i)-(vi) of the proposed amended claim, which are set out in Appendix “B” to this decision. These amendments are “replete” with descriptions of evidence, including specific dates, discussions, correspondence, and/or proceedings in relation to SaskPower’s bad faith conduct in the litigation process. For example, subpara. 33(h)(iv) and (v) reads as follows:

- (iv.) By letter dated June 18, 2020, in order that the matter might proceed to a pre-trial conference, Judy requested through her counsel that SaskPower make a number of admissions in respect of certain specific documents SaskPower had produced in December 2019 and January 2020. SaskPower failed to provide any response to that letter and failed to respond to three follow up requests in July and August 2020, necessitating service on SaskPower of Written Questions and an Appointment to resume the oral questioning of SaskPower's proper officer to obtain alternative information about the newly disclosed documents.
- (v.) At the resumption of the Oral Questioning in November 23 2020, SaskPower unlawfully refused to answer numerous relevant questions about three central documents disclosed by SaskPower in January 2020 pertaining to the calculation of short term incentive bonus payments for SaskPower Vice-Presidents at the material times. SaskPower refused to reconsider its position even after being provided with additional information following adjournment of the Questioning. This necessitated Judy bringing another Court application in April of 2021 to compel SaskPower to

answer and ultimately resulted in an order of this Court on November 17, 2021 directing SaskPower to return to Questioning to answer all of the questions it had refused to answer and all other relevant questions flowing therefrom, which Questioning took place on March 25, 2022.

[40] Subparagraphs 33(h)(i)-(vi) articulate the evidence Ms. May relies on to establish SaskPower acted in bad faith in the litigation by knowingly frustrating and delaying her pursuit of her claim as alleged in para. 33(h). These amendments go well beyond setting out the essential facts to enable SaskPower to identify the issues that must be joined. In other words, they are not required to avoid taking SaskPower by surprise and allowing it to intelligibly defend. I conclude they improperly plead evidence and ought to be struck as in *Mallard*. I also conclude that pleadings that are replete with evidence are unnecessarily lengthy and would not survive an application to strike pursuant to Rule 7-9(2)(c) of *The King's Bench Rules*. In the circumstances, the material facts to support the assertion of bad faith in the context of the ensuing litigation are sufficiently pleaded in para. 33(h) to satisfy the purpose of pleadings.

**(c) Do the Amendments Seek to Relitigate an Issue Already Decided?**

[41] The third issue is whether the amendments seek to relitigate an issue already decided, which would result in a claim to be struck pursuant to Rules 7-9(2)(b) or (e) of *The King's Bench Rules*.

[42] In its brief of law, SaskPower submits that Ms. May's proposed amendments in paras. 33(c) and (d) of the amended claim raise an issue that has already been decided by this Court. Although it did not argue the amendments would be struck pursuant to Rules 7-9(2)(b) or (e) for being frivolous or vexatious on the basis of the doctrine of *res judicata* or as an abuse of process, I briefly address this issue.

[43] In *Canada (Attorney General) v Merchant Law Group LLP*, 2017 SKCA 62 at paras 58 and 103, [2017] 10 WWR 664, the court confirmed:

- (a) Where a claim or matter is *res judicata* (finally determined in a prior proceeding), it may be struck as being frivolous or vexatious pursuant to Rule 7-9(2)(b); and
- (b) Abuse of process has been invoked to preclude relitigation in situations where the strict requirements of *res judicata* do not apply, with the result that a claim may be struck pursuant to Rule 7-9(2)(e).

[44] SaskPower’s position is based on the August 23, 2016, fiat in this action. Ms. May applied to strike portions of the defence that pleaded details of a purportedly privileged letter dated June 16, 2016. The court held that facts relating to the letter were not struck because he was “not persuaded that SaskPower likely intended that the letter would not be disclosed to the court in the event negotiations failed” (para. 21).

[45] Ms. May’s proposed amendments in paras. 33(c) and (d) of the amended claim assert SaskPower led her to believe their settlement negotiations, including that letter, would be kept confidential. They do not invite the court to re-decide whether the letter was protected by settlement privilege. I am satisfied that allowing these proposed amendments will not result in a pleading to be struck pursuant to Rule 7-9(2)(b) or (e) of *The King’s Bench Rules*.

**IV. ORDER**

[46] For the reasons set out above, Ms. May has leave to amend her claim as set out in paras. 6, 14, 31, 32, 33(a)-(h), 34, and 35(c) and (e) of the proposed amended claim.

[47] Ms. May shall serve on SaskPower and file with the court the amended claim within eight days. SaskPower shall have a further 30 days to serve and file its amended statement of defence in response, if it chooses to do so.

[48] In light of the divided success, there shall be no order of costs.

**J.**

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**H. A. KUSKI BASSETT**

## APPENDIX A

31. SaskPower owed to Judy a duty of good faith and fair dealing with respect to the manner of her dismissal which duty extends and applies to SaskPower's conduct of the litigation of Judy's wrongful dismissal claim.

32. Judy states that SaskPower acted in bad faith with respect to the manner of her dismissal and resulting litigation and in the circumstances, breached its duty of good faith.

33. The particulars of SaskPower's bad faith conduct, and concomitant breach of duty are:

a) SaskPower chose to advise Judy of the impending termination of her employment as a Vice-president on her 34<sup>th</sup> anniversary of the commencement of her employment, told her that her replacement had been hired but failed to provide her with any documentation.

b) Contrary to their standard practice for management employees terminated without cause, and contrary to the verbal assurances of President Marsh on June 15, 2015, SaskPower did not allow Judy the option to retire before delivering to her the written "Notice of Termination of Employment" on June 16, 2015.

c) By its letter of June 16, 2015, SaskPower initiated "Confidential" settlement negotiations with Judy and intentionally led her to believe that the negotiation process would be kept confidential. Unbeknownst to Judy, SaskPower intended that in the event Judy did not accept SaskPower's terms, they would make their June 16 offer public and in fact did so. In response to Judy's Statement of Claim for wrongful dismissal, SaskPower selectively set out terms of their confidential June 16 offer in its Statement of Defence and filed the same on the public court file, claiming it had made Judy a reasonable offer that she rejected and accordingly did not owe Judy any monies in connection with her employment.

d) On June 24<sup>th</sup>, 2015, SaskPower sent to Judy, through counsel, documents which belatedly raised the possibility of SaskPower offering Judy a retirement package on terms set out in the documents but which would only have paid 75% of the compensation offered in the June 16 letter of termination. SaskPower marked the package of documents "Without Prejudice" to signal its intention to keep the matter confidential. However, in response to Judy's Statement of

Claim, SaskPower set out the purported terms of the confidential retirement package in its Statement of Defence.

e) SaskPower knew by August 7, 2015, that Judy would not accept the terms of its June 16 offer, yet failed to pay Judy, until December 21, 2015, \$44,598.40 it admitted owing to her for statutory pay in lieu of notice under s. 2-60 of *The Employment Act*.

f) SaskPower has expressly admitted that its contract with Judy required it to comply with section 7 of *the Crown Employment Contracts Act* as set out in paragraph 19 of this Claim and has expressly admitted that between the time it terminated Judy's employment and filed its Defence, SaskPower had only paid to Judy a sum equivalent to eight weeks base salary, yet asserted in paragraph 12 of its Defence that it had met all its legal and equitable obligations to Judy and had no liability to the Plaintiff as a result of her employment, a claim that has no basis whatsoever in fact, law, or equity.

g) At the time SaskPower terminated Judy, SaskPower knew that it held in excess of \$83,900 of Judy's Supplementary Superannuation funds that had vested in Judy in respect of her pre-1996 service which were being held by SaskPower in trust for Judy and which were to be paid to Judy upon the cessation of her employment. Despite this, and despite the fact that Judy claimed the said funds in her Statement of Claim, SaskPower claimed in its defence that it had no liability to Judy in respect of her employment and wrongfully withheld the said funds from Judy for over two years until admitting under Questioning that it had no justification for withholding the monies and paid the said funds to Judy, without interest, in the fall of 2017.

h) SaskPower has conducted itself in this litigation in a manner that it knew would frustrate and delay Judy's lawful pursuit of her claim, delay payment to her of monies justly owing, and increase the cost to her of pursuing her claim, including:

## APPENDIX B

h) [...]

(i.) SaskPower took over 8 months to provide its initial Replies to Undertakings given by its proper officer at the August 2017 Questioning, delivering same on April 12, 2018. These replies were not complete and proper replies were demanded on August 28, 2018, together with a request to resume the Questioning in September. SaskPower failed to respond requiring a second request on September 26. Following discussions on October 4, a new request for responses and dates to resume questioning was made on October 5 that went unanswered. On November 16 SaskPower was given written notice that a Court application would be brought resulting in SaskPower providing the name of its new proper officer on November 23, 2018, and a week later offering January dates to resume questioning. SaskPower failed to deliver its completed replies to the August 2017 undertakings until January 21, 2019.

(ii.) SaskPower failed to deliver its initial Replies to Undertakings given at the January 30, 2019 Questioning until May 15, 2019 and again only after repeated demands and the threat of another court application. SaskPower failed to provide proper Replies to some of these undertakings.

(iii.) By letter dated August 26, 2019, Judy demanded, through her counsel, that SaskPower provide its outstanding Replies and to produce numerous specific documents pertaining to her claims for salary and benefits. SaskPower failed to provide any response to that letter and failed to respond to two follow up demands in October and November 2019, necessitating an Application by Judy to the Court in December 2019 for an Order requiring SaskPower to provide the said replies and produce the said documents. Between December 23, 2019, and January 24, 2020 SaskPower provided the all the replies and documents sought in the Court application, consisting of 125 pages and requested withdrawal of the application which followed.

(iv.) By letter dated June 18, 2020, in order that the matter might proceed to a pre-trial conference, Judy requested through her counsel that SaskPower make a number of admissions in respect of certain specific documents SaskPower had produced in December 2019 and January 2020. SaskPower failed to provide any response to that letter and failed to respond to three follow up requests in July and August 2020, necessitating service on SaskPower of Written Questions and an Appointment to resume the oral questioning of SaskPower's

proper officer to obtain alternative information about the newly disclosed documents.

(v.) At the resumption of the Oral Questioning in November 23 2020, SaskPower unlawfully refused to answer numerous relevant questions about three central documents disclosed by SaskPower in January 2020 pertaining to the calculation of short term incentive bonus payments for SaskPower Vice-Presidents at the material times. SaskPower refused to reconsider its position even after being provided with additional information following adjournment of the Questioning. This necessitated Judy bringing another Court application in April of 2021 to compel SaskPower to answer and ultimately resulted in an order of this Court on November 17, 2021 directing SaskPower to return to Questioning to answer all of the questions it had refused to answer and all other relevant questions flowing therefrom, which Questioning took place on March 25, 2022.

(vi.) On December 2, 2022, SaskPower was asked to consent to all of the amendments in this proposed Amended Claim, save this subparagraph. On December 22, 2022, SaskPower unreasonably refused its consent necessitating another Court application.