KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 107**

Date: **2024 05 28**
File No.: QBG-SA-00082-2020
Judicial Centre: Saskatoon

BETWEEN:

RENEE HILLARY TUTTLE

PLAINTIFF

- and -

MORRIS HENRY ERMINE

DEFENDANT

- and -

SASKATCHEWAN GOVERNMENT INSURANCE

THIRD PARTY DEFENDANT

Counsel:

Jonathan S. Abrametz	for the plaintiff
No one contra	for the defendant
Michael R. Scharfstein and Valerie J. Warwick	for the third party defendant

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DECISION
May 28, 2024

CROOKS J.

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[1] On February 21, 2018, the defendant, Morris Henry Ermine [Mr. Ermine], was driving impaired and was involved in a collision with the plaintiff, Renee Hillary Tuttle [Ms. Tuttle]. Ms. Tuttle sues in tort to recover damages related to her injuries. Saskatchewan Government Insurance [SGI] was added as a third party to

the action. In having this action determined, including the assessment of damages, Ms. Tuttle has opted to proceed by way of a jury trial.

[2] SGI applies to have the jury demand notice struck.

[3] The question, very simply put, is whether SGI is the Crown and therefore entitled to the protections under *The Proceedings Against the Crown Act, 2019*, SS 2019, c P-27.01 [*PATCA, 2019*]. If so, a jury trial would not be available.

Background

[4] On February 21, 2018, Mr. Ermine was the driver of a vehicle with a valid Saskatchewan licence plate.

[5] On that date, Ms. Tuttle was driving on a highway near Spruce Home, Saskatchewan, when Mr. Ermine struck her vehicle, causing Ms. Tuttle to lose control of her vehicle and collide with oncoming traffic.

[6] A statement of claim was issued on January 17, 2020, with Ms. Tuttle claiming the following:

a) general damages for pain and suffering and loss of amenities of life in an amount exceeding of $50,000.00;

b) special damages and economic loss in an amount to be proven at trial;

c) punitive and exemplary damages; and

d) costs of the action on a complete indemnification basis, or solicitor client costs.

[7] Mr. Ermine was the only named defendant; however, he did not file a statement of defence. He was noted for default on July 28, 2020.

[8] SGI denied liability to Mr. Ermine on October 30, 2018, based on information that he was impaired at the time of the collision. Mr. Ermine was subsequently convicted of impaired driving, contrary to s. 255(2) of the *Criminal Code*, RSC 1985, c C-46.

[9] On April 18, 2018, Mr. Ermine signed a non-waiver agreement, which, *inter alia*, permitted SGI to appear and defend all actions arising from the collision.

[10] On September 14, 2020, SGI brought an application without notice, with consent of counsel for Ms. Tuttle, to be made a third party in the action, pursuant to s. 45 of *The Automobile Accident Insurance Act*, RSS 1978, c A-35 [*AAIA*], relevant portions of which read:

> **45** …
>
> (6) Where the insurer denies liability to an insured under this Part, it shall have the right, upon application to the court in which the action is taken, or a judge thereof, to be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action for which it is or might be asserted that indemnity is provided under this Part, whether or not the insured enters an appearance or defence in the action and, upon being made a third party, the insurer shall have the right to contest the liability of the insured to any party claiming against the insured, and to contest the amount of any claim made against the insured, to the same extent as if a defendant in the action, including for that purpose the right to deliver a statement of defence to the claim of any party claiming against the insured, to deliver other pleadings, to have production and discovery from any party adverse in interest and the right to examine and cross-examine witnesses at the trial.
>
> …
>
> [Emphasis added]

[11] The consent order adding SGI as a third party in the action was issued on September 17, 2020 [Consent Order] and states:

> …
>
> 2) That Saskatchewan Government Insurance shall have the right to contest the liability of the Defendant, Morris Ermine, to the

> Plaintiff, and to contest the amount of any claim made against the Defendant, Morris Ermine, to the same extent as if a Defendant in the action, including the right to deliver a Statement of Defence to the Claim of the Plaintiff and to deliver other pleadings, have production and discovery of the Plaintiff and examine and cross-examine witnesses at trial.

[12] This paragraph of the Consent Order echoes the rights granted to SGI under s. 45(6) of the *AAIA*.

[13] SGI filed a statement of defence on October 9, 2020. In the statement of defence, SGI relied upon s. 45(6) of the *AAIA*, noting that because they had denied liability to Mr. Ermine they had the right to contest the amount and nature of the liability of any claim against him. SGI admitted that Mr. Ermine was driving the vehicle that struck Ms. Tuttle. They admitted Mr. Ermine was convicted of driving over .08 on May 15, 2019. The issue that remains in the action is whether, and to what extent, damages are appropriate.

[14] The right to trial by a jury in civil cases in Saskatchewan is created by s. 18 of *The Jury Act, 1998*, SS 1998, c J-4.2, which provides as follows:

> **18**(1) Any party may demand a jury in accordance with *The King's Bench Rules* in an action:
>
> ...
>
> (b) where the amount claimed exceeds $10,000.
>
> …
>
> **39** The Crown is bound by this Act.

[15] On May 24, 2023, counsel for Ms. Tuttle filed a jury demand notice pursuant to *The Jury Act, 1998*. The required fee has been paid. A jury trial is set to begin on June 10, 2024.

[16] On April 22, 2024, counsel for SGI filed a notice of application, seeking

to strike the jury demand notice.

[17] The sole issue to be determined under the notice of application is whether this trial can proceed by way of jury or whether the jury demand notice should be struck.

Position of SGI

[18] Counsel for SGI takes the position that the sole issue is whether a jury trial is permitted in a proceeding against SGI. SGI's position is that they are the Crown for the purposes of the *PATCA, 2019* and are entitled to rely on the restriction on jury trials against the Crown found in s. 14 of that Act. They also point to the statutory scheme for motor vehicle insurance in Saskatchewan as well as the statutory basis for limiting a plaintiff's access to a jury trial.

[19] SGI relies on s. 14 of the *PATCA, 2019*, suggesting this section prohibits a trial against SGI, as agent for the Crown, from proceeding by way of a jury trial where they have exercised their right to be added as a third party. Section 14 of the *PATCA, 2019* states:

> **14.** Notwithstanding *The Jury Act, 1998*, in proceedings against the Crown, the trial must be without a jury.

[20] SGI also relies on s. 22 of *The Crown Corporations Act, 1993*, SS 1993, c C-50.101 [*CCA*] to invoke the prohibition on jury trials under the *PATCA, 2019*.

Position of the Plaintiff

[21] Counsel for Ms. Tuttle raised two arguments in his brief of law in response to the application. First, he argued that SGI is not a party to the litigation. Second, he suggested that limiting the right to a jury trial would be contrary to public policy and an abuse of process. At the hearing, counsel argued that the inferences drawn by SGI are not indicative of the legislature's intention. He invited the Court to consider

the provisions of the *PATCA, 2019*, and confirm their limitation to the Crown, without extension to an agent of the Crown or to a Crown corporation.

[22] Counsel for Ms. Tuttle initially raised the issue of whether the *PATCA, 2019* applied retrospectively; however, this was abandoned at the hearing. While the collision occurred before the *PATCA, 2019* was enacted, counsel for Ms. Tuttle acknowledged that it is the more recent version of the legislation that applies. This reflects the clear intention found at s. 7 of the *PATCA, 2019*:

> **7** Subject to the appropriate provisions of the law relating to the limitation of time for bringing proceedings, the provisions of this Act are deemed to have always been in force and effect.

[23] I share counsel's view that the *PATCA, 2019* applies retrospectively despite the collision occurring prior to its enactment.

A. SGI is a party to the action

[24] SGI, as a third party, is a party to the action. Rule 3-33 of *The King's Bench Rules* states:

> **3-33** (1) On service of a third party claim:
>
> (a) the third party defendant becomes a party to the action between the plaintiff and defendant; and
>
> (b) all subsequent proceedings in the action must name the third party as a party in the action between the plaintiff and defendant.
>
> …
>
> [Emphasis added]

[25] Further, s. 6-6 of *The King's Bench Act*, SS 2023, c 28, specifically addresses third parties:

> **6-6**(1) In this section, **"third party"** means a person, whether already a party to an action or matter or not, who has been served, pursuant to the rules of court or an order of the court, with notice in writing of a defendant's claim against the person for relief relating to the original subject of an action or matter.
>
> (2) A judge may grant to a defendant all relief relating to the original subject of an action or matter and claimed by the defendant against a third party that the court might grant in an action or matter commenced for that purpose by the same defendant against the same third party.
>
> (3) A third party is deemed to be a party to the action or matter, with the same rights with respect to the third party's defence against the claim as if the third party had been sued in the ordinary way by the defendant.
>
> [Emphasis added]

[26] The intention for SGI to become a party to the action is also confirmed in s. 45 of the *AAIA*, repeated for convenience:

> **45**
>
> …
>
> (6) Where the insurer denies liability to an insured under this Part, it shall have the right, upon application to the court in which the action is taken, or a judge thereof, to be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action for which it is or might be asserted that indemnity is provided under this Part, whether or not the insured enters an appearance or defence in the action and, upon being made a third party, the insurer shall have the right to contest the liability of the insured to any party claiming against the insured, and to contest the amount of any claim made against the insured, to the same extent as if a defendant in the action, including for that purpose the right to deliver a statement of defence to the claim of any party claiming against the insured, to deliver other pleadings, to have production and discovery from any party adverse in interest and the right to examine and cross-examine witnesses at the trial.

[27] The Consent Order, endorsed with the consent of counsel for Ms. Tuttle, added SGI as a third party and echoed the rights set out above.

[28] I am satisfied that SGI is a party to the action.

B. Public Policy and Abuse of Process

[29] On the second issue raised by Ms. Tuttle, counsel intimates that if SGI were to succeed in this application, it raises the possibility that defendants wanting to avoid jury trials would be well-served to default on a claim against them. SGI could then apply under s. 45 of the *AAIA* to be added as a third party, with the consequence being the denial of a plaintiff's access to a jury trial.

[30] Counsel suggests that granting SGI's application to strike the jury demand notice only rewards a defendant who chooses to default under this Court's proceedings, with the unintended result of providing an additional incentive for impaired drivers to ignore proceedings against them, all of which would encourage an abuse of process and be contrary to public policy.

[31] However, I note that SGI's right to be added as a third party does not depend upon whether a defendant defaults in an action or not. In fact, SGI's right to be added as a third party requires only the denial of liability to an insured. Further, SGI's right to be added as a third party is not limited to actions where the defendant has been noted for default and s. 45(6) makes it clear that the right exists "… whether or not the insured enters an appearance or defence in the action …".

[32] The only additional right SGI has under the *AAIA*, in the event of default by the defendant, is to "settle the action and consent to judgment against the insured as if the insurer were the defendant":

> **45**(6.1) Where, pursuant to subsection (6):
>
> (a) the insurer has been made a third party; and
>
> (b) the insured has not filed a defence;
>
> the insurer may at any stage of the proceedings settle the action and consent to judgment against the insured as if the insurer were the defendant in the action.

[33] Counsel for SGI also points to additional policy reasons to prohibit jury trials in proceedings against the Crown, specifically the desirability of having written reasons for those who make and implement policy such that future claimants can have the benefit of the guidance offered in these decisions, as well as the potential for bias against a plaintiff by jurors who are taxpayers as it is their tax dollars being used to pay out awards to plaintiffs or, on the flipside, the potential for bias against the Crown by jurors who see the government as having "deep pockets".

[34] In my view, the underlying public policy basis for restricting jury trials where SGI is a party provides more predictability and stability not only for litigants, but for taxpayers and insureds. Further, it provides the required feedback and guidance to policymakers and policy implementers in response to the reasons offered in the absence of a jury trial.

C. SGI is more than just an intervening insurer

[35] I recognize counsel's argument that insurance companies are typically limited in the manner in which they intervene on behalf of an insured. As the Saskatchewan Court of Appeal noted in *Saskatchewan Government Insurance v Schira*, 2020 SKCA 88 at para 46, 450 DLR (4th) 673, when considering the procedure for appeals taken under s. 191 of the *AAIA*, SGI is essentially a first-party insurer:

> [46] … SGI should be seen as a first-party insurer and thus, like any first-party insurer, it is entitled to call evidence, conduct cross-examinations and present argument in defence of its position that benefits are not payable. In so doing, of course, it must respect its obligation to act in good faith. See generally: Gordon G. Hilliker, *Insurance Bad Faith*, 3d ed (Markham, Ont: LexisNexis, 2015) at 81-83.

[36] However, when considering the protections available to SGI as a Crown corporation, there are benefits, limitations and protections available to SGI that are not extended to other insurers. For example, s. 45 of the *AAIA* provides special status to

SGI, whereby they have the right to apply to be added as a third party in an action. This right is not extended to any other insurer, many of whom participate in an action on behalf of an insured and without party status.

[37] In fact, SGI's distinct treatment from other insurers is recognized in s. 84 of the *AAIA*, which makes inapplicable the provisions of *The Insurance Act*, SS 2015, c I-9.11. Section 84 of the *AAIA* reads:

> **84**(1) *The Insurance Act* does not apply to insurance provided pursuant to this Act.
>
> (2) Insurance provided pursuant to this Act:
>
> (a) is deemed not to be:
>
> (i) other insurance within the meaning of section 8-76 of *The Insurance Act*; or
>
> (ii) a policy of insurance subject to section 8-76 of *The Insurance Act*; and
>
> (b) is deemed not to contain any term to the same or like effect as subsection 8-76(1) or (2) of *The Insurance Act*.

[38] Similar wording was in place under the iteration of the *AAIA* at the time of the collision as it related to *The Saskatchewan Insurance Act*, RSS 1978, c S-26 (since rep).

[39] In my view, SGI is far more than an intervening insurer within this action and, as I move to consider the statutory framework for the administration of automobile insurance in Saskatchewan, the distinction becomes significant and obvious.

D. SGI and the Crown

[40] The central issue in this application is whether SGI is entitled to the same procedural limitations as the Crown under s. 14 of the *PATCA, 2019*, which prohibits a jury trial against the Crown.

[41] When it comes to auto insurance, Saskatchewan is unique among Canadian provinces in that there is a compulsory automobile insurance provider – SGI. While additional insurance may be purchased through other insurance providers, SGI provides basic insurance by virtue of vehicle registration and the associated issuance of licence plates. For many people, their only coverage for vehicle-related insurance may be through SGI. As a Crown corporation wholly owned by the Government of Saskatchewan, SGI's existence and operations are prescribed by statute.

[42] There are a number of statutes that set out the nature and function of SGI, including SGI's enabling statute, *The Saskatchewan Government Insurance Act, 1980*, SS 1979-80, c S-19.1 [*SGI Act*]. Relevant provisions of the *SGI Act* include:

> **2** In this Act:
> …
>
> (f) **"corporation"** means Saskatchewan Government Insurance or SGI as constituted by section 3;
>
> …
>
> **6**(1) The corporation is for all its purposes an agent of the Crown in right of Saskatchewan, and its powers pursuant to this Act may be exercised only as an agent of the Crown.
>
> (2) All property of the corporation, both real and personal, all moneys acquired, administered, possessed or received from any source and all profits earned by the corporation are the property of the Crown and are, for all purposes, including taxation of whatever nature or description, deemed to be the property of the Crown.

[43] The *AAIA* contemplates the role of SGI, including its responsibility for managing public funds:

> **2**(1) In this Act:
> …
>
> (q) **"fund"** means the Saskatchewan Auto Fund established pursuant to section 87;
>
> …

> (w) **"insurer"** means Saskatchewan Government Insurance;
>
> …
>
> **87**(1) The Saskatchewan Auto Fund is hereby established.
>
> (2) The insurer shall:
>
> (a) subject to the direction and control of the board of directors of the fund, administer the fund; and
>
> (b) use the fund solely in its capacity as the designated insurer under this Act.
>
> (3) The fund may contain property of every nature and kind.
>
> …
>
> **89** All property in the fund, both real and personal, all moneys acquired, administered, possessed or received from any source and all profits earned by the insurer as administrator of the fund are the property of the Crown in right of Saskatchewan.

[44] SGI is also subject to the *CCA*. A number of provisions are relevant:

> **2** In this Act:
>
> (d) **"Crown"** means the Crown in right of Saskatchewan;
>
> …
>
> (f) **"designated subsidiary Crown corporation**" means any corporation that is wholly owned by the Crown, that is created or continued pursuant to an Act and that is designated in the regulations as a designated subsidiary Crown corporation;
>
> …
>
> **17**(1) Every Crown corporation is for all its purposes an agent of the Crown, and all its powers may be exercised only as an agent of the Crown.
>
> (2) Every designated subsidiary Crown corporation is for all its purposes an agent of the Crown, and all its powers may be exercised only as an agent of the Crown.
>
> (3) All property of a Crown corporation or a designated subsidiary Crown corporation, all moneys acquired, administered, possessed or received from any source and all profits earned by a Crown

> corporation or a designated subsidiary Crown corporation are the property of the Crown and are, for all purposes including taxation of whatever nature and description, deemed to be the property of the Crown.

[45] Central to SGI's application is s. 22 of the *CCA*:

> **22** Every Crown corporation and every designated subsidiary Crown corporation may:
>
> (a) sue with respect to any tort; and
>
> (b) be sued with respect to liabilities in tort to the extent to which the Crown is subject pursuant to *The Proceedings Against the Crown Act, 2019*, subject to any limitations on liability that are provided in the Act incorporating or continuing the Crown corporation or the designated subsidiary Crown corporation.

[46] Counsel for SGI suggests that when the legislative framework is considered collectively, SGI enjoys the same protections as the Crown under the *PATCA, 2019*. Because SGI is a Crown corporation and "designated subsidiary Crown corporation" for the purposes of the *CCA*, the immunities in proceedings against SGI are limited to the same "extent to which the Crown is subject", which includes procedural limitations such as a restriction on proceeding against SGI by a jury trial.

[47] Counsel for Ms. Tuttle invites the Court to conclude that the provisions in the *PATCA, 2019* do not provide for the specific inclusion of a Crown agent in these protections and, as such, the inferences SGI asks the Court to draw from the *CCA* and the Court's consideration of other legislative schemes are not applicable. Counsel did not address SGI's position that s. 22 of the *CCA* applies to the within action and extends the immunities offered to the Crown, other than to point to provisions in the *PATCA, 2019* which he suggested are more applicable.

[48] Counsel for Ms. Tuttle encourages the Court to interpret the *PATCA, 2019* and the *CCA* in the manner set out in s. 2-10 of *The Legislation Act*, SS 2019,

c L-10.2:

> **2-10**(1) The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.
>
> (2) Every Act and regulation is to be construed as being remedial and is to be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

[49] In argument, counsel for the plaintiff suggested that specific provisions in the *PATCA, 2019*, indicate there was no intention to extend this immunity to a Crown corporation:

> **2** In this Act:
>
> **"agent"**, if used in relation to the Crown, includes an independent contractor employed by the Crown;
>
> …
>
> **"Crown"** means the Crown in right of Saskatchewan;
>
> …
>
> **"proceedings against the Crown**" includes a claim by way of set-off or counterclaim raised in proceedings by the Crown, and interpleader proceedings to which the Crown is a party;
>
> **3** …
>
> (2) Except as otherwise provided in this Act, nothing in this Act:
>
> …
>
> (d) subjects the Crown to proceedings pursuant to this Act with respect to a cause of action that is enforceable against a corporation or other agency owned or controlled by the Crown; or
>
> …
>
> **12** In proceedings pursuant to this Act, the Crown shall be designated "The Government of Saskatchewan".

[50] Counsel for SGI points to *Howard v Saskatchewan Crop Insurance Corp.* (1992), 101 Sask R 224 (QB) [*Howard*], to assist in determining whether an "agent for the Crown" enjoys the same immunities as the Crown itself. In *Howard*, the primary ground for relief was set out as follows:

> [11] …
>
> > 1. The applicant, Saskatchewan Crop Insurance Corporation, is an 'agent of the Crown' pursuant to s. 5 of the *Crop Insurance Act*, S.S. 1983-84, c. C-47.2 and s. 5 of the *Crown Corporations Act, 1978*, R.S.S. 1978, c. C-50.1, and as such, no attachment may be issued against the applicant in accordance with s. 19(6) of the *Proceeding against the Crown Act*, R.S.S. 1978, c. P-27.

[51] In *Howard*, the issue related to whether Saskatchewan Crop Insurance Corporation, as an agent of the Crown, was subject to the attachment provisions of *The Attachment of Debts Act*, RSS 1978, c A-32 (since rep). Section 19(6) of *The Proceedings Against the Crown Act*, RSS 1978, c P-27 (since rep), limited execution, seizure or attachment to be issued for enforcing payment by the Crown. Grotsky J. determined that Saskatchewan Crop Insurance Corporation enjoyed the same immunities as the Crown, commenting:

> [26] Counsel for the respondents submits that the term "agent for the Crown" has a meaning which differs from that which is ascribed to the term "Crown". That, as an "agent of the Crown", the applicant defendant does not enjoy the same rights, privileges and immunities as the "Crown". In the particular circumstances, I am in respectful disagreement with these submissions.
>
> [27] In my respectful view, where, as here:
>
> > 1. The applicant has statutorily been constituted as an agent of the Crown; and
> >
> > 2. Its powers under The Crop Insurance Act may only be exercised as an agent of the Crown; and
> >
> > 3. All of its property, both real and personal, including all monies acquired and administered by it are by *The Crop Insurance Act* deemed to be the property of the Crown; and

> 4. Where, by virtue of the express provisions of s. 19(6) of said [the *Former PATCA*], no attachment "shall be issued out of any court for enforcing payment by the Crown of money";
>
> then, in my view, if the Crown is not subject to attachment, it follows that an agent of the Crown whose powers may only be exercised as an agent of the Crown and whose property, both real and personal, is, as noted, deemed to be the property of the Crown, is also not subject to having the monies acquired and administered by it, as such agent, attached.

[52] It is noteworthy that s. 5 of *The Crown Corporations Act, 1978*, RSS 1978, c C-50.1 (Supp) (since rep) [*CCA, 1978*], which was the version in effect at the time *Howard* was decided, contained the same wording SGI relies upon to assert that the immunity of the Crown extends to Crown corporations. In fact, ss. 17 and 22 of the current version of the *CCA* reflect the same wording found at s. 5 of the *CCA, 1978*:

> **5**(1) A corporation shall have perpetual succession and a common seal and shall have capacity to contract and to sue and be sued in its corporate name in respect of any right or obligation acquired or incurred by it on behalf of Her Majesty as if the right or obligation had been acquired or incurred on its own behalf, and a corporation may also sue in respect of any tort, and may be sued in respect of any liabilities in tort to the extent to which the Crown is so subject pursuant to *The Proceedings against the Crown Act*.
>
> (2) A corporation is for all its purposes an agent of Her Majesty in right of Saskatchewan, and its powers under this Act may be exercised only as an agent of Her Majesty.
>
> (3) A corporation may, on behalf of Her Majesty, contract in its corporate name without specific reference to the Crown or to Her Majesty.
>
> (4) All property of a corporation, both real and personal, all moneys acquired, administered, possessed or received from any source and all profits earned by a corporation shall be the property of Her Majesty and shall for all purposes, including taxation of whatever nature or description, be deemed to be the property of Her Majesty.
>
> [Emphasis added]

[53] While the within application arises in a different context, when the entirety of the legislative scheme is considered as it relates to SGI, the test in *Howard*

assists in determining whether procedural immunities benefitting the Crown should be extended to a Crown corporation. The considerations set out at para. 27 of *Howard* are all met in the present circumstances:

1. There is no question that SGI is an agent of the Crown by operation of s. 6(1) of the *SGI Act* and s. 17(2) of the *CCA*.

2. Any powers exercised under the *SGI Act* are solely as an agent of the Crown pursuant to s. 6(1) of the *SGI Act*.

3. All property of SGI is deemed to be property of the Crown pursuant to s. 6(2) of the *SGI Act*. This includes all monies and profits administered through the Saskatchewan Auto Fund pursuant to s. 89 of the *AAIA*. Any judgment against SGI is a judgment regarding Crown property and includes the payment of Crown funds to the plaintiff.

4. There is an express provision under s. 14 of the *PATCA, 2019* which prohibits jury trials against the Crown. Further, s. 22 of the *CCA* permits a Crown corporation to be sued with respect to liabilities in tort only to the extent to which the Crown is subject pursuant to the *PATCA, 2019.*

[54] In *Hetherington v Saskatchewan Liquor and Gaming Authority*, 2020 SKQB 110, an action centered around wrongful dismissal, Mitchell J. considered a provision nearly identical in wording to s. 22 of the *CCA*, being s. 5(c) of *The Alcohol and Gaming Regulation Act, 1997*, SS 1997, c A-18.011, and concluded that employment with an agent of the Crown is the same as employment with the Crown:

> [36] It follows from this brief statutory overview that as an agent of the Crown in right of Saskatchewan, SLGA is an emanation of the Government of Saskatchewan. This can be discerned further, for

> example, from ss. 5(c) of *AGRA* [*The Alcohol and Gaming Regulation Act*, SS 1997, c A-18.011] which explicitly references *The Proceedings Against the Crown Act*, RSS 1978, c P-27 (rep), now *The Proceedings Against the Crown Act, 2019*, SS 2019, c P-27.01.

[55] Agency of a Crown corporation was also considered in *Farley v Badley* (1991), 97 Sask R 21 (CA), where the Saskatchewan Court of Appeal considered whether Agricultural Credit Corporation of Saskatchewan [ACS] could invoke the Crown's prerogative to obtain repayment of its judgment in priority to other judgments. In deciding that ACS, as an agent of the Crown, was entitled to the same protections as the Crown, the Court of Appeal commented on the language of the Crown corporation's constituent statute and the clear intention to constitute ACS as a Crown agent. After outlining the legislative provisions setting out ACS's Crown agency, as well as its mandate and principal purpose, the Court of Appeal stated:

> **15** The Act that constituted ACS is *The Agricultural Credit Corporation of Saskatchewan Act*, R.S.S. 1978 c. A-8.1. It speaks expressly to the question of Crown agency:
>
> > 4(1) The corporation is a body corporate with perpetual succession and a common seal and with capacity to contract, to sue and to be sued in its corporate name in respect of any right or obligation acquired or incurred by it on behalf of the Crown as if the right or obligation had been acquired or incurred on its own behalf and also in respect of any liabilities in tort to the extent to which the Crown is subject by reason of *The Proceedings against the Crown Act*.
> >
> > (2) The corporation is for all its purposes an agent of the Crown and its powers pursuant to this Act may be exercised only as an agent of the Crown.
> >
> > (3) The corporation may, on behalf of the Crown, contract in its corporation name without specific reference to the Crown.
> >
> > (4) All real or personal property and all money acquired, administered, possessed or received by the corporation is the property of the Crown and is, for all purposes, including taxation of whatever nature and description, deemed to be the property of the Crown. [Emphasis omitted]
>
> …

18 In the light of this and given the nature of the loan, it is clear that ACS was acting within its legislative mandate. The evidence before the chambers judge established that the money loaned by ACS was loaned out of the consolidated fund of the Province of Saskatchewan. The learned chambers judge found that ACS made a "production" loan to Desmond Farley. There is ample evidence to support that finding. Since section 9 and the *Regulations* allowed ACS to make such loan to a farmer, ACS relied upon the Crown's prerogative right to repayment in relation to that loan. It contended that it made the loan to Mr. Badley as agent of and on behalf of the Government of Saskatchewan, and accordingly, was collecting the loan in its capacity as agent.

19 In making the production loan to Mr. Badley, ACS was operating within the scope of its statutory purpose. Given the general provisions of the Act as well as the funding provisions, there is nothing in the legislation to indicate that the Legislature intended to preclude ACS, as agent of the Crown, from invoking the Crown's prerogative right to repayment with respect to its loans. The language of ACS's constituent statute makes it clear that it stands before the Court as a Crown agent and not as a private corporation.

20 This analysis comports with the principles articulated in *R. v. Eldorado Nuclear Limited*; *R. v. Uranium Canada Limited*, [1983] 2 S.C.R. 551. In that case the Supreme Court of Canada interpreted the status of Crown agents "for all its purposes" at p. 576 (per Dickson J., for the majority):

> The major difference between *Uranium* and *Eldorado* is that while the former is closely controlled by government, the latter at least on paper is not. Yet the statutory provisions making both corporations Crown agents for all their purposes are identical. I do think it is admissible, without rewriting the statutes, to interpret these identical provisions differently. The status of Crown agents "for all its purposes" gives each such agent the benefit of Crown immunity under s. 16 of the *Interpretation Act* [RSC 1970, c I-23]. The draftsman of the governing statutes of Uranium Canada and Eldorado may well have been thinking of immunity from taxing statutes rather than criminal statutes, but the result is that there is immunity from both as long as the corporations are acting within their respective authorized purposes.

21 In *Eldorado* the Supreme Court of Canada also held that a Crown agent is entitled to invoke Crown immunity from the operation of a statute when it is acting within the scope of the public purpose it is statutorily empowered to pursue. When the agent steps outside the ambit of Crown purpose it acts personally and not on behalf of the state. In such circumstances it cannot claim immunity from prosecution as an agent of the Crown. This distinction is emphasized in the following passage of the majority judgment at p. 568:

> I think it is also important to draw a distinction between (i) acts committed in the course of fulfilling Crown purposes but in no way undertaken in order to effect Crown purposes; and (in) those acts committed which are designed to effect Crown purposes. Whereas the latter situation does invoke Crown immunity, the former does not.
>
> **22** Since ACS was acting within its corporate objects and to effect Crown purposes, there is no merit to the appellant's submission that ACS is not entitled to invoke the Crown's prerogative right to repayment of its judgment.

[56] Counsel for Ms. Tuttle also suggests that SGI would only become a party were it to bring a subrogated action against Mr. Ermine in the future, thereby seeking to recover any funds it is obligated to pay to Ms. Tuttle in this case. I note that counsel for Ms. Tuttle concedes in his brief of law that a jury trial would not be available against SGI were it a party to an action:

> 16. […] In the prospective case against [Mr.] Ermine in the future, [Mr.] Ermine would not be permitted to a jury trial because SGI is an actual party to the action against him.

[57] When the statutory framework is considered in its entirety, I am satisfied that s. 14 of the *PATCA, 2019* applies to SGI through the extension of the protection provided under s. 22 of the *CCA*. I also conclude that SGI, as an agent of the Crown, is entitled to the procedural immunity available to the Crown under the *PATCA, 2019*.

[58] As such, a jury trial is prohibited in a proceeding against SGI.

Conclusion

[59] For all of these reasons, the motion to strike the jury demand notice dated May 23, 2023, is granted. In view of the novel nature of the issue raised, I make no award of costs on the application.

_____J.
N.D. CROOKS