KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 178**

Date: **2024 10 02**
File No.: QBG-SA-00767-2021
Judicial Centre: Saskatoon

BETWEEN:

MIA HOLLINGER

PLAINTIFF

- and -

SASKTEL CENTRE
WILL LOFDAHL
CITY OF SASKATOON

DEFENDANTS

Counsel:

Steven J.R. Seiferling	for the plaintiff
Gordon D. Hamilton	for the defendant, SaskTel Centre and Will Lofdahl
Alan W. Rankine	for the defendant, City of Saskatoon

FIAT — ELSON J.
October 2, 2024

Introduction

[1] This application to strike part of a statement of claim arises in the context of an action for wrongful dismissal. The plaintiff's pleading contains two distinct claims. Her principal claim asserts that she was constructively and wrongfully dismissed by her employer through the conduct of its then Chief Executive Officer [CEO]. In this regard, both the employer and the then CEO are named as defendants.

[2] Another claim alleges that a third defendant, who is described in the statement of claim as the owner of the employer, is also liable to the plaintiff for the damages she sustained during her employment. Specifically, the statement of claim alleges that the third defendant is liable for "bad faith conduct" and for "negligent investigation" in the investigation of the CEO's conduct. It follows, according to the plaintiff, that the third defendant is also liable to her for the damages arising from the constructive dismissal. As against all three defendants, the plaintiff asserts that they should be jointly and severally liable for some or all the damages she sustained.

[3] The third defendant has applied to strike the claim against it. The application is grounded on two bases. First, it is asserted that the allegations against the third defendant do not disclose a reasonable cause of action. Alternatively, the third defendant asserts that the claim is scandalous, frivolous and vexatious.

[4] For the reasons described below, I am satisfied that the plaintiff's statement of claim does not disclose a reasonable cause of action against the third defendant. I am also satisfied that the claim against the third defendant is so deficient in this regard that it would be inappropriate to grant the plaintiff leave to amend it. Given my finding that the plaintiff's pleading does not disclose a reasonable cause of action against the third defendant, I decline to rule on the alternative submission.

Background

[5] The statement of claim in this matter was issued out of this Court on July 19, 2021, but the application was not heard until recently. As will be apparent in the discussion of the claim's contents, the plaintiff's pleading is not carefully drafted. It is rather untidy in the way it words allegations against multiple defendants. There are also curious assertions where material facts that one would expect to be pleaded are absent.

[6] The named defendants in the statement of claim are the SaskTel Centre [Centre], Will Lofdahl [Lofdahl] and the City of Saskatoon [City]. The Centre, simply described in the statement of claim as "a body corporate constituted pursuant to the laws of the Province of Saskatchewan", is identified as the plaintiff's employer. She alleges that she was employed with the Centre from 2010 until 2021. Lofdahl is described as the Centre's CEO during the time of the plaintiff's employment. Although not described in the statement of claim, I am satisfied that, as part of the background to this application, I can comfortably take judicial notice of the fact that the Centre is Saskatoon's major arena facility. It hosts sports, concerts and other similar events.

[7] In her statement of claim, the plaintiff simply pleads that the City owns the Centre. While a more detailed description of the relationship appears in the filed statements of defence, the plaintiff did not see fit to plead these details. As such and based solely on the wording of the statement of claim, the Court has no particulars of the Centre's corporate name or corporate status. Moreover, the statement of claim says nothing about whether the Centre is incorporated as a private corporation, pursuant to *The Business Corporations Act, 2021*, SS 2021, c 6, or as a non-profit corporation, pursuant to *The Non-profit Corporations Act, 2022*, SS 2022, c 25. The pleading also does not provide any particulars about how the City is said to "own" the Centre, whether as a shareholder, a member or otherwise.

[8] As mentioned, the plaintiff's principal claim is for constructive dismissal. The allegations in that part of the statement of claim, while not the subject of this application, give context to the issues before me. For that reason, I will summarize the plaintiff's allegations against the Centre and Lofdahl.

[9] The plaintiff pleads that she held two positions with the Centre. She first began her employment with the Centre as its Assistant Financial Controller and later received a promotion to the position of Financial Controller in April 2012.

[10] The plaintiff alleges that the problems, which eventually led to her constructive dismissal, began in 2017 when she took steps to introduce accountability and reporting policies at the Centre. She says that Lofdahl did not respond favourably to these measures. The plaintiff alleges that, after the measures were introduced, Lofdahl began interfering with her job duties. Among other things, she says the CEO instructed her to remove written records, ordered the removal of her comments from meeting minutes and exercised executive overreach to use company accounts for personal reasons. The plaintiff also alleges that Lofdahl would demean, disrespect and patronize her in such a way that it effectively ostracized her from the workplace. The claim alleges that issues came to a head in early 2021 when the Centre imposed unilateral changes to the plaintiff's employment. These changes included reducing both her hours of work and her income, but without any corresponding reduction in her duties. The plaintiff also asserts that, without consulting her, the Centre terminated the employment of the then Assistant Controller, thereby forcing her to absorb the duties of that position, as well as her own.

[11] In short, the plaintiff pleads that Lofdahl created a "toxic work environment", causing her to experience work-induced stress and anxiety for which she required treatment and a medical leave of absence. Although the plaintiff pleads that she was constructively dismissed, she curiously does not include any specific material facts about how her employment formally ended, whether by resignation, which one would expect, or by dismissal.

[12] The plaintiff pleads three other allegations that are somewhat collateral to the claim for constructive wrongful dismissal. One allegation is that, during her medical leave of absence, Lofdahl disclosed her medical information to a third party without her consent, thereby breaching her rights under *The Privacy Act*, RSS 1978, c P-24.

[13] A second allegation is that she anonymously raised her concerns about Lofdahl's conduct with the Centre's human resources personnel and its Board of Directors. The plaintiff goes on to plead that, to the best of her knowledge, no action was taken.

[14] The third additional allegation forms the principal basis for the plaintiff's claim against the City. On this point she alleges that, in May 2019, she tried to "report the Defendant" to an "ombudsman" with the City. Although not specifically pleaded, I can only presume this allegation to be a report about Lofdahl. The plaintiff goes on to say that she was never informed of any investigation or any outcome following her meeting with the ombudsman. Later, this pleading evolves into the bald allegation, without specific material facts, that the City failed or refused to investigate.

[15] As already mentioned, the only allegations in the statement of claim that are the subject of this application are those pertaining to the alleged liability of the City. Given the untidy wording of the claim, where allegations against all three defendants are inelegantly combined, a discrete claim against the City is not as discernible as it should be. By my reading of the plaintiff's pleading, the claim against the City is described – or at least touched upon – in paragraphs 4, 16, 23, 25, 28, 29, 32(b) and 32(d).

[16] The claims made specifically against the City are twofold. They are pleaded in subparagraphs 32(b) and (d) as: (1) "bad faith conduct"; and (2) "negligence and negligence investigation". These subparagraphs read as follows:

> 32. The Plaintiff therefore claims against the Defendants the following:
>
> …
>
> b. Damages against the Defendants jointly and severally, in the form of payment of moral and aggravated damages for bad faith conduct, in an amount to be determined at trial;

…

d. Damages against the City, for negligence and negligent investigation, in an amount to be proven at trial;

[17] The material facts pleaded to support the two claims against the City appear, or are tangentially touched upon, in the other six paragraphs that reference the City. Recited from the pleading, but with one appropriate redaction, these allegations read as follows:

4. The Defendant City of Saskatoon (the "City") is a city in Saskatchewan pursuant to *The Cities Act* [SS 2002, c C-11.1], with a registered office in Saskatoon, Saskatchewan. The City owns the Centre.

…

16. In May 2019, the Plaintiff tried again to report the Defendant and met with an Ombudsman for the Defendant City of Saskatoon. The Plaintiff was never informed of any investigation, or any outcome, as a result of her meeting with the Ombudsman.

…

23. The culmination of the harassment and toxic work environment led to work-induced stress and anxiety causing her to require anti-anxiety medication, attend counselling and finally necessitating a medical leave of absence on March 11th, 2021. The medical leave was a direct result of the toxic work environment, the behaviour of Lofdahl, and the failure or refusal by the Centre, its Board of Directors, and the City, to take any steps to resolve the serious issues in the workplace

…

25. During the Plaintiff's absence, Lofdahl provided her medical information to a third party, [Redacted], without her consent or knowledge. [Redacted] contacted the Plaintiff and identified Lofdahl as the party who provided her confidential information, breaching her privacy. The Defendants did not have consent, right, or claim of right to provide the Plaintiff's personal information or personal health information to [Redacted].

…

> 28. The Plaintiff claims against the Defendant Centre for moral/aggravated damages for bad faith in the manner of termination of the Plaintiff, the cause for termination is the Defendants (Lofdahl, the Centre, and the City) jointly and severally, created a toxic work environment, and the Centre unilaterally changed the Plaintiff's position and compensation.

Positions of the Parties

[18] The City's principal argument is that the wording of the plaintiff's statement of claim fails to disclose a reasonable cause of action against it. It posits that there is no recognized cause of action for "bad faith conduct" and that the claim for the torts of "negligence and negligent investigation" does not apply to circumstances of the plaintiff's case, as reflected in the pleadings.

[19] Perhaps more importantly, the City contends that the statement of claim does not plead sufficient material facts which, if proved, would establish the essential elements of a claim for negligence and negligent investigation. In this regard, the City's counsel emphasized that the statement of claim pleads no factual basis upon which one can discern the existence of a duty of care to conduct the kind of investigation the plaintiff appears to have expected.

[20] The plaintiff argues that the City overstates the importance of the pleadings at this stage of the litigation. In this respect she contends that, when assessing the sufficiency of pleadings, courts are to be "generous" and can only strike a claim where it is "plain and obvious" that it has no arguable chance of success. The plaintiff's counsel says this means that the Court need not engage in a "granular analysis" as to whether the statement of claim pleads material facts to meet the tests for the alleged causes of action. In counsel's view, such an analysis must be left to a trial.

Applicable Law and Analysis

Importance and Purpose of Pleadings

[21] A significant consideration in this case – too often neglected in recent years – is the importance and purpose of pleadings. The words in statements of claim, statements of defence, third party claims, cross-claims and replies must not be seen as mere throw-aways, without regard to substantive law, that are included simply to give hopeful – but less-than-meaningful – voice to a client's complaints and aspirations. They must be penned carefully, with a view to meeting both the technical requirements of pleadings (see Rules 13-8 to 13-12 of *The King's Bench Rules*) and the overarching and substantive purpose of pleadings.

[22] Guidance about the nature and purpose of pleadings can be drawn from both academic writings and relevant authorities. In Linda S. Abrams & Kevin P. McGuinness, *Canadian Civil Procedure Law*, 2d ed (Markham: LexisNexis Inc., 2010), the authors addressed the purpose of pleadings at page 735:

> **§10.1** … Pleadings are the written or printed statements delivered alternatively by the parties to a proceeding to enable them to ascertain the questions of fact and law that are to be decided in the proceeding. There are four main purposes of pleading, these being: (1) to define and inform other parties and the court of the nature of the cause of action and the issues of fact (and, at least implicitly, law) that are in dispute among the parties; (2) to state the material facts that each party respectively alleges to be true and on which each relies in support of his or her side of the dispute; (3) to identify the nature of the relief that each party seeks; and (4) to serve as the basis of the record of the proceeding.
>
> [Emphasis added]

[23] In Saskatchewan, a frequently cited authority on the purpose of pleadings is the decision of the Saskatchewan Court of Appeal in *Ducharme v Davies*, [1984] 1 WWR 699 (Sask CA) [*Ducharme*]. There, the Court adopted the observations of another leading civil procedure text. Although these observations described the

functions of pleadings in somewhat different language from that used by Abrams and McGuinness, I find the two descriptions complement each other. The Court's comments in *Ducharme* were penned by Cameron J.A. at page 718:

> While pleadings are no longer subject to the precise, complex, and occasionally oppressive requirements they once were, nevertheless they remain an important aspect of every law suit and must be framed with care. The following passage taken from The Law of Civil Procedure, Williston and Rolls, vol. 2 (1970), p. 637, illustrates why a careful pleading is still important:
>
> > The function of pleadings is fourfold:
> >
> > 1. To define with clarity and precision the question in controversy between litigants.
> >
> > 2. To give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issues disclosed by them. A defendant is entitled to know what it is that the plaintiff asserts against him; the plaintiff is entitled to know the nature of the defence raised in answer to his claim.
> >
> > 3. To assist the court in its investigation of the truth of the allegations made by the litigants.
> >
> > 4. To constitute a record of the issues involved in the action so as to prevent future litigation upon the matter adjudicated between the parties.
>
> [Emphasis added]

[24] Cameron J.A. went on, in *Ducharme*, to reference additional passages from the same text that directly pertained to the issues in that appeal. These issues, which are also engaged in the present application, related to: (1) the importance of properly pleaded material facts; (2) the presumption of construing pleadings against their author; and (3) the importance of pleading something more than a simple conclusion of law. On these issues, Cameron J.A. wrote the following at page 718:

> I think it would be useful to refer to three additional passages from The Law of Civil Procedure (which appear respectively at pp. 651, 654, and 677):

> In pleadings it is necessary that the material facts be stated clearly and definitely in a concise summary way . . . The facts must be alleged with certainty and with precision and not left to be inferred from vague or ambiguous expressions or from statements of circumstances consistent with different conclusions. If vague and general language is used nothing is defined and the issue may become hopelessly confused.
>
> In construing a pleading, the presumption is always against the pleader because he is taken to have stated his own case in the best possible light and in the manner most favourable to himself.
>
> In an action for damages for negligence, the plaintiff must in his statement of claim specifically plead such facts as are intended to be relied upon as establishing negligence with sufficient particularity to enable the other party and the court to know on what allegations he bases his case. To plead merely that the defendant was negligent is to plead a conclusion of law. Such a plea is bad unless accompanied by a plea of the particular facts in respect of which the negligence is alleged.
>
> [Emphasis added]

[25] Another noteworthy authority from the 1980s, which still attracts attention, is the decision in *Touche Ross Ltd. v McCardle* (1987), 66 Nfld & PEIR 257 (WL) (PEI SC). In that matter, the plaintiff issued a statement of claim naming 10 defendants and asserting multiple allegations of wrongdoing, while also expressly exonerating one of the defendants. The pleading's prayer for relief claimed multiple remedies, jointly and severally, against all the defendants. McQuaid J. allowed the defendants' application to strike the statement of claim – without leave to amend. In doing so, he masterfully articulated the law's expectation of a properly drawn pleading, at paras. 4-6:

> 4 The essence of a properly drawn pleading is clarity and disclosure. With respect to a statement of claim in particular, the defendant, or each defendant if there be more than one, must know from the face of the record precisely what case he, or each of them, has to answer. He must not be left to speculate or to guess the particulars of the case alleged against him and of the remedy sought from him. He must not be left to ascertain this through some esoteric process of divination.

> 5 Perhaps the best test of a well and properly drawn pleading is this, that a stranger to the proceeding, reasonably versed in legal terminology, might pick up the document and upon first reading readily ascertain the particulars of the cause of action, the specific nature of the defendant's alleged breach of duty or other deficiency, the precise nature of the remedy sought and the reason why such a remedy is, in fact, sought. Unless all of this information is patently and readily available on the face of the record, then, it seems to me, the pleading is, itself, defective.
>
> 6 Elementary as it may appear, the cause of action must first be clearly identified, not only in the mind of the draftsman but, more especially, patently in the document. Where there is more than one plaintiff, that cause of action must be joint in each. Where there is more than one defendant, that cause of action must also be joint in each and made to appear so with respect to each defendant. Where a single remedy is sought against several defendants, the record must be equally clear in what respect and for what reason each of the several defendants is jointly and severally liable.
>
> [Emphasis added]

Application of Rule 7-9(2)(a): Disclosure of a Reasonable Claim

[26] Having addressed the law's expectation of a properly prepared pleading, I now turn to the way this expectation factors in assessing whether a statement of claim sufficiently discloses a reasonable claim or defence.

[27] While the City's application is confined to specific considerations of Rule 7-9(2)(a) and (b), I think it appropriate to recite Rule 7-9 in its entirety. It reads as follows:

> **7-9(1)** If the circumstances warrant and one or more conditions pursuant to subrule (2) apply, the Court may order one or more of the following:
>
> (a) that all or any part of a pleading or other document be struck out;
>
> (b) that a pleading or other document amended or set aside;
>
> (c) that a judgment or an order be entered;
>
> (d) that the proceeding be stayed or dismissed.

> (2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:
>
> (a) discloses no reasonable claim or defence, as the case may be;
>
> (b) is scandalous, frivolous or vexatious;
>
> (c) is immaterial, redundant or unnecessarily lengthy;
>
> (d) may prejudice or delay the fair trial or hearing of the proceeding; or
>
> (e) is otherwise an abuse of process of the Court.
>
> (3) No evidence is admissible on an application pursuant to clause (2)(a).

[28] The wording of Rule 7-9 is similar to former Rule 173. As I recently wrote in *Iron v Bateman's Jewelery*, 2024 SKKB 59, the fundamental principles underlying former Rule 173 remain generally applicable to Rule 7-9, subject only to the overarching impact of the Foundational Rules in Part 1 of *The King's Bench Rules*. See *Bell v Xtreme Mining & Demolition Inc.*, 2014 SKQB 177 at para 6, 448 Sask R 255; *Hope v R.M. of Parkdale #498*, 2014 SKQB 9 at para 15, 432 Sask R 18; *Her Majesty the Queen in Right of Lorin Rubbert v Boxrud*, 2014 SKQB 221 at para 35, 450 Sask R 147 [*Rubbert*].

[29] The purpose of Rule 7-9, and former Rule 173 before it, has been addressed in several Saskatchewan authorities. In *Rubbert*, I addressed three of the authorities that described the overall purpose of former Rule 173 before going on to apply that jurisprudence to the consideration of Rule 7-9. In this regard, I wrote the following at para. 34:

> [34] From a review of the relevant jurisprudence, it is apparent that the object of former Rule 173 was to prevent the delay and expense of a trial founded on an unreal claim or defence: *Montreal Trust Co. of Canada v. Jaynell Inc.* (1993), 111 Sask. R. 178, [1993] S.J. No. 274 (QL) (Q.B.), aff'd (1993), 116 Sask. R. 13, [1993] S.J. No. 548 (QL)

> (C.A.); *Ellis v. Canada (Office of the Prime Minister)*, 2001 SKQB 378, 210 Sask.R. 138, aff'd 2002 SKCA 35, [2002] S.J. No. 137 (QL); *RoyNat Inc. v. Northland Properties Ltd.*, [1994] 2 W.W.R. 43, 115 Sask.R. 272 (Q.B.). In the pursuit of this object, courts generally concluded that it was appropriate to strike a claim or defence where it was seriously defective or so devoid of merit that it could not inspire reasonable argument. While such remedies were never to be taken lightly, and were limited to exceptional cases, there were circumstances where the remedy is clearly justified.
>
> [Emphasis added]

[30] The kind of "exceptional cases", understood to be incapable of inspiring reasonable argument, engage the so-called "plain and obvious" test. This test was first articulated by the Supreme Court of Canada in *Attorney General of Canada v Inuit Tapirisat*, [1980] 2 SCR 735. In that case, Estey J. wrote, at page 740, that "… a court should, of course, dismiss the action or strike out any claim made by the plaintiff only in *plain and obvious* cases where the court is satisfied that 'the case is beyond doubt" (emphasis added). See also *Operation Dismantle Inc. v The Queen*, [1985] 1 SCR 441 at 449, and *Hunt v Carey Canada Inc.*, [1990] 2 SCR 959 at 980 (WL) at para 37. In Saskatchewan, the plain and obvious test was expressly adopted by the Court of Appeal in *Sagon v Royal Bank of Canada* (1992), 105 Sask R 133 (CA) at para 16.

[31] In *Atlantic Lottery Corp. Inc. v Babstock*, 2020 SCC 19, [2020] 2 SCR 420 [*Babstock*], the Supreme Court of Canada provided somewhat of a restatement of the plain and obvious test. This reinstatement was pronounced in the context of a split decision over a proposed class action asserting three causes of action, namely, waiver of tort (breaching a duty to warn of inherent dangers), breach of contract and unjust enrichment in the form of disgorgement. The majority, speaking through the judgment of Brown J., struck all three pleaded causes of action, while the dissenting judges, in a judgment written by Karakatsanis J., would have allowed the claim for breach of contract to go forward. Despite this division of opinion, there was general agreement about the relevant principles to be applied in assessing whether a claim disclosed a

reasonable cause of action. These were articulated by Karakatsanis J. at paras. 87-90:

> 87 A pleading may be struck or amended on the ground that it discloses no reasonable cause of action or defence (*Rules of the Supreme Court, 1986*, r. 14.24(1)(a)). When considering whether to strike a pleading on this ground, the question is whether the claim has "no reasonable prospect of success" (*Knight v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 17), or whether it is "plain and obvious" that the action cannot succeed (*Hunt v. T & N plc*, [1990] 2 S.C.R. 959, at p. 980). This is a high standard that applies to determinations of fact, law, and mixed fact and law. The facts pleaded are assumed to be true "unless they are manifestly incapable of being proven" (*Imperial Tobacco*, at para. 22).
>
> 88 On a motion to strike, the statement of claim should be read "as generously as possible and to accommodate any inadequacies in the form of the allegations which are merely the result of drafting deficiencies" (*Operation Dismantle Inc. v. R.*, [1985] 1 S.C.R. 441, at p. 451), because "cases should, if possible, be disposed of on their merits" (*Montreal Trust Co. of Canada v. Hickman*, 2001 NFCA 42, 204 Nfld. & P.E.I.R. 58 (Nfld. C.A.), at para. 12). At times, a proposed cause of action is so obviously at odds with precedent, underlying principle, and desirable social consequence that regardless of the evidence adduced at trial, the court can say with confidence that it cannot succeed. But this is not often the case, and our common law system generally evolves on the basis of the concrete evidence presented before judges at trial.
>
> 89 This is why claims that do not contain a "radical defect" (*Hunt*, at p. 980) should nevertheless proceed to trial. Courts should consider whether the pleadings are sufficient to put the defendant on notice of the essence of the plaintiff's claim (*Holland v. Saskatchewan (Minister of Agriculture, Food & Rural Revitalization)*, 2008 SCC 42, [2008] 2 S.C.R. 551, at para. 15) and whether "the facts pleaded would support one or more arguable causes of action" (*Anderson v. Bell Mobility Inc.*, 2009 NWTCA 3, 524 A.R. 1 (N.W.T. C.A.), at para. 5). In *Markevich v. Canada*, 2003 SCC 9, [2003] 1 S.C.R. 94, this Court explained that a cause of action is "only a set of facts that provides the basis for an action in court" (para. 27).
>
> 90 The threshold to strike a claim is therefore high. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial (*Imperial Tobacco*, at paras. 17 and 21). The correct posture for the Court to adopt is to consider whether the pleadings, as they stand or may reasonably be amended, disclose a question that is not doomed to fail (*Hunt*, at p. 978, quoting *Minnes v. Minnes* (1962), 39 W.W.R. 112 (B.C. C.A.), at pp. 116 and 122).
>
> [Emphasis added]

A concise summary of the observations of Karakatsanis J. appears in *Reed v Dobson*, 2021 SKQB 252 at para 154.

[32] In Saskatchewan, a substantial body of case law has developed on the question as to whether a pleading discloses a reasonable cause of action or defence as required by Rule 7-9(2)(a). In chronological order, and aside from the decisions in *Rubbert* and *Reed v Dobson*, this body of case law includes *Milgaard v Saskatchewan*, [1994] 9 WWR 305, (Sask CA), *Saskatchewan Provincial Court Judges Association v Saskatchewan (Minister of Justice)* (1995), [1996] 2 WWR 129 (Sask CA); *Sandy Ridge Sawing Ltd. v Norrish*, [1996] 4 WWR 528 (Sask QB); *Collins v Saskatchewan Rural Legal Aid Commission*, 2002 SKQB 201 [*Collins*]; *Saskatchewan Power Corporation v Swift Current (City)*, 2007 SKCA 27, 293 Sask R 6; *Lawless v Conseil scolaire Fransaskois*, 2014 SKQB 23, 436 Sask R 196; *Smerek v Areva Resources Canada Inc.*, 2014 SKQB 282, 454 Sask R 217; *Reisinger v J.C. Akin Architect Ltd.*, 2017 SKCA 11, [2017] 8 WWR 532 [*Reisinger*]; *Thirsk v Public Guardian and Trustee of Saskatchewan*, 2017 SKQB 66 [*Thirsk*]; *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98; *Bhagaloo v M2 Construction & Development Ltd.*, 2021 SKCA 168, [2022] 3 WWR 179; *Wilson v Saskatchewan Water Security Agency*, 2023 SKCA 16, 478 DLR (4th) 170 [*Wilson*] and *Yashcheshen v Canada (Attorney General)*, 2024 SKKB 63.

[33] Of the above authorities, a frequently cited case, both in the context of Rule 7-9(2)(a) and former Rule 173(a), is the decision of this Court in *Collins*. There, at para. 11, Gunn J. concisely summarized the five principles that applied to an application under former Rule 173(a):

> [11] The principles which apply to an application to strike a plaintiff's claim under Rule 173(a) are the following:
>
> (i) The claim should be struck where, assuming the plaintiff proves everything alleged in the claim there is no reasonable

> chance of success. (*Sagon v. Royal Bank* (1992), 105 Sask. R. 133 (Sask. C.A.), at 140);
>
> (ii) The jurisdiction to strike a claim should only be exercised in plain and obvious cases where the matter is beyond doubt. (*Sagon*, at 140; *Milgaard v. Kujawa* (1994), 123 Sask. R. 164 (Sask. C.A.));
>
> (iii) The court may consider only the claim, particulars furnished pursuant to a demand and any document referred to in the claim upon which the plaintiff must rely to establish its case (*Sagon*, at p. 140);
>
> (iv) The court can strike all, or a portion of the claim (Rule 173);
>
> (v) The plaintiff must state sufficient facts to establish the requisite legal elements for a cause of action. (*Sandy Ridge Sawing Ltd. v. Norrish* (1996), 140 Sask. R. 146 (Sask. Q.B.)).

The five principles in *Collins* have been expressly followed and applied in the consideration of applications pursuant to Rule 7-9(2)(a). This includes Court of Appeal decisions in *Saskatchewan Power Corporation v Swift Current (City)* and *Wilson*. In my view, the five principles still apply and do not conflict with principles articulated in *Babstock*.

[34] The fifth principle described in *Collins* deserves further comment. In my view, this principle runs contrary to the thrust of the plaintiff's argument against the need for a "granular analysis" of pleaded causes of action. I will explain.

[35] This fifth principle referenced in *Collins* reflects the Court's expectation that, when preparing a statement of claim, a plaintiff shall plead sufficient material facts that, if proved, will establish all the essential elements of any asserted causes of action. It necessarily follows that where a statement of claim asserts a cause of action without sufficiently pleaded material facts to meet this expectation, it will fail to disclose a reasonable cause of action. Where an application under Rule 7-9(2)(a) challenges a statement of claim, the analysis a chambers judge must apply was described by

Ottenbreit J.A. in *Reisinger* at para 20:

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

[36] Other members of this Court have addressed this analysis. In *Thirsk*, Barrington-Foote J. (as he then was) wrote, at para. 21, that *Reisinger* stands for the proposition that a substantive analysis of pleadings is called for when they are challenged under Rule 7-9(2)(a). He then went on to state, at para. 23, that a statement of claim must define the issues in dispute. A pleading premised on the mere possibility of a court finding "… allegations which could be stitched together to disclose all essential elements of a claim was not enough." Scherman J. made somewhat similar comments in *Haug v Loran*, 2017 SKQB 92 at para 64, observing that Rule 7-9(2)(a) applications should not be resolved through "a generalist and 'close enough' approach to whether the claim disclosed a reasonable cause of action."

Analysis of the Claims in the Present Case

[37] As described in the background of this fiat, the wrongdoing alleged against the City consists of "bad faith conduct" as well as the torts of "negligence and negligent misconduct". As pleaded by the plaintiff, each of these claims are said to be causes of action. I will analyse each of these claims separately.

[38] Before beginning the analysis of each purported cause of action, it is necessary for me to comment on the apparent inclusion of the City in the breach of privacy allegation in para. 25 of the statement of claim. Given the untidiness in the drafting of this claim, I suspect that the inclusion of the City in this allegation is simply the result of careless drafting. This suspicion is supported by the fact that, in subparagraph 32(c) of the statement of claim, the request for damages on this alleged liability targets only the Centre and Lofdahl.

[39] Aside from my suspicions, I am satisfied that the City cannot be included in the plaintiff's claim for breach of privacy. There are simply no pleaded material facts to support the assertion of liability against the City for the alleged disclosure of personal information to a third party.

(1) Bad faith conduct

[40] As pleaded in para. 32(b) of the statement of claim, the plaintiff simply asserts that all three defendants are liable for "bad faith conduct" for which she is entitled to moral and aggravated damages. In the context of a wrongful dismissal claim against the Centre, and possibly Lofdahl, such a claim is arguable under the authority of *Keays v Honda Canada Inc.*, 2008 SCC 39, [2008] 2 SCR 362 [*Keays*]. It is not, however, arguable against the City as there are no material facts pleaded to suggest that the City was the plaintiff's employer. Simply pleading that the City owns the Centre, without more, is not sufficient to meet the control element of the fourfold employment test articulated in *Montreal (City) v Montreal Locomotive Works Ltd.*, [1947] 1 DLR 161 (UK PC).

[41] In his oral submissions to the Court, the plaintiff's counsel posited that, as against the City, his client's claim for bad faith conduct is based on the City having failed to investigate after the plaintiff's meeting with the ombudsman. He argued that

the pleadings properly address this issue and that the claim should be allowed to stand.

[42] I find no merit in the plaintiff's position on this point. I say this for two reasons.

[43] Firstly, it must be understood that there is no recognized cause of action for stand-alone instances of bad faith conduct. Where bad faith is alleged and later established, it can only result in specific or additional liability when it is combined with some other form of culpable conduct by the bad faith actor, such as the wrongful denial of insurance coverage or defamation.

[44] Here, the plaintiff's pleading cannot meaningfully be read as anything other than a discrete assertion of bad faith conduct, unconnected with any other culpable conduct by the City. While the plaintiff argues that the pleading connects bad faith conduct to the purported failure to conduct a proper investigation, I simply cannot read her pleading that way. If bad faith conduct by the City is related to the purported failure to investigate, it should have been pleaded much more clearly. Borrowing from the words in *Thirsk*, it should not be carelessly thrown into a statement of claim and left for the Court to "stitch it together".

[45] Secondly, even if there was a recognized cause of action for bad faith conduct or if the plaintiff could draw a meaningful connection to the alleged bad investigation, I find the assertion of bad faith to be woefully inadequate. Allegations of bad faith are very serious and cannot be taken lightly. They require something more than the bald assertion pleaded in this statement of claim. As the Ontario Court of Appeal observed in *Salehi v Association of Professional Engineers of Ontario*, 2016 ONCA 438 at para 9, the "party claiming bad faith must provide specific allegations of it." The Court went on to say that the pleader must allege something more than a mere error or omission. In this respect, bad faith conduct is typically focused on fraud, undue

oppression or an improper purpose or motive, such as an intent to mislead, deceive or deliberately cause harm.

[46] Here, the allegation of the City's purported bad faith conduct falls far short of what is required. The only material facts pleaded is that: (1) the City's ombudsman – which is not a position recognized by statute – met with the plaintiff about her complaint; and (2) the plaintiff was never informed of any investigation or outcome resulting from that meeting. Notably, the plaintiff does not plead, as a material fact, that the City did not investigate or make any inquiries related to the plaintiff's complaint.

[47] It necessarily follows that the allegations of bad faith conduct against the City do not disclose a reasonable cause of action and cannot stand.

(2) Negligence and negligent investigation

[48] During oral submissions on this application, the plaintiff's counsel seemed to emphasize that his client was pursuing both the torts of negligence and negligent investigation, and that they were pleaded as such. In the context of what appears in the statement of claim, this emphasized observation ignores the obvious. The only factual allegation against the City is that it did not investigate or inquire about the plaintiff's complaint. As such, I cannot see how this allegation translates into anything other than the assertion of a negligent investigation. Accordingly, I will address the sufficiency of her pleadings in this context.

[49] In Canada, negligent investigation was recognized in Canada as a tort through the Supreme Court of Canada judgment in *Hill v Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, [2007] 3 SCR 129 [*Hill*]. In *Hill*, the plaintiff was investigated by local police officers in connection with a series of robberies. The investigation resulted in the plaintiff's arrest following which he was

convicted at trial. After a successful appeal, the plaintiff was acquitted following a new trial. In the meantime, he spent more than 20 months in pre-trial custody.

[50] The plaintiff commenced a civil action against the police service and certain individual officers, claiming both malicious prosecution and negligent investigation. The claim for negligent investigation raised issues about the way the photo line-up was conducted. Both the Ontario Court of Appeal and the Supreme Court recognized that there is a tort of negligent investigation, but also concluded that the investigating officers had not breached the standard of care expected of them.

[51] In recognizing the tort of negligent investigation, the Court in *Hill* expressly addressed each of its four essential elements, as separate subheadings, at paras. 19-94. These elements are: (1) duty of care; (2) standard of care; (3) loss or damage; and (4) causal connection.

[52] The analysis of the duty of care element, obviously central to the recognition of a new negligence-based tort, is thoughtfully laid out in paras. 19-65. There, McLachlin C.J.C., writing for the majority, concluded that, as a matter of principle, a duty of care should be recognized in the fact scenario before the Court. She arrived at this conclusion after a detailed consideration of the so-called *Anns/Cooper* test, drawn from the judgments in *Anns v Merton London Borough Council* [1978] AC 728 (HL) and *Cooper v Hobart*, 2001 SCC 79, [2001] 3 SCR 537.

[53] I digress from this discussion to summarize the considerations in the *Anns/Cooper* test. In a nutshell, the test is principally a two-stage exercise, where a court may be expected to make two determinations, the second of which depends on an affirmative answer to the first. These determinations are: (1) whether a *prima facie* duty of care exists between the parties; and (2) if a *prima facie* duty of care exists, whether there are residual policy concerns, outside the parties' relationship, that should negate

a duty of care. Each of these determinations call for specific inquiries. The plaintiff bears the ultimate legal burden at the first stage, while the defendant bears the evidentiary burden at the second stage.

[54] At the first stage, a court must answer two distinct, but related, inquiries: (1) whether harm to the plaintiff was a reasonably foreseeable consequence of the defendant's conduct; and (2) whether there is a relationship of proximity between the parties such that a defendant might reasonably anticipate that failure to take care could cause harm to the plaintiff.

[55] The reasonable foreseeability inquiry engages the "neighbour principle" enunciated by Lord Atkin in *McAlister (Donoghue) v Stevenson*, [1932] AC 562 (HL) at 580. There Lord Atkin observed that an alleged wrongdoer's neighbour is a person who is "so closely and directly affected" by the former's conduct that he or she ought reasonably to have been mindful of that when carrying out the impugned conduct.

[56] In the relationship of proximity inquiry, a court is called upon to focus more specifically on the relationship between the parties and whether it was sufficiently "close and direct" as to make it just and fair to recognize a legal duty of care. The relationship need not be a personal one. Rather, a court's inquiry will focus on factors arising from the relationship, such as expectations, representations, reliance and the nature of interests engaged by the relationship; see *Hill* at para 31.

[57] In cases where a *prima facie* duty of care is found – and the case does not fall within, or is not closely analogous to, a recognized category of relationships where a duty of care has previously been recognized – a court must then turn to the second stage and assess the impact of residual policy concerns. This assessment calls for a court to give broad consideration to the potential consequences of fully recognizing the *prima facie* duty of care. Without setting out an exhaustive list, a court might reasonably be

expected to determine: (1) whether the recognition will adversely impact other legal obligations or society as a whole; (2) whether the law already provides a remedy for the subject complaint; or (3) whether the duty of care might result in unlimited liability for an unlimited class of persons or entities.

[58] In crafting the above summary, I had the opportunity to read the judgment in *Revelstoke (City) v Gelowitz*, 2023 BCCA 139, [2023] 9 WWR 187. In that case, at paras. 38-39, the Court adopted and added its own comments to a similar summary from the judgment in *Nelson (City) v Marchi*, 2021 SCC 41, [2021] 3 SCR 55.

[59] I pause at this point to note that some reported decisions and texts give the impression that the *Anns/Cooper* test is, in fact, a three-stage test. This impression arises from the view that a court's first task is to determine whether the duty of care has previously been recognized. The other view, which I have adopted, incorporates this task as part of the second stage inquiry. For what it may be worth, I think these somewhat differing views are simply matters of perspective, and that neither view is necessarily wrong.

[60] Returning to the judgment in *Hill*, McLachlin C.J.C. concluded that the answers to the reasonable foreseeability and proximity questions favoured the recognition of a *prima facie* duty of care. The Chief Justice was also persuaded that there were no residual policy considerations to negate it. On the matter of proximity, McLachlin C.J.C. accepted that the relationship between investigating police officers and a suspect is "personal, close and direct" such that it gave rise to a duty of care. In this regard, the Chief Justice wrote the following at paras. 33 and 34:

> 33 Other factors relating to the relationship suggest sufficient proximity to support a cause of action. The relationship between the police and a suspect identified for investigation is personal, and is close and direct. We are not concerned with the universe of all potential suspects. The police had identified Hill as a particularized suspect at the relevant time and begun to investigate him. This created

> a close and direct relationship between the police and Hill. He was no longer merely one person in a pool of potential suspects. He had been singled out. The relationship is thus closer than in *Cooper* and *Edwards*. In those cases, the public officials were not acting in relation to the claimant (as the police did here) but in relation to a third party (i.e. persons being regulated) who, at a further remove, interacted with the claimants.
>
> 34 A final consideration bearing on the relationship is the interests it engages. In this case, personal representations and consequent reliance are absent. However, the targeted suspect has a critical personal interest in the conduct of the investigation. At stake are his freedom, his reputation and how he may spend a good portion of his life. These high interests support a finding of a proximate relationship giving rise to a duty of care.
>
> [Emphasis added]

[61] The judgment in *Hill* has been cited in more than 250 reported decisions involving allegations of negligent investigation. While I have not reviewed all these cases, my incomplete review reveals that most negligent investigation claims have, with few exceptions, been pursued by individuals who were the subject of investigations conducted by peace officers, private investigators, professional bodies and, in rare cases, employers. The plaintiffs in these proceedings alleged that, because of faulty investigations by these entities, they were either prosecuted, terminated from their employment, or subjected to professional discipline.

[62] The reported cases in this regard include authorities cited by the City, namely, *Correia v Canac Kitchens*, 2008 ONCA 506, 294 DLR (4th) 525 [*Correia*]; *Luan v ADP Canada Co.*, 2020 ABQB 387, 65 CCEL (4th) 57; and three reported decisions in the matter of *Lee v Magna International Inc.*, 2020 ONSC 3912, 2021 ONSC 2899, and 2022 ONCA 32. Each of these cases involved termination of employment following alleged negligent investigations. The second cited case is a trial judgment while the other two respectively involved motions on summary judgment and amendment of pleadings.

[63] The City considers it noteworthy that the ultimate decisions of the courts in each of these cases held that, while there may be other forms of liability against an employer arising from an employee's termination, that liability could not extend to the tort of negligent investigation. These findings were based on comments in *Correia*, which were adopted in the other two cases. In *Correia* at paras 73-74, Rosenberg and Feldman JJ.A, in a jointly written judgment, identified two policy reasons for refusing to recognize employer liability in this context. The first reason was that such liability would be inconsistent with the judgment in *Wallace v United Grain Growers Ltd.*, [1997] 3 SCR 701 [*Wallace*], where the Supreme Court of Canada refused to recognize a tort for breach of good faith and fair dealing obligations. Against this judicial backdrop, the Court in *Correia* held that recognizing employer liability for negligent investigation would effectively carve out an exception to the Supreme Court's earlier judgment, one for which there was no principled reason.

[64] The second policy reason focused on the "chilling effect" this form of employer liability would have on reporting criminality to law enforcement. In this respect, the Court noted that the employer, unlike the private investigator it had hired, was not in the business of conducting investigations. As such, it was in no different position than any other citizen who reports alleged criminal activity to the police.

[65] As I read the exceptional cases, where the plaintiff was not the subject of an alleged negligent investigation, they generally include two types of cases. The first group consists of cases where plaintiffs alleged that police officers or law enforcement officials failed to investigate or negligently investigated criminal conduct that victimized them or their family members. Cases in this group include *Wellington v Ontario*, 2011 ONCA 274, 333 DLR (4th) 236; *Allen v New Westminster (City)*, 2017 BCSC 1329; *Connelly v Toronto (Police Services Board)*, 2018 ONCA 368; *Jones v The Attorney General of Canada (Royal Canadian Mounted Police)*, 2018 NBCA 86;

Goldman v Weinberg, 2019 ONCA 224; *Rennalls v Tettey*, 2021 ABQB 1 [*Rennalls*]; and *Bigeagle v Canada*, 2021 FC 504, aff'd 2023 FCA 128; leave to appeal refused 2024 CarswellNat 2139 (WL).

[66] Except for *Rennalls*, each first group case resulted in findings that the claims, as pleaded, failed to disclose a reasonable cause of action. In most instances, a *prima facie* duty of care could not be established due to lack of foreseeability of harm, lack of proximity or both. In *Rennalls*, the lone exception, the Court concluded that the claim did not conform to a classic negligent investigation because, according to the pleading, the charges against the alleged offender had been stayed on the grounds of delay directly attributable to police conduct. As described at para. 109 of the decision, this conclusion rested on the claim's assertion that, to use the words of Devlin J., the subject police service "sabotaged its own, judicially confirmed investigative outcome … through a baffling level of negligence".

[67] The second group consists of cases where the plaintiffs alleged that police investigators failed to act on complaints they had received or to take measures to prevent crime, and that this failure to act resulted in subsequent harm to the plaintiffs or family members. These cases include: *Project 360 Investments Ltd. v Toronto Police Services Board*, [2009] CarswellOnt 3418 (WL) (Ont Sup Ct); *Thompson v Webber*, 2009 BCSC 1876 [*Thompson*], aff'd 2010 BCCA 308, 320 DLR (4th) 496 [*Thompson CA*], leave to appeal refused 2010 CarswellBC 3523 (WL) (SCC); *Burnett v Moir*, 2011 BCSC 1469, [2012] 6 WWR 317; and *Callan v Cooke*, 2012 BCSC 1589. In each of these cases, the relevant courts found that the pleadings failed to disclose sufficient proximity to ground a private duty of care on the part of investigating police officers.

[68] Of these cases, the decision in *Thompson* is instructive as it gives a sense of the approach a court should take. In *Thompson*, the plaintiff was the non-custodial parent of two children who lived primarily with their mother. After receiving

information from the children, the plaintiff complained to police that the mother had improperly disciplined the children. When the police interviewed both the mother and the children, they concluded that the mother had indeed assaulted the children with a kitchen spatula. Following a further interview with a third party, the police closed their file and took no further action. In his statement of claim, the plaintiff alleged that, because the police failed to take appropriate action, the mother had alienated him from his children.

[69] The plaintiff's claim was struck for failure to disclose a reasonable cause of action. The decision of Wilson J. was based on three grounds. On the first ground, and guided by the comments in *Hill*, the Court concluded that the plaintiff's statement of claim did not disclose a legal duty of care. He wrote the following at paras. 15-17:

> 15 There are three grounds upon which I find that this claim, beyond a reasonable doubt, is bound to fail. First, there is no allegation that the defendants owed a duty of care to Mr. Thompson, the plaintiff. In *Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board*, 2007 SCC 41, the court concluded as a matter of law that police do have a duty of care to persons accused of crime. There is a discussion, lengthy discussion, of the analysis of how the Supreme Court of Canada has established that duty. But Mr. Thompson is not an accused person, and never was. I find, under the authority of *Hill*, the Saanich police owed no duty of care to Mr. Thompson. There may be a duty of care owed by police officers to members of a family of a person who suffers, for example, death at the hands of police officers; and it is alleged that the chief of police of the police department involved has negligently failed to comply with the provisions of Ontario legislation involving investigations into police conduct.
>
> 16 That is apparent from the decision of the Supreme Court of Canada in *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263, 2003 SCC 69 (S.C.C.). But no authority has been advanced for the proposition that members of a police department have a duty of care to any complainant. As a general proposition, Mr. Thompson's argument is this: if A reports to a police officer that B has committed a criminal offence against C, then the police officer has a duty of care to A, in the conduct of the investigation, if any, which follows up from the complaint. Or, more particularly, as I understand Mr. Thompson in this case, he is a non-custodial parent, is intimately involved with the victims of the alleged crime, and a police officer, receiving a report

> from a non-custodial parent, that the custodial parent is committing a criminal offence, against the children subject to that custodial regime, owes a duty of care to the non-custodial parent.
>
> 17 Whether general or particular, I am not persuaded that the present law recognizes a duty of care to a person in that position as complainant.

[70] On appeal to the British Columbia Court of Appeal, the decision was affirmed, *Thompson CA*. In doing so, Saunders J.A. added her own observations about how the *Anns/Cooper* test and the comments in *Hill* factored in the analysis of the plaintiff's claim. She then made the following comment at para. 27:

> 27 In my view, the relationship of Mr. Thompson to the police officers, even on his full pleadings, is not sufficiently proximate to find a duty of care. Mr. Thompson was not the subject of the information provided to the police, either as a person said to be wronged - who were his children, or the person thought to be the wrongdoer -Ms. Thompson. He was, although the father of the children, one party removed from the complaint. I consider it is plain and obvious, on the pleadings, that Mr. Thompson was not within the circle of people the police would reasonably have in mind as a person potentially harmed by their actions.
>
> [Emphasis added]

[71] Turning to the present claim, I am satisfied that the pleaded material facts are insufficient to establish the essential elements of the plaintiff's claim for negligent investigation. This insufficiency is apparent with respect to both the duty of care as well as the standard of care. On the latter of these two elements, I note, with some surprise, that the plaintiff's pleading is internally inconsistent. In paragraph 16, she simply pleads that, after the meeting with the ombudsman, she was not informed of any investigation or outcome. Later, in paragraph 29, she more assertively says that the City failed or refused to investigate. While my perspective may admittedly be seen as somewhat pedantic, I am not persuaded that unawareness of an investigation later translates into the equivalent of no investigation.

[72] Aside from this concern about the standard of care element, I find that the plaintiff's claim for negligent investigation is completely derailed on the duty of care element. In this regard, I am satisfied that the plaintiff's claim does not meet the first stage of the *Anns/Cooper* test and fails to establish a *prima facie* duty of care. I will explain.

[73] In the analysis of the plaintiff's claim, it must first be noted that, of the reported cases, the arguable claims for negligent investigation have been confined to cases where the defendants formally conduct themselves as investigators. They were described as either police officers, private investigators or professional regulatory bodies, tasked by law or contract, with specific investigatory responsibilities. In such circumstances, much may be at stake. There may be risk to a person's liberty, employment or livelihood. As noted in *Hill* and the authorities that have cited it, these considerations make it easier to discern both foreseeability of harm and relationships of proximity.

[74] In the present case, there is no suggestion in the statement of claim that the City has any formal duty or expertise to investigate anything. Its ownership of the Centre, in whatever form that takes, and its voluntary decision to create an ombudsman position does not, without more, signify assumptions of responsibilities beyond the City's direct administrative control. In this respect, it must be remembered that the statement of claim does not assert – nor allege material facts to assert – that the City is the plaintiff's employer or the operator of her employer. Against this backdrop, there may have been a chance that a purely voluntary and "Good Samaritan" type of investigation or inquiry by the City's ombudsman could have assisted in addressing the dispute between the plaintiff and Lofdahl. However, if that chance was lost, as the plaintiff submits (but inconsistently pleads), the harm of which she now complains is not a reasonably foreseeable consequence of the City's omission.

[75] Even if I am wrong about the reasonable foreseeability of harm, I find that the statement of claim does not allege sufficient material facts to establish the requisite relationship of proximity to justify a *prima facie* duty of care. In my view, the City's ownership of the Centre and its ombudsman's meeting with the plaintiff are not capable of establishing the kind of "close and direct" relationship for a legal duty of care to be imposed. In saying this, I acknowledge that, unlike the circumstances in *Thompson*, the plaintiff here pleads that she was the "person said to be wronged" when she met with the City's ombudsman. This acknowledgement might support the existence of a duty of care if there the plaintiff pleaded material facts to support the conclusion that, similar to police officers, the City had a statutory or contractual obligation to act on her complaint. As I read the relevant authorities, including *Hill* and *Rennalls*, the existence of such statutory obligations for police services factor prominently in the duty of care analysis. This is primarily because they underlie the presence of a close and direct relationship.

[76] Based on the above analysis, I find that the plaintiff's statement of claim fails to disclose a *prima facie* duty of care on the part of the City relative to the claim for negligent investigation. Given this finding, it is not necessary for me to address the presence, or not, of residual policy concerns associated with giving full recognition to a duty of care. Having said that, I must say that I agree with the City's argument that piercing the Centre's corporate veil, with a view to characterizing the City as co-employer of the plaintiff, would accomplish nothing for her. In this respect, I am persuaded that the decision in *Correia*, which I adopt, makes it clear that an employer, or a co-employer for that matter, could not be found discretely liable for the tort of negligent investigation in the context of a wrongful dismissal. Whatever moral damages the plaintiff may be entitled to for a flawed or improper investigation would be confined to those available under *Wallace* or *Keays*.

Conclusion

[77] In the result, the City's application is allowed. I am satisfied that the plaintiff's statement of claim fails to disclose any reasonable cause of action against the City. I am also satisfied that the pleading against the City is so deficient that leave to amend the allegations against it cannot be granted.

[78] Because the plaintiff's action continues against the remaining two defendants, it is necessary to direct the issue of an order that refers to specific paragraphs in the statement of claim. In this regard, I order that the following paragraphs and words be struck from the plaintiff's statement of claim:

a. in the list of defendants in the style of cause, the words "City of Saskatoon";

b. paragraphs 4 and 16 and subparagraph 32(d), in their entirety;

c. in paragraph 23, the words "and the City";

d. in paragraph 28, the words "and the City"; and

e. in paragraph 29, the words "and the Defendant City" as well as the entire last sentence.

While I had earlier commented that paragraph 25 and subparagraph 32(b) seemed to suggest some form of liability against the City, the untidy way in which these passages were drafted are such that orders striking any portion of them is not required.

[79] As I have ordered the statement of claim to be struck against the City, it is not necessary for me to address the question as to whether the claim against the City was frivolous, vexatious or scandalous.

[80] Finally, the City shall have its taxable costs against the plaintiff with respect to both the application to strike and the action as a whole.

_____J.
R.W. ELSON