
Court of Appeal for Saskatchewan

Docket: CACV4172

**Citation: *SteveCo Construction Ltd. v
Saskatchewan Power Corporation, 2024 SKCA 46***

Date: 2024-04-26

Between:

SteveCo Construction Ltd. and Steven Leslie Mitchell

*Appellants
(Plaintiffs)*

And

**Saskatchewan Power Corporation and
The Government of Saskatchewan**

*Respondents
(Defendants)*

Before: Leurer C.J.S., Jackson and Caldwell JJ.A.

Disposition: Appeal dismissed

Written reasons by: The Honourable Madam Justice Jackson

In concurrence: The Honourable Chief Justice Leurer
The Honourable Mr. Justice Caldwell

On appeal from: QBG-PA-00053-2020 (Sask KB), Prince Albert

Appeal heard: October 6, 2023

Counsel: Peter Abrametz for the Appellants
Jason Clayards for the Respondents

Jackson J.A.

I. Introduction

[1] In the early morning hours of April 4, 2019, a fire destroyed the industrial shop of SteveCo Construction Ltd. [SteveCo] and the residence of Steven Mitchell [collectively, the appellants]. In due course, the appellants filed a claim in negligence against the Saskatchewan Power Corporation [SaskPower], alleging that the fire had been caused by its employees working on a nearby power line the day before.

[2] SaskPower defended the claim, among other bases, on the footing that it was immune from liability under s. 3(2.1)(b) of *The Power Corporation Act*, RSS 1978, c P-19, and s. 14.1 of the Terms and Conditions of Service [Terms and Conditions] passed pursuant to s. 8 of that Act. In light of the nature of this defence, SaskPower applied under Rule 7-1(1)(a) of *The King's Bench Rules* for an order directing that certain questions be heard before trial, and if those questions were ultimately decided in its favour, it asked that the appellants' claim be struck or summarily dismissed pursuant to either Rule 7-1(3)(a) or Rule 7-1(3)(b) of *The King's Bench Rules*.

[3] The appellants agreed with the process and the questions that were fixed for determination under Rule 7-1(1)(a). Following the Rule 7 hearing, the Chambers judge resolved all issues in SaskPower's favour. She then struck the appellants' claim, pursuant to Rule 7-1(3)(a): *SteveCo Construction Ltd. v Saskatchewan Power Corporation* (17 February 2023) Prince Albert, QBG-PA-00053-2020 (Sask KB) [*Decision*].

[4] The appellants bring this appeal largely on the basis that the Chambers judge wrongly held that SaskPower was immune. Other grounds relate to what I find to be peripheral to the decision relating to immunity. For the reasons that follow, I have concluded that the appeal should be dismissed. The Chambers judge committed no error either in finding SaskPower was entitled to claim immunity or in striking the appellants' claim.

II. Legislative and regulatory provisions

[5] Section 3(2) and s. 3(2.1) of *The Power Corporation Act* provide as follows:

Capacity to contract, etc.

3(2) Subject to *The Workers' Compensation Act, 2013*, the corporation is subject to all those liabilities in tort to which, if it were a person of full age and capacity, it would be subject:

- (a) in respect of a tort committed by any of its officers, employees or agents;
- (b) in respect of a breach of those duties that a person owes to his or her officers, employees or agents by reason of being their employer or principal;
- (c) in respect of a breach of the duties attaching to the ownership, occupation, possession or control of property; and
- (d) under any statute, or under any regulation or bylaw made or passed under any statute;

Provided that no proceedings lie against the corporation by virtue of clause (a) in respect of any act or omission of an officer, employee or agent of the corporation unless the act or omission would, apart from this Act, have given rise to a cause of action in tort against that officer, employee or agent or his or her personal representative.

(2.1) Notwithstanding subsection (2), the corporation is not liable in any action:

...

- (b) for any injury, loss or damage to persons or property arising out of, or directly or indirectly resulting from, the supply or use of electrical energy or natural or manufactured gas by a customer beyond the point of delivery to the customer's premises.

(Emphasis added)

[6] Section 8 of *The Power Corporation Act* grants SaskPower the authority to establish and revise terms and conditions with respect to which all persons receiving a service must comply:

Purposes and powers

8(3) Notwithstanding any other Act but subject to subsection (5), every person who accepts, uses or otherwise is the recipient of a service provided by the corporation shall:

- (a) pay any charges and rates; and
- (b) comply with any terms and conditions;

established and revised by the corporation.

...

(4) The charges, rates, terms and conditions mentioned in subsection (3) shall be set out or described in a schedule that the corporation shall make available for public inspection at the business offices of the corporation during business hours.

(5) A charge, rate, term or condition is not valid unless the schedule mentioned in subsection (4) and in which it is set out or described has been made available for public inspection in the manner provided in that subsection.

(6) Notwithstanding subsections (3) to (5), where in the opinion of the corporation the schedule of charges, rates, terms and conditions mentioned in subsection (4) does not adequately accommodate the provision of a particular service requested by a person, the corporation may enter into a special agreement with that person to provide the service in accordance with charges, rates, terms or conditions at variance with or in addition to those set out or described in the schedule and the agreement shall have precedence over the schedule to the extent necessary to give effect to that agreement.

(Emphasis added)

[7] Pursuant to s. 8(3) of *The Power Corporation Act*, SaskPower has established the Terms and Conditions. Section 14.1 of the Terms and Conditions, as they existed at the time of the fire, provided as follows:

14. Liability and Indemnification

14.1 Limitation of Liability

(a) Notwithstanding anything contained in these Terms and Conditions or in any agreement between SaskPower and a Customer or any other person, SaskPower or its affiliates, or any of their directors, officers, agents, contractors, assigns or employees shall not be liable under any circumstances whatsoever for any damages, injuries, losses, expenses, liabilities, fees (including legal fees), or costs whatsoever or howsoever caused, suffered or incurred by any Customer or any other Person on premises owned, leased or operated by such Customer or arising out of, or in any way connected with, the provision by SaskPower of Electrical Service or any other SaskPower Service or any failure, including any failure to meet an in-service date, defect, fluctuation, reduction, disconnection, suspension, curtailment or interruption in the provision of such services, whether arising in contract, tort, negligence, strict liability, indemnity or any other basis, with the sole exception of direct physical damages suffered by a Customer and occurring as a direct result of the gross negligence or willful misconduct of SaskPower or its employees acting within the scope of their employment.

(b) “Direct physical damages” shall not include any indirect, consequential, incidental, special, exemplary or punitive damages or damages, however characterized, for loss of use, loss of profits, loss of revenue, loss of production, loss of earnings, loss of contract, cost of capital, cost of purchased or replacement capacity or energy, loss of any use of any Facilities or Equipment or property owned, leased or operated by any Person.

(c) Notwithstanding the above, SaskPower shall not be liable for any injury, loss or damage to Persons or property arising out of, or directly or indirectly resulting from, the supply or use of Electrical Energy by a Customer beyond the Point of Delivery. SaskPower does not guarantee or promise uninterrupted service.

(Emphasis added)

[8] According to s. 2 of the Terms and Conditions, *point of delivery* is defined as “the location where SaskPower’s Facilities and Equipment end and the Customer’s Facilities and Equipment begin”. *Facilities, equipment, electrical service* and *electrical energy* are also defined terms in the same document.

III. Background

A. Factual matters

[9] The nature of the fire and its cause were in dispute before the Chambers judge and are best reviewed in the context of the grounds of appeal.

[10] An essential fact not in dispute and of particular importance is this. In July of 2008, SteveCo requested that SaskPower provide an additional service, which would require a new power connection. On July 10, 2008, SaskPower sent SteveCo a letter describing what would be installed, quoting a cost and outlining various required approvals and conditions [Quote No. 50626]. This quote is relevant because of the legislative and regulatory provisions mentioned above. By signing Quote No. 50626, SteveCo agreed to the following:

- (a) it would provide a “customer-supplied, exterior splitter box, capable of accommodating 500 mcm aluminum conductor” prior to delivery of SaskPower’s service;
- (b) the “splitter box will be the point of delivery” for SaskPower’s service; and
- (c) the quote itself “and any services provided hereunder, [will be] governed by SaskPower’s Terms and Conditions of Service”.

[11] I will provide the balance of the background in the context of the pleadings and the evidence provided on the Rule 7 application.

B. Pleadings

[12] The appellants’ February 11, 2020, claim against SaskPower reads as follows:

6. The cause and origin of the fire was found to be electrical in nature, and originated from the splitter box and electrical meter supplied by SaskPower which receive electricity from SaskPower on wires owned by SaskPower.

7. The particular cause of the fire was a surge of electricity into the splitter box.

8. The Plaintiff states that the cause of the power surge which caused his loss was negligence on the part of the Defendant related to, inter alia, improper installation of a transformer near the Plaintiffs property, and the Plaintiff further states that the Defendant improperly installed its electrical meter, and/or installed an improper electrical meter.

9. The Plaintiff states that the Defendant breached its duty of care to the Plaintiff through negligence and by causing and permitting the power surge to damage the Plaintiff's property.

[13] SaskPower defended the claim on the basis of these assertions contained in its statement of defence:

6. With respect to paragraph 6 of the Statement of Claim, SaskPower states that the splitter box and meter box are supplied by the customer. The customer is responsible for the wiring from the splitter to the metering point. SaskPower owned cables run into the splitter from the transformer bank pole. The SaskPower meter was installed at this location July 15, 2015 and had not been changed, remaining on the building when it was destroyed in the fire of April 3, 2019.

7. SaskPower denies that there was any "power surge" as alleged in paragraph 7 of the Statement of Claim and puts the Plaintiffs to the strict proof of that allegation. SaskPower also states that no other customers that receive power from the same transformer bank as the Plaintiffs have claimed to have suffered any damage to their property as a result of any abnormalities with the voltage in the power service supplied by SaskPower.

...

10. SaskPower denies that it breached any duty of care to the Plaintiff through negligence or in any other manner and it also denies the allegation that it caused or permitted a power surge to damage the Plaintiffs' property.

11. SaskPower says that the fire did not occur as a result of SaskPower's electrical service, but rather as a result of a fault in the Plaintiffs' electrical wiring.

12. SaskPower pleads and intends to rely on section 3(2.1)(b) and (2.2) of the *PCA [The Power Corporation Act]*. Specifically, SaskPower is not liable for loss or damage from the supply or use of electrical energy beyond the point of delivery to the customer's premises and is not liable in an action based on nuisance, or any tort that does not require a finding of intention or negligence.

13. SaskPower pleads and intends to rely on section 8(3)(b) of the *PCA*. Specifically, SaskPower intends to rely upon section 14 of the Terms and Conditions of Service.

C. Rule 7 application

1. Stated questions and orders sought

[14] In due course, SaskPower applied for an order under Rule 7-1(1)(a). SaskPower asked Queen's Bench, as it then was, to decide the following questions:

- (a) Is SaskPower immune from liability by reason of s. 3(2.1)(b) of *The Power Corporation Act*?
- (b) Is SaskPower immune from liability by reason of s. 14.1 of SaskPower's Terms and Conditions?

If either (a) or (b) were answered affirmatively, SaskPower asked that the appellants' action be struck or summarily dismissed, pursuant to Rule 7-1(3)(a) or Rule 7-1(3)(b).

[15] The appellants agreed that these were the issues to be decided on the Rule 7 application and that, if the result were in SaskPower's favour, the Chambers judge could proceed to determine whether the claim should be struck or dismissed under Rule 7-1(3).

2. Evidence on the Rule 7 application

[16] All of the evidence took the form of affidavits or commissioned reports. None of the affiants or report authors were cross-examined.

a. The case for SaskPower

[17] SaskPower's evidence was composed of the following:

- (a) an affidavit sworn by Nidal Dabghi, who identified himself as the Director, Operation & Maintenance North / Distribution Services of SaskPower;
- (b) an affidavit sworn by Dwayne Mintzler, who identified himself as the Director, Distribution Engineering of SaskPower;
- (c) a report from Maskell Plenzik & Partners Engineering Inc., commissioned by the appellants [MP&P Report]; and
- (d) a report from Chris Hewitt, P.Eng., Principal, Senior Electrical Engineering Ltd. [Hewitt Report].

[18] In his affidavit, Mr. Dabghi averred as follows: "It is my understanding ... the surge reported was caused by the fire melting the insulators on electrical conductors causing SaskPower protection to see the fault and operate properly".

[19] Mr. Mintzler attested to the following:

5. ... The point of delivery for the services provided by SaskPower is inside the splitter box, where the SaskPower cables meet the blocks. The customer's power cables connect to the blocks and run the power to the meter box. All power cables and installations beyond where the SaskPower cables meet the blocks are the sole property and responsibility of the customer.

6. From the splitter box, the customer's power cables enter the exterior meter box. The exterior meter box is the customer's property and responsibility. The cables from the exterior meter box would enter the property and connect to a main breaker or a metering transformer cabinet, depending on the customer's configuration. Because this installation was only good for 200-amps, the metering transformer cabinet would not be required.

7. Once the installation at the Plaintiffs' Property was completed by SaskPower on August 18, 2008, the power ran from a SaskPower line through a transformer bank on the power pole. From the transformer bank, the power split into two cable lines, one that ran to the Plaintiff's splitter box and another that ran to the neighboring property

8. If a power surge originated from the SaskPower line, both the neighboring property and the Plaintiff's Property would have been affected by the surge because the power at both properties originated from the same SaskPower line and passed through the same transformer bank.

[20] The authors of the MP&P Report opined as follows: "The physical evidence examined indicates a fire within the space acting on the power utility meter and then the power service splitter box. There is no evidence of an electrical failure within the artifacts examined" (at 18).

[21] In the Hewitt Report, the author indicated that he had reviewed the MP&P Report and essentially agreed with its conclusions. In summary, he offered this opinion (at 6 and 10):

Based upon my review of the information provided to me, as noted on page 1 of this letter [including the MP&P Report], it is not possible to confirm that the cause of the fire was electrical in nature. ...

...

A surge was categorically not the cause of the fire.

...

All potential causes of the failure of the conductors have been eliminated. The arcing noted was most likely caused by secondary heat, resulting from a fire which started outside of the electrical distribution.

[22] As part of his report, Mr. Hewitt answered a series of questions that had been put to him by SaskPower's counsel. The following question is the most significant (at 12):

1. Question: To the extent possible, please comment on the conclusions of the MP&P Report with respect to the cause of the fire:

Answer: I agree generally with the conclusions drawn in the MP&P Electrical Fire Investigation Report with respect to the cause of the fire. In my opinion the cause of the fire was unrelated to the electrical equipment noted in the MP&P Report. The damage to the electrical equipment was as a result of secondary effect heating from a fire due to another cause. The arcing was caused specifically by secondary heat, damaging the insulation of the wiring leaving the meter socket and between the splitter enclosure and the meter socket, leading to short circuit to grounded steel parts. There is no evidence of failure of the splitter enclosure, meter, meter socket or service conductors.

b. The case for the appellants

[23] Pointedly, the appellants did not rely on their own commissioned MP&P Report. Rather, the only evidence submitted on their behalf came from Mr. Mitchell, in his personal capacity, and from Eric Lindgren, an electrical engineer.

[24] The principal paragraphs from Mr. Mitchell's affidavit are as follows:

3. THAT I agree that the splitter box was on the outside of my building. The splitter box is also sometimes referred to as the weatherproof enclosure. I agree that it contained the input, live, feeder, power wires from SaskPower and that the purpose of the splitter box is to provide electricity to my building.

4. THAT however, before electricity is transferred into my building, it goes from the splitter box to the meter box. My meter box was also located on the exterior of my building approximately 18 inches to the left of the splitter box and at the same height when facing the splitter box. I provided the splitter box and meter box. However, the Defendant, Saskatchewan Power Corporation, provided the power meter.

...

8. THAT in my opinion, there was nothing within the wall between my distribution panel and the SaskPower meter that would cause a fire. The wires between my distribution panel and the SaskPower meter were copper, meaning they were of a higher quality than the aluminum wires between the SaskPower transformer on the power pole and the splitter box. Aluminum wires are less expensive and that is why they are used. It is highly unlikely that anything inside the wall could cause a fire because the wall was an enclosed space with copper wires that were insulated so it is hard to imagine them being disturbed by any movement or moisture in the wall from any possible cause.

9. THAT the interior wall of my industrial shop where the distribution panel was attached was clad in aluminum panelling which was fire resistant. Furthermore, I know of nothing near the distribution panel that could have possibly been the origin of the fire.

[25] Mr. Lindgren, the electrical engineer engaged by Mr. Mitchell, averred in his affidavit as follows:

4. THAT I agree that on the existing evidence that we have, the origin of the fire is the first arc point, however, it is my opinion that this first arc point originated in the meter socket (meter box).

5. THAT in my opinion, the most likely hypothesis as to the origin of this fire was arcing in the meter socket that could be caused by one of two things: either a bridge between the input feeder line and the neutral line in the meter socket is the cause, and the bridge could be the result of either liquid or solid foreign material, or alternatively, there was an input of voltage into the meter socket that was a higher voltage than the rating of the meter socket.

6. THAT this failure in the meter socket would have caused an instantaneous temperature increase in the conductors to the service cabinet (distribution panel) located in the building. The temperature increase would cause the insulation to melt off the conductors to the service cabinet causing a chain reaction back to the power source in the service cabinet.

7. THAT it is in my opinion that a significant voltage spike sufficient to cause the damage found here could be caused by a collapsing magnetic field on the secondary of the pole transformer.

8. THAT my opinion is informed by the fact that there is no protection on the conductors between the meter socket on the exterior wall of the structure and the distribution panel on the interior wall of the structure except for the utility fusing to the meter provided by the electrical utility provider.

IV. Chambers decision

[26] The Chambers judge first considered whether Rule 7-1 was the appropriate way to resolve the parties' dispute. After reviewing the applicable case law and the nature of the evidence before her, she concluded that the matter could be suitably addressed under a Rule 7-1 application. She then turned to an assessment of the evidence.

[27] The Chambers judge gave full effect to the parties' agreement, as contained in Quote No. 50626. As noted, the essential aspect of that document provided that the "splitter box will be the point of delivery" for the electrical service (Terms and Conditions at 1).

[28] With this agreement in mind, the Chambers judge determined that she could not accept Mr. Mitchell's opinion as to the starting point or the cause of the fire. She found him unqualified to give such evidence; and, even if he were qualified to provide a technical interpretation of those matters, she would not have accepted it because his comments directly contradicted his contract with SaskPower as to the defined point of delivery being the splitter box. In that regard, she wrote as follows (*Decision*):

[32] While some of Mr. Mitchell's evidence is merely personal observation, several of his comments, particularly at paras. 8 and 9 of his affidavit, constitute opinions on matters for which he is not qualified. They also appear as a self-serving attempt to circumvent the previous contractual agreement regarding the point of delivery. As such, the opinions do not satisfy the test for admissibility outlined in *Graat* [[1982] 2 SCR 819] and *Montague-Mitchell* [2018 SKCA 78]

[33] Even if these comments by Mr. Mitchell were considered as admissible opinion evidence, they are insufficient to dispel the contractual position that the splitter box is the point of delivery. Accordingly, for purposes of considering the legal questions posed, I accept that the point of delivery is the splitter box.

(Emphasis added)

[29] The Chambers judge also did not accept Mr. Lindgren's evidence as to the cause of the fire. She rejected it for these reasons:

[42] ... The safeguards regarding the provision of expert evidence found in Rule 5-37 of *The Queen's Bench Rules* and the Supreme Court of Canada decisions in *R v Mohan*, [1994] 2 SCR 9, and *White Burgess Langille Inman v Abbott and Haliburton Co.*, 2015 SCC 23 (CanLII), [2015] 2 SCR 182, are not present in relation to Mr. Lindgren's evidence. What materials he reviewed is unknown. The bases for his conclusions are uncertain. ...

...

[45] Mr. Lindgren's area of expertise is not identified in the affidavit and there is certainly no indication of fire investigation experience. As such, Mr. Lindgren's affidavit does not provide evidence on which this court can rely. ... [W]hich requires me to exercise my gatekeeper function.

[30] In conclusion on the cause of the fire, the Chambers judge wrote as follows: "Whether inadmissible or admitted but given no weight, Mr. Lindgren's affidavit provides no viable alternative to the cause of the fire than that provided by MP&P and Mr. Hewitt, whose expertise and experience are clear and who have provided the foundation for their opinions" (emphasis added, at para 47).

[31] Having rejected Mr. Mitchell's and Mr. Lindgren's evidence, this left SaskPower's evidence only. From that, the Chambers judge concluded that the fire did not result from electrical failure:

[48] The decision in *Reed* [2017 SKQB 273], as noted earlier, confirms that, for this court to consider an application under Rule 7-1, undisputable facts are not required. Given the evidence filed, and recognizing that little, if any, weight can be given to the opinions of either Mr. Mitchell or Mr. Lindgren – if the former could even be considered admissible – it is uncontroverted that the fire originated beyond the electrical distribution system, although its exact cause remains an enigma. As counsel emphasized, I am not being called upon to determine the precise origin of the fire. However, as counsel for SaskPower noted, I am able to accept what the evidence shows did *not* happen, namely a fire resulting from electrical failure.

(Emphasis in original)

[32] With her finding that the fire did not result from an electrical failure, the Chambers judge then answered the two questions raised in the Rule 7 application, which I repeat for ease of reference:

- (a) Is SaskPower immune from liability by reason of s. 3(2.1)(b) of *The Power Corporation Act*?
- (b) Is SaskPower immune from liability by reason of s. 14.1 of SaskPower's Terms and Conditions?

[33] In summary form, she gave the following answers to those questions:

- (a) since the parties agreed in 2008 that the splitter box was the point of delivery, “the statutory immunity afforded to SaskPower by [s. 3(2.1)(b)] operates in this case, which fully disposes of the plaintiffs’ claim” (at para 83);
- (b) since “neither gross negligence nor willful misconduct on the part of SaskPower has been alleged ... [Section] 14.1(a) [of the Terms and Conditions] operates as a complete bar to the action and fully disposes of the plaintiffs’ claim” (at para 85); and
- (c) s. 14.1(c) of the Terms and Conditions “also prevents a claim by the plaintiffs against SaskPower in this case” (at para 86).

[34] During the course of the Rule 7 hearing, the appellants raised what they stated was SaskPower’s obligation to report the fire under s. 27 of *The Electrical Inspection Act, 1993*, SS 1993, c E-6.3, to the chief electrical inspector under that Act. Their theory was that if SaskPower had promptly reported the fire it would have been investigated, and the location of the fire would have been determined to have been on SaskPower’s property. From this, the appellants asserted that SaskPower could not rely on the immunity provisions of either *The Power Corporation Act* or the Terms and Conditions. While not one of the initial issues set for determination under Rule 7-1(1)(a), the Chambers judge, nonetheless, addressed this supposition. She concluded, at paragraph 81, that SaskPower did not have an obligation to report the fire to the chief electrical inspector.

V. Issues

[35] The appellants appeal the *Decision*, putting in issue these points, which I take, with minor restatement, from their factum:

- (a) Did the Chambers judge properly strike their claim?
- (b) Is SaskPower immune from liability based upon *The Power Corporation Act* or the Terms and Conditions?
- (c) Did SaskPower have an obligation to report the fire to the chief electrical inspector?

VI. Analysis

A. Introduction

[36] It is important to say at the outset that the appellants do not challenge the process that led to the *Decision*. Apart from the application of *The Electrical Inspection Act*, which was only raised late in the proceedings, they agreed with the questions that the Chambers judge had been asked to decide. They did not seek to cross-examine any of SaskPower’s witnesses. In short, they do not resile from the appropriateness of the issues that were to be decided under Rule 7. I highlight the point to make it clear that the process was not in issue in either that Court or this one.

[37] A second preliminary matter is that the appellants continue to assert facts and opinions in their factum that were not accepted in the *Decision*. For example, the appellants do not submit that the Chambers judge made a palpable and overriding error by finding that “the fire originated beyond the electrical distribution system, although its exact cause remains an enigma” (*Decision* at para 48). They also do not challenge the conclusion that the fire “did *not* happen ... from electrical failure” (emphasis in original, at para 48). Rather, the appellants speculate as to the nature and starting point of the fire. They say as follows in their factum:

- (a) “It was a suspected electrical fire and the electrical boxes had major ‘blow outs’ which may well have been caused by a power surge of some kind”.
- (b) “The Plaintiffs believe, with good reason, that the fire originated at the power meter owned by SaskPower”.
- (c) “The power meter is ... where it seems this fire began”.

[38] The appellants make these statements, but they cannot be taken into account in assessing whether the Chambers judge erred by answering the questions raised in the application as she did. For example, the reference to there having been “a suspected electrical fire” comes from a basic fire incident report wherein the author advised he did not have the qualifications to determine the cause of the fire. The Chambers judge correctly gave no weight to that opinion, as the author was “not an electrical engineer” (*Decision* at para 34). In short, these unsubstantiated criticisms or contradictions of the *Decision* do not rise to the level of establishing palpable and overriding error.

[39] A third preliminary comment relates to the appellants' overall points of argument. The first issue was cast in the appellants' factum as being whether the Chambers judge properly *discontinued* the claim, which is manifestly not an issue in this appeal. If the Chambers judge properly answered the questions raised in the Rule 7 application, the appellants have offered no submissions as to why the claim should not have been *struck*. The central issue is reflected in ground (b) – Is SaskPower immune from liability based on *The Power Corporation Act* or the Terms and Conditions? However, this manner of drafting the ground of appeal gives the appearance that this Court has the authority to determine all factual matters afresh, which is not the function of an appellate court. Thus, I have construed ground (b) as asking the Court to decide these questions of law:

- (a) Did the Chambers judge err in law by finding SaskPower to be immune from liability under s. 3(2.1)(b) of *The Power Corporation Act*?
- (b) Did the Chambers judge err in law by finding SaskPower to be immune from liability under s. 14.1 of the Terms and Conditions?

[40] The standard of review of correctness applies to the interpretative exercise that forms the core of those questions: *Custer v Saskatchewan Government Insurance*, 2024 SKCA 18 at para 17. It also must be recognized that if the Chambers judge did not err with respect to *either* issue the appeal must be dismissed.

[41] Finally, the appellants refer to the test for determining whether a claim should be struck as disclosing no reasonable cause of action as taken from *Wilson v Saskatchewan Water Security Agency*, 2023 SKCA 16 at para 17, 478 DLR (4th) 170. This case has no application to an appeal from a decision striking a claim under Rule 7-1(3)(a).

B. Immunity under s. 3(2.1)(b) and s. 14.1(c)

1. The appellants' submissions

[42] To reiterate, SaskPower's immunity hinges, in part, on what constituted the point of delivery to SteveCo's premises. This is important because s. 3(2.1)(b) of *The Power Corporation Act* states SaskPower is not liable for any loss arising *beyond the point of delivery to the customer's premises*. That provision is repeated for ease of reference:

Capacity to contract, etc.

3(2.1) Notwithstanding subsection (2), the corporation is not liable in any action:

...

(b) for any injury, loss or damage to persons or property arising out of, or directly or indirectly resulting from, the supply or use of electrical energy or natural or manufactured gas by a customer beyond the point of delivery to the customer's premises.

(Emphasis added)

[43] Unlike the Terms and Conditions, *The Power Corporation Act* does not define *point of delivery to the customer's premises*, but Quote No. 50626 defines the point delivery as being the splitter box. In addition, that document indicates SaskPower's Terms and Conditions apply.

[44] Section 14.1(c) of the Terms and Conditions, previously quoted, provides as follows:

14.1(c) Notwithstanding the above, SaskPower shall not be liable for any injury, loss or damage to Persons or property arising out of, or directly or indirectly resulting from, the supply or use of Electrical Energy by a Customer beyond the Point of Delivery. SaskPower does not guarantee or promise uninterrupted service.

(Emphasis added)

[45] Tied to s. 14.1(c) is the definition of *point of delivery* contained in s. 2 of the Terms and Conditions:

2. Definitions

The following words and phrases, whenever used in these Terms and Conditions of Service, shall have the respective meanings set out below:

...

“Point of Delivery” means the location where SaskPower's Facilities and Equipment end and the Customer's Facilities and Equipment begin.

[46] The appellants' argument is that the point of delivery in Quote No. 50626, defined as the splitter box – “This splitter box will be the point of delivery” – is not the same thing as “the *location* where SaskPower's facilities and equipment end and the customer's facilities and equipment begin” (emphasis added), as contained in the definitions of the Terms and Conditions. They say that that *location* is SaskPower's meter. They assert further that, since the meter box, in their opinion, was the point of delivery, SaskPower cannot claim it is not liable because immunity is only conferred for fires “beyond the point of delivery”, i.e., downstream from the meter box.

[47] The Chambers judge did not accept that argument. She found that, when SteveCo decided to buy services and electricity from SaskPower, the former contractually agreed that the point of delivery would be the splitter box. The appellants challenge this conclusion on two bases.

[48] First, SteveCo submits that neither SaskPower nor SteveCo could contract for any different point of delivery than what is shown in the Terms and Conditions, and indeed, that latter document is incorporated into Quote No. 50626. Second, they assert that the *contra proferentum* rule applies to the quote such that the most favourable reading of it should be given to the provisions and in their favour.

2. Chambers decision on immunity

[49] These arguments bring me to a closer analysis of the *Decision*. The principal paragraphs read as follows:

[67] In considering s. 14.1(c) of the Terms and Conditions, we are not dealing with provisions in two pieces of legislation which may appear to be in conflict, such as was addressed in *Platana v City of Saskatoon and Szabo*, 2004 SKQB 291 affd 2006 SKCA 10. There, Allbright J. noted, at paras. 16 and 22 that “the conflict is avoided by applying the specific provision to the exclusion of the more general one”. However, if one considers that s. 8(3) of the *PCA [The Power Corporation Act]* may simply make general reference to terms and conditions, the more specific provision is s. 3(2.1)(b). As previously discussed, that more specific provision operates as a bar to liability on the part of SaskPower in the circumstances of this case.

[68] The more general provision, s. 8(3), references the Terms and Conditions. The definition of “point of delivery” in the Terms and Conditions may, at first blush, appear to run somewhat counter to the definition agreed upon in Quote No. 50626. In the Terms and Conditions, the point of delivery is said to mean “the location where SaskPower’s Facilities and Equipment end and the Customer’s Facilities and Equipment begin”. The definitions of facilities and equipment state:

“Facilities” means physical facilities including, without limitation, transmission and distribution lines, powerlines, wires, transformers, Meters, Meter reading devices and other electrical apparatus.

“Equipment” means, including but not limited to, all electrical apparatus and equipment and other property utilized in or necessary for the supply and delivery of Electrical Energy by SaskPower to the Customer.

[69] The term “meters” is included in the definition of “facilities”, albeit it would not be encompassed in “equipment” as it monitors consumption rather than being involved in the supply and delivery of the electrical energy. Indeed, Mr. Mitchell recognizes this when he says, at para. 5 of his affidavit, that the meter merely “measured the amount of electricity consumed for billing purposes”.

[70] However, as the evidence demonstrates, although SaskPower owns the meter in this case, the remaining equipment beyond the midpoint of the splitter box belongs to the plaintiffs. As such, that is where SaskPower submits its equipment ends and the customer's begins, in keeping with the definition of "point of delivery" in the Terms and Conditions.

[71] Mr. Mitchell also states, at para. 3 of his affidavit, that he agreed that "the splitter box was on the outside of [his] building". He added, "I agree that it contained the input, live, feeder, power wires from SaskPower and that the purpose of the splitter box is to provide electricity to my building". Mr. Mitchell thus confirms that the splitter box is where his property begins, which is consistent with the definition of point of delivery in the Terms and Conditions of Service, marked as Exhibit "B" to Mr. Dabghi's affidavit.

[72] Exhibit "B" to Mr. Mintzler's affidavit illustrates the point of delivery in a photo, with him explaining, at para. 5 of his affidavit, that inside the splitter box is where the SaskPower cables meet the blocks. Exhibit "C" to Mr. Dabghi's affidavit shows two designs "identical or mirrored to what was installed at the Plaintiffs' property", with the installation notes confirming that the point of delivery is "SaskPower termination in the customer supplied splitter".

[73] As such, the location of the meter appears to be irrelevant, albeit the meter is included in the definition of "facilities". Given that the location of the point of delivery was also specifically agreed between the parties as being the splitter box, such a particular and certain term in the main body of the contract, and not merely incorporated by the provisions of s. 8(3) of the *PCA*, would govern. Reading the specific provision in Quote No. 50626 together with the definitions in the Terms and Conditions yields the conclusion, in the factual matrix of this case, that liability on the part of SaskPower is blocked by s. 14.1(c) of the Terms and Conditions.

(Emphasis added)

3. Discussion on immunity

[50] As I read the above paragraphs from the *Decision*, the Chambers judge made two findings in SaskPower's favour. First, she concluded that the more specific definition of *point of delivery* in Quote No. 50626 as being the splitter box would govern: "that more specific provision operates as a bar to liability" (at para 67). She made the same point at two other places in the *Decision*:

[26] Clearly, the parties agreed in July of 2008 what constituted the point of delivery. This agreement was made in contemplation of a specific design. As such, the plaintiffs are hard-pressed to now pursue an alternative delivery point based on convenient speculation in the post-fire period.

...

[56] An even higher hurdle for the plaintiffs pertains to the issue of the point of delivery. The term is not defined in the *PCA*. However, again, in relation to this specific property and design of the electrical service, the parties had agreed that the splitter box was the point of delivery, as evidenced in the signed acceptance of the terms of Quote No. 50626, marked as Exhibit "A" to Mr. Dabghi's affidavit.

[51] Second, she also held that there was no conflict between the definition of splitter box in Quote No. 50626 and the definition in the Terms and Conditions. She saw s. 14.1(c) as not being in conflict but acting as an additional shield from liability; a conclusion she returned to in the concluding paragraphs of her reasons: “I am also of the view that s. 14.1(c) of the Terms and Conditions also prevents a claim by the plaintiffs against SaskPower in this case” (at para 86). In short, the Chambers judge read the provisions together.

[52] Assuming, but not deciding, that the definition of point of delivery in Quote No. 50626 and the definition in the Terms and Conditions are different, I see no reason in principle why SaskPower could not, for the purposes of s. 3(2.1)(b), reasonably define that term: i.e., it could declare where service was being provided to a customer’s premises, and it could embody that definition in a contract. It could then offer to contract for the provision of the service on the basis of how it had defined the “point of delivery”.

[53] Quote No. 50626 clearly is a contract – a close look at its terms confirms this. It is in letter form, which SteveCo was required to sign and return as a condition of SaskPower rendering service and consideration was provided. The salient provisions of the letter are these:

Design:

SaskPower has designed a 120/208-volt, three-phase, four-wire service to a 400-amp main. Service will be provided underground to a customer-supplied, exterior splitter box, capable of accommodating 500 mcm aluminum conductor. This splitter box will be the point of delivery for this service. Enclosed is a copy of our map/drawing showing the proposed routing/ location of SaskPower facilities required for your service.

...

Approvals:

To proceed, please return the following items:

- Signed quotation letter
- Approved SaskPower map/drawing
- Down Payment of \$2,000.00 and the remaining construction charge will be invoiced upon the completion of the work OR 25% down and your application for finance

Conditions:

- This quotation is contingent on SaskPower receiving all necessary approvals

...

- Customer-supplied splitter box to be installed prior to hook up

...

- This agreement, and any services provided hereunder, is governed by SaskPower’s Terms and Conditions of Service

(Underline emphasis added)

[54] In any event, as the Chambers judge alternatively reasoned, SaskPower’s cables “meet the blocks” inside the splitter box. According to the affidavit of Mr. Dabghi, which was the only evidence on this point, he affirmed that the splitter box, as per s. 2 of the Terms and Conditions, is “the location where SaskPower’s Facilities and Equipment end and the Customer’s Facilities and Equipment begin” (at para 7). Thus, with this finding, there is no internal conflict in Quote No. 50626 as to the point of delivery. Immunity is established by the application of *The Power Corporation Act* to the contract, i.e., the quote *or* by the application of the Terms and Conditions to the facts, as found on the Rule 7 application.

[55] There is also yet another basis upon which the Chambers judge did not err by finding immunity under *The Power Corporation Act*. For this one, I return to two key factual determinations that she made (*Decision* at para 48):

- (a) “it is uncontroverted that the fire originated beyond the electrical distribution system, although its exact cause remains an enigma”; and
- (b) the fire did not result “from electrical failure”.

Thus, regardless of how one defines the point of delivery, the definition does not matter because the substratum of the appellants’ claim in negligence was not proven.

4. Immunity under s. 14(1)(a)

[56] The Chambers judge wrote that if she had erred with respect to her finding regarding immunity under s. 3(2.1)(b) of *The Power Corporation Act*, “the limitation of liability found in s. 14.1(a) of the Terms and Conditions would still be operative to shield SaskPower” (*Decision* at para 74); similarly, see paragraphs 75 and 85. In point of fact, the appellants made no submissions challenging this determination. Given the far-reaching nature of the conclusion underpinning a finding of immunity under s. 14.1(a), it is not necessary for the Court to opine on this point. It is sufficient to address the appellants’ arguments by having considered immunity under s. 3(2.1)(b) of *The Power Corporation Act* and s. 14.1(c) of the Terms and Conditions.

C. Obligation to report fire

[57] On the appellants' submission that SaskPower had an obligation to initiate an investigation into the fire, the Chambers judge wrote as follows:

[79] Before proceeding to the concluding issues, however, some comment is warranted regarding a side issue that arose during Chambers and in relation to which both counsel were given leave to file additional written commentary. It had been mentioned that the plaintiffs had not notified the fire inspector of the fire as required by *The Electrical Inspection Act*, 1993, SS 1993, c E-6.3 [*EIA*], s. 27 of which states:

27 Where an accident involving an electrical installation or electrical equipment occurs and results in the death or injury of a person or in a fire or an explosion, the contractor or the contractor's agent or the owner of the electrical equipment or the owner's agent shall immediately notify the chief inspector, stating the precise location of the accident, its general nature and results.

[80] On behalf of the plaintiffs, Mr. Abrametz submitted that SaskPower had an equal obligation to report, given that SaskPower owned electrical equipment and the Crown, by s. 4, is bound by the *EIA*. Mr. Clayards, on the other hand, noted that the application of the *EIA* is circumscribed by s. 3(1), which references "work of electrical installation". This is a term defined in s. 2 of the *EIA*. From a reading of both ss. 2 and 3, the *EIA* only applies to electrical equipment beyond "the point where electrical power or energy is delivered". This is akin to the language in the Terms and Conditions considered in this application, whereby the *EIA* would only apply to equipment beyond the point of delivery. This would be equipment within the purview of the plaintiffs and not SaskPower.

[81] Thus, while not necessary to the determination of this application, SaskPower's position that the plaintiffs had a duty to report, and SaskPower did not, is substantiated by the provisions of the *EIA* and the facts demonstrated in the evidence filed.

[58] The appellants make far-ranging policy arguments against the Chambers judge's interpretation of *The Electrical Inspection Act*, but there is no merit to their position. I find that the Chambers judge interpreted *The Electrical Inspection Act* correctly. I must say, however, in any event, that the Legislature has not determined that the immunity conferred on SaskPower by *The Power Corporation Act* and the Terms and Conditions is contingent on that corporation reporting a fire under that Act.

VII. Conclusion

[59] The appeal is dismissed with costs fixed at \$2,000.

“Jackson J.A.”

Jackson J.A.

I concur. “Leurer C.J.S.”

Leurer C.J.S.

I concur. “Caldwell J.A.”

Caldwell J.A.