
Court of Appeal for Saskatchewan
Docket: CACV4366

Citation: *Lombard v Ron S. Maurice Professional Corporation (Maurice Law Barristers & Solicitors)*, 2025 SKCA 35
Date: 2025-04-04

Between:

Alisa R. Lombard

Appellant
(Plaintiff by Counterclaim)

And

Ron S. Maurice Professional Corporation
operating as Maurice Law Barristers & Solicitors

Respondent
(Defendant by Counterclaim/Plaintiff)

And

Donald Worme, Alisa R. Lombard, Helen Semaganis,
Semaganis Worme Lombard Barristers & Attorneys-at-Law,
Aubrey D. Charette, Stephanie Lavalee and Shoshanna Paul

Non-Parties
(Defendants)

Before: Jackson, Tholl and Kalmakoff JJ.A.

Disposition: Appeal dismissed

Written reasons by: The Honourable Justice Georgina R. Jackson
In concurrence: The Honourable Justice Jerome A. Tholl
The Honourable Justice Jeffery D. Kalmakoff

On appeal from: QBG-SA-00235-2021 (Sask KB), Saskatoon
Appeal heard: November 25, 2024

Counsel: Matti Lemmens for the Appellant
Jaylene Olson and Andrew Winton for Maurice Law

Jackson J.A.

I. Overview

[1] This appeal is from an order of a Court of King's Bench judge dismissing an application for summary judgment: *Lombard v Ron S. Maurice Professional Corporation (Maurice Law Barristers & Solicitors)* (9 April 2024) Saskatoon, QBG-SA-00235-2021 (Sask KB) [*Chambers Decision*]. The parties raise issues of what constitutes a final order in the context of a summary judgment dismissal and how the known standards of appellate review are to be applied. The questions in contention play out against this backdrop.

[2] Ron S. Maurice Professional Corporation, operating as Maurice Law Barristers and Solicitors [Maurice Law], is a law firm that specializes in class actions on behalf of Indigenous people. In March of 2017, a potential class action became part of Maurice Law's work [Class Action]. On June 1, 2017, the firm hired Alisa Lombard to assist with this work. With Ms. Lombard's assistance, Maurice Law commenced the Class Action in October of 2017.

[3] Maurice Law alleges that it did extensive work on the Class Action, only to have Ms. Lombard end her employment and set up practice with another firm, taking the work with her. In the course of this transition, Ms. Lombard is said to have informed the Class Action plaintiffs of her move to another firm and thereby harmed Maurice Law and caused it loss.

[4] Maurice Law decided to commence an action against her and other named individuals (who are not parties to this appeal). The action alleges breach of contract and breach of fiduciary duty on the part of Ms. Lombard. The claim also alleges that all of the defendants, including Ms. Lombard, were unjustly enriched by their actions and committed the torts of conversion and of conspiracy.

[5] Ms. Lombard brought a summary judgment application, seeking an order dismissing the claim as against her on the following bases:

- (a) the claim is barred by the basic two-year limitation provision contained in s. 5 of *The Limitations Act*, SS 2004, c L-16.1;
- (b) the claim is barred by a mutual release entered into between Maurice Law and her;
and
- (c) the claim has no legal merit.

[6] The Chambers judge found the claim is not statute-barred and that there exists a triable issue. Accordingly, he dismissed the summary judgment application. In doing so, he said he was dismissing the limitations defence and that “it will not be necessary to deal with this issue at trial” (*Chambers Decision* at para 18).

[7] In addition to alleging legal error in the *Chambers Decision*, Ms. Lombard asserts that it is entirely a final order for which leave to appeal is not required. She also claims that the Chambers judge erred by using the doctrine of *nunc pro tunc* (now for then) to find that the claim was not barred by *The Limitations Act*.

[8] Maurice Law argues that the *Chambers Decision* is mostly interlocutory. It also argues that all of the Chambers judge’s conclusions are, in effect, findings of fact and sheltered from appellate intervention by the proper application of the palpable and overriding error standard of review.

[9] I conclude that (a) the determination that the claim is not statute-barred is a final order, and (b) the Chambers judge did not err by deciding that question in the context of dismissing the balance of the summary judgment application. Applying a standard of review of correctness to his conclusion that the claim is not statute-barred, I find that the Chambers judge made no error. Applying the standard of review for discretionary decisions to the balance of the *Chambers Decision*, I further find that the Chambers judge committed no error. I would dismiss the appeal.

[10] Since the dismissal of this appeal means that the matter will now proceed to trial, I will be circumspect in my presentation of the context. Nothing in these reasons should be taken as resolving contentious matters of fact that require resolution in the trial.

II. *Chambers Decision*

A. Describing the limitations issue

[11] Section 5 of *The Limitations Act* establishes a two-year limitation period from discovery for claims to be brought. The parties took opposing positions as to when the claim was discovered and when the proceedings were commenced.

1. Facts regarding when the claim was discovered

[12] The factual assertions in this part are drawn from the *Chambers Decision*.

[13] At some point in 2018, Maurice Law retained Donald Worme and Helen Semaganis, the principals of Semaganis Worme Legal, a law firm, to assist Ms. Lombard to move the Class Action forward. The parties agree that on February 28, 2019, Ms. Lombard notified Maurice Law by email that she would be leaving the firm effective March 1, 2019. As part of that email, she provided a letter that she planned to mail to the Class Action clients of Maurice Law with whom she had been working. Ms. Lombard did, in fact, send those letters on March 1, 2019.

[14] It is understood that Ron Maurice, the principal of Maurice Law, knew that Ms. Lombard had authorized the transfer of certain files to Semaganis Worme Legal. However, Mr. Maurice averred in an affidavit filed on the summary judgment application that he was not aware of the full extent of those transfers until March 4, 2019.

[15] The above recitation of the facts gives rise to the following possible dates for when the two-year limitation period began:

Date	Discoverable Action
February 28, 2019	Ms. Lombard notified Maurice Law she intended to leave the firm and she intended to send letters to the Class Action clients
March 1, 2019	Ms. Lombard left the firm and sent a letter to the Class Action clients
March 4, 2019	Mr. Maurice says he discovered the full extent of how he believed he had been harmed

2. Facts regarding when the action was commenced

[16] A lawyer with Maurice Law deposed that he was instructed to issue the statement of claim pertaining to the action against Ms. Lombard and others on March 1, 2021, and that he did so in accordance with the procedure in effect at the time. The Chambers judge recounted his evidence as follows:

[15] ... [Andrew Dusevic] attended at the Saskatoon Registry office before it closed on March 1, [2021] at 4:00 p.m. Because of COVID-19 restrictions, no face-to-face interaction was allowed with members of the Registry staff. You could not appear at the Registry desk at any time during that day and speak to a court staff and leave and file a claim in person. The Government of Saskatchewan had set up a process by where anyone wishing to have documents filed in the court was to leave them in a dropbox located outside of the Registry office. Mr. Dusevic said that he followed that procedure and filed the statement of claim in the dropbox on March 1, [2021] before 4:00 p.m.

[17] The Registry desk took the claim out of the dropbox on March 2, 2021, and marked it as having been received and issued that day.

[18] These facts give rise to two possible commencement dates:

Date	Commencement Action
March 1, 2021	the statement of claim was left in the dropbox at the Registry
March 2, 2021	the statement of claim was taken out of the dropbox and the Registry staff dated, signed, and issued it

3. Chambers Decision on the limitations issue

[19] The Chambers judge considered Rule 13-24(1) of *The King’s Bench Rules* [Rules], which provides that “a commencement document is issued when the local registrar has signed, sealed and dated the document on filing”. He held that “Rule 13-24 is presumptive but not determinative” (*Chambers Decision* at para 17). In doing so, he relied on *Shannon v Topp*, [1986] 3 WWR 83 (Sask QB). In *Shannon*, MacLeod J. used the doctrine of *nunc pro tunc* in somewhat similar circumstances and referred to the words of Lord Eldon: “There is no general rule with respect to the practice of this court that will not yield to the demands of justice” (at para 25, quoting *Wales (Princess) v Liverpool (Earl)* (1818), 1 Swans 114 at 125, 36 ER 320).

[20] In the result, the Chambers judge made these two findings:

- (a) “the earliest Maurice could have learned of the activity giving rise to this action was on March 1, 2019” (*Chambers Decision* at para 14); and

(b) “the statement of claim was issued on March 1, 2021” (at para 18).

With these conclusions made, he held that the claim was not statute-barred.

B. Mutual release issue

1. Background to the release issue

[21] Ms. Lombard commenced a small claims action in Ontario alleging that Maurice Law owed her money for unpaid employment amounts [Small Claims Action]. That action was settled in February of 2021 by way of a document entitled, “Full and Final Mutual Release” [Release], which the parties signed before Maurice Law commenced its action against Ms. Lombard.

[22] The Release contains this clause (at 1–2):

IN CONSIDERATION OF the release by Alisa R. Lombard, the receipt and sufficiency of which is hereby acknowledged, the undersigned, Ronald S. Maurice Professional Corporation, does hereby remise, release and forever discharge Alisa R. Lombard from any and all Claims by reason of or arising out of her employment with Ronald S. Maurice Professional Corporation, including all claims or matters related to or arising out of or in any way connected with the matter *Lombard v Ronald S. Maurice Professional Corporation* in the Ontario Superior Court of Justice, Small Claims Court bearing File No. SC-19-00154674. For greater certainty, the release of Alisa R. Lombard as aforesaid shall not be a release of the said Alisa R. Lombard from any claims relating to breach of fiduciary duty, interference with contractual and/or economic relations or any claims or complaints relating to breach of Law Society Rules and or Code of Professional Conduct in any jurisdiction in Canada.

(Emphasis added)

[23] In the Release, *claim* is broadly defined as follows (at 1):

“Claim” means all claims, actions, demands, manner of actions, causes of actions, suits, debts, duties, accounts, bonds, warranties, claims over, indemnities, contracts, losses, injuries, undertakings, covenants and liabilities of whatever nature and kind, including any claim for costs, interest and disbursements, but does not include any such claims, actions, demands, manner of actions, causes of actions, suits, debts, duties, accounts, bonds, warranties, claims over, indemnities, contracts, losses, injuries, undertakings, covenants and liabilities specifically and expressly excluded from this release.

[24] Ms. Lombard averred in her affidavit that she had already been released by any claims that Maurice Law might have against her as a result of the above terms. She submits that the Release was intended to and did provide a waiver of any right that Maurice Law might have against her in this action – as well as in the Small Claims Action.

[25] In his affidavit, Mr. Maurice averred that the Release “was meant to only deal with the Small Claims Action and anything similar arising out of it” (*Chambers Decision* at para 23).

2. *Chambers Decision on the Release document*

[26] The Chambers judge concluded that he could not decide what the Release meant. He held as follows:

[23] ... This is not an issue that can be decided by affidavit evidence. The discussion and context with respect to the signing of the release is important. I am not in a position from the affidavit evidence to say conclusively or even on a balance of probabilities that the release was intended to settle the claim before the Court. This issue needs to go to trial and the application for summary judgment based on this position is dismissed.

C. **Merits issue**

[27] Under this heading, Ms. Lombard raised four issues with the Chambers judge: (a) Maurice Law consented to the transfer of the files, (b) she did not breach her duties, (c) Maurice Law did not own the transferred files, and (d) Maurice Law had a further legal option.

[28] First, Ms. Lombard asserted that Maurice Law agreed or consented to any transfer or sharing of records with Semaganis Worme Legal. The Chambers judge held that the evidence was conflicting as to what Semaganis Worme Legal’s role would be. He found that he was “unable, on the evidence, to determine the nature of the role actually agreed to by Maurice” (at para 26). He wrote, in that regard, as follows:

[27] There is no definitive determination in the affidavits as to what use the records provided to Semaganis Worme were given for. There is little doubt that the intention of transferring the records was not so that Semaganis Worme could take over carriage of the file from Maurice. Maurice acknowledges that Semaganis Worme would need access to its files for the limited purpose of their agency agreement. Lombard avers that it was much greater than that. This issue needs to be addressed at a trial where credibility can be determined. It is not something that I believe I can do from the transcripts of the cross-examinations only.

[29] The second issue addressed by the Chambers judge was the submission that the “departing lawyer letters did not breach any duties” (at para 28). It was Ms. Lombard’s position that Rule 3.7-7A of the *Code of Professional Conduct* (Regina: Law Society of Saskatchewan, 22 September 2023 update), placed an obligation on her to send letters to the Class Action clients of Maurice Law. That rule reads as follows:

3.7 Withdrawal from Representation ...

Leaving a Law Firm

3.7-7A When a lawyer leaves a law firm, the lawyer and the law firm must:

- (a) ensure that clients who have current matters for which the departing lawyer has conduct or substantial involvement are given reasonable notice that the lawyer is departing and are advised of their options for retaining counsel; and
- (b) take reasonable steps to obtain the instructions of each affected client as to who they will retain.

[30] The Chambers judge determined he was not able to find in Ms. Lombard's favour on this issue at this time (*Chambers Decision*):

[30] ... It is not clear from the evidence what the full context of these letters [sent by Ms. Lombard to the Class Action clients] are, who in particular they were sent to, how many people were involved, whether identical letters were sent to everyone involved in the proposed Class Action, as well as the other files involving Lombard. It is clear there was not a joint communication sent nor was there discussion regarding the contents of the letter. I am unable to determine whether the letter is contrary to the Law Society of Saskatchewan's *Code of Professional Conduct* or the employment contract based on the evidence provided. The action for summary judgment cannot be granted in respect of this issue.

[31] The third issue on the merits question considered by the Chambers judge was the contention that "Maurice Law did not own the Class Action records" (at para 31). The Chambers judge agreed with Ms. Lombard, but he found that her argument was beside the point. He concluded that the issue was not the ownership of the records but rather whether Ms. Lombard had breached her contract with Maurice Law or had breached "various other duties" arising from her "employment relationship" (at para 32).

[32] For her final argument, Ms. Lombard submitted that Maurice Law has a statutory remedy available to it, notably the ability to apply under s. 41(1) of *The Class Actions Act*, SS 2001, c C-12.01, for an order directing how the legal fees should be divided. The Chambers judge described this assertion as a "non-starter" as there was "no basis upon which Maurice could make an application to the Court for any determination of fees at this time" as the Class Action had not yet been certified (at para 33). He also held that "the action is not about fees, but about breach of the employment contract" (at para 33).

[33] In the result, the Chambers judge concluded that there would have to be a trial of the issue "to resolve the matters that are outstanding in the claim except for the defence of the limitation period" (at para 34).

III. Issues

[34] On appeal, Ms. Lombard repeats the issues that she placed before the Chambers judge, now framing them as errors on the part of the Chambers judge. They are as follows:

- (a) Did the Chambers judge err by not finding that the claim is barred by *The Limitations Act*?
- (b) Did the Chambers judge err by not finding that the claim is barred by the Release entered into between the parties?
- (c) Did the Chambers judge err by not finding that the claim has no legal merit?

[35] There is a further and important preliminary issue that Ms. Lombard addressed in passing in oral argument: whether she needed leave to appeal any part of the *Chambers Decision*. However, it is essential, when making the determination to appeal, to answer, as a first question, whether the order of the trial court is final or interlocutory. The identification of individual issues, some of which may engage questions of law, does not answer the question as to the nature of the decision under appeal. The importance of this determination is jurisdictional.

[36] Apart from considerations of inherent or ancillary jurisdiction, an appellate court has the authority that the Legislature gives to it and no more. Section 8(1) of *The Court of Appeal Act, 2000*, SS 2000, c C-42.1, states that “no appeal lies to the court from an interlocutory decision of the Court of King’s Bench without leave” except in certain limited exceptions that do not apply here. For its part, Maurice Law submits that the whole of the *Chambers Decision* is interlocutory or, at the very least, an appeal from the direction to proceed to trial with respect to all issues other than the limitations question requires this Court’s leave.

[37] It is appropriate to begin with this preliminary issue, which requires the following determination: Is it possible to parse a decision dismissing an application for summary judgment into independent components and, in doing so, label one or more of them as a final order?

IV. Analysis

A. Final or interlocutory?

1. Finding the claim is not statute-barred is a final order

a. Principles on the type of order

[38] In this part of my reasons, I am considering if, in the context of a summary judgment application, a finding that a claim is not statute-barred can be a final order when the balance of the application is dismissed. I will first look at whether such a decision would be final, apart from any consideration of the summary judgment context.

[39] At one time, it could be said that the classification of any given order as final or interlocutory was somewhat of a mystery. Today, however, most cases are resolved by the application of the prior jurisprudence of this Court. Those that are not so covered are governed by the well-defined framework articulated in *Métis Nation – Saskatchewan v Saskatchewan (Environment)*, 2023 SKCA 35, 479 DLR (4th) 345, aff'd 2025 SCC 4 [*Métis Nation*]. *Métis Nation*, a unanimous decision of the Court, sets out the most recent guidance on the issue.

[40] The Court in *Métis Nation* confirmed the framework to determine whether an order is final or interlocutory, observing as follows:

[27] The basic distinction between final and interlocutory orders is easy to state. As explained by Ottenbreit J.A. in *Saskatchewan Medical Association v Anstead*, 2016 SKCA 143, it “has long been the law in this jurisdiction that orders which do not finally dispose of the ‘substantive issue’ in an action are not final but interlocutory”. Conversely, “an order is final when, if allowed to stand, it finally disposes of the rights of the parties” (at para 56). More recently, Kalmakoff J.A. stated that, “[a]t a very general level, an interlocutory decision is one made during the progress of an action or other proceeding that relates to some intermediate matter at issue in the case, not to the ultimate matter in issue” (*Poffenroth Agri Ltd. v Brown*, 2020 SKCA 68 at para 15, [2021] 5 WWR 302, referring to The Honourable Stuart J. Cameron, *Civil Appeals in Saskatchewan: The Court of Appeal Act & Rules Annotated*, 1st ed (Regina: Law Society of Saskatchewan Library, 2015) at 118). Later, Kalmakoff J.A. also observed that the “determination of whether an order is final or interlocutory in nature turns on whether the order effectively disposes of the rights of the parties, in a final and binding way, with respect to a substantive issue” (at para 18, emphasis added). If an order has this effect, it is final in nature.

(Italic emphasis in original, underline emphasis added)

[41] Applying the *Métis Nation* framework of analysis alone, I would conclude that a refusal to find a claim to be statute-barred can be final, depending on what the application judge held: see *1819472 Ontario Corp. v John Barrett General Contractors Limited*, 2024 ONCA 333 at paras 24–26, 17 PPSAC (4th) 304 [*Ontario Corp.*], and *Stoiantsis v Spirou*, 2008 ONCA 553 at para 21, 57 CPC (6th) 30. In the context of a dismissal of a summary judgment application, other considerations may prevail.

[42] In 2013, the *Rules* were amended to adopt summary judgment rules along the lines of those in place elsewhere in Canada. The *Rules* envisage the possibility of resolving one or more issues or the whole of a claim in a summary fashion. Specially, Rule 7-2 authorizes the following:

Application for summary judgment

7-2 A party may apply, with supporting affidavit material or other evidence, for summary judgment on all or some of the issues raised in the pleadings at any time after the defendant has filed a statement of defence but before the time and place for trial have been set.

(Emphasis added)

[43] This provision dovetails with Rule 7-5(6), which contemplates hiving off discreet issues from the main dispute:

Disposition of application

7-5(1) The Court may grant summary judgment if:

(a) the Court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or

(b) the parties agree to have all or part of the claim determined by summary judgment and the Court is satisfied that it is appropriate to grant summary judgment.

...

(6) If the Court is satisfied there are one or more genuine issues requiring a trial, the Court may nevertheless grant summary judgment with respect to any matters or issues the Court decides can and should be decided without further evidence.

(7) If an application for summary judgment is dismissed, either in whole or in part, a judge may order the action, or the issues in the action not disposed of by summary judgment, to proceed to trial in the ordinary way.

(Emphasis added)

[44] Interpreting these rules as permitting the granting of summary judgment on a specific issue is consistent with the direction provided by the Supreme Court. In *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87 [*Hryniak*], Karakatsanis J. wrote that the rule of law is threatened without greater access to justice. In that regard, I quote the following from her reasons:

[1] Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened. Without public adjudication of civil cases, the development of the common law is stunted.

[2] Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.

[3] Summary judgment motions provide one such opportunity.

(Emphasis added)

That said, in paragraph 60 of *Hryniak*, Karakatsanis J. also mentioned the special risks involved in granting partial judgments because of the possibility of inconsistent findings of fact.

[45] It is safe to say that, in certain circumstances, there will be some reluctance to parse out aspects of a claim and grant what is, in effect, a partial summary judgment – and then to go and find for appellate purposes that some part of the decision is final and others are interlocutory. The hesitancy to bifurcate proceedings in this way stems as much from questions of judicial economy as it does from a fear of inconsistent rulings on what may become a different presentation of the facts at trial. Intermediary appellate courts are familiar with and have grappled with partial resolution of summary judgment applications, which will certainly continue to be an evolving issue.

[46] In *Canada Trust Company (McDiarmid Estate) v Alberta (Infrastructure)*, 2021 ABCA 53, 458 DLR (4th) 545 [*Canada Trust*], the Alberta Court of Appeal held that a Chambers judge had erred by making a final determination that certain claims were not statute-barred. Instead, in the context of the summary judgment application before her, the Court of Appeal found that she should have dismissed the application, thereby leaving the limitations issue to the trial judge. On that point, the Court of Appeal wrote as follows:

[14] In this way, the Chambers judge made a reviewable error. She made a final ruling against the limitations defence to the Remaining Claims when all she had been asked to decide was whether the Remaining Claims should be dismissed for limitations reasons. It appears that, inadvertently, this summary dismissal application morphed into a summary judgment application or a summary trial of the limitations issue, neither of which was sought.

See also *Novosell v Bolster*, 2022 ABKB 804 at para 21, 84 ETR (4th) 34.

[47] However, I note that, in other circumstances, courts of appeal have held that it was appropriate to determine, finally, whether a claim is statute-barred in the context of a summary judgment application and to permit an appeal from such orders, notwithstanding that there will ultimately be a trial on the merits. In *Ontario Corp.*, the Ontario Court of Appeal canvassed its jurisprudence regarding when a summary application judge can be said to have finally decided a limitation issue, even though the finding is to the effect that the claim is not statute-barred. After observing that “it is not invariably the case that a dismissal of a motion for summary judgment that was brought solely on the basis of a limitation period will be a final order” (at para 23), the Court of Appeal commented on the various scenarios that might arise to determine when an order will be final:

[24] It is uncontroversial that where a defendant brings a successful motion for summary judgment on the basis that the action is statute-barred due to having been commenced out of time, the resulting order is final, and an appeal lies to this court. Matters are more complicated where the motion is instead dismissed.

[25] The complication results from an ambiguity that can be present in the dismissal of a summary judgment motion. In dismissing the motion, a motion judge may have either intended to: (1) decide a substantive issue – in this case, whether the limitations defence is available – or; (2) decide that there is a genuine issue requiring trial, without intending that any findings made be binding on any subsequent proceeding: *Skunk* [2016 ONCA 841], at para. 34; *Ashak v. Ontario (Family Responsibility Office)*, 2013 ONCA 375, 115 O.R. (3d) 401, at para. 7. In order to avoid the uncertainty generated by this potential ambiguity, there is a presumption that, unless the motion judge specifically references the powers under r. 20.05(1) or r. 20.04(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to make binding determinations of fact or law, and specifies what material facts or questions of law are now not in dispute, the motion judge did not intend to make binding determinations of fact or law, and those determinations will remain to be made by the trial judge: *Ashak*, at para. 11; *Skunk*, at para. 36.

[26] As a matter of best practice, a motion judge who intends to make a final determination on a question of fact or law ought to state the rule under which the determination has been made in the order issued: *Skunk*, at para. 36. And although a failure to make such a statement in the order suggests that no such determination or finding was made, this failure is not determinative: in some cases, to determine what has been decided, it is necessary to look at the reasons: [references omitted]. This is one of those cases.

(Emphasis added)

[48] I note also the comments of Steel J.A., in Chambers, in *Nguyen v Winnipeg (City)*, 2022 MBCA 33, [2022] 8 WWR 189. *Nguyen* considered if leave should be granted from a decision holding that a limitations period had not expired but, nonetheless, dismissing the remainder of a summary judgment application:

[10] The issue therefore arises as to whether the portion of the judgment dismissing the limitation defence is a final or interlocutory order. If it is an interlocutory order, should this Court nevertheless grant leave for it to be appealed?

[23] The judgment in this case can be distinguished It not only dismissed the motion for summary judgment. The issue of the limitation defence is singled out for resolution and that is reflected in the content of the judgment at para 2, which determines a substantive right of the City and which could have been dispositive of the entire action.

[24] Thus, I find that the judgment finding that the plaintiff provided substantial notice to the City and, therefore, complied with section 491 of *The City Charter*, is a final order and may be appealed as of right.

See also *Tabet v Winnipeg (City)*, 2024 MBCA 60.

[49] From these authorities, I conclude that much will depend on what the parties asked the Chambers judge to do and then on how the reasons and ensuing order are to be construed. It would be helpful if the parties were precise in their applications as to what they are requesting of the court and in how they draft the ensuing order. However, as *Ontario Corp.* indicates, “in some cases, to determine what has been decided, it is necessary to look at the reasons” (at para 26).

b. Application of the principles

[50] The Chambers judge expressly held at several junctures in the *Chambers Decision* that he had made a final determination regarding the limitations issue. He found the claim was not statute-barred such that the trial could proceed in the normal course, and he used language conveying finality. On that issue, he wrote as follows (*Chambers Decision*):

[18] ... I determine that it is not necessary to have a trial of the issue on the question of the limitation period. ... The limitations defence is, therefore, dismissed and it will not be necessary to deal with this issue at trial.

...

[34] I have determined that there must be a trial of the issue to resolve the matters that are outstanding in the claim except for the defence of the limitation period. Maurice has been successful in having the application dismissed.

[51] Following release of the *Chambers Decision*, an order issued out of the Court of King’s Bench judicial centre of Saskatoon on August 19, 2024, in pertinent part, as follows: “The Court orders that: 1. The Applicant’s summary judgment application is dismissed” (at 2).

[52] There are obviously a number of comments that could be made about the above reasons and order. First, it is trite to say that a judge of the Court of King’s Bench cannot make the classification of a matter as final or interlocutory for the purpose of determining appellate jurisdiction. Nor did the Chambers judge purport to do that. Nonetheless, a statement removing the issue from future trial consideration is a powerful and persuasive indication that the order is final. Second, it is regrettable that the formal order does not track the language found in the *Chambers Decision*. However, in the same way that a trial court cannot determine whether an order is final for appellate purposes nor can the ensuing order control the nature of the order. Notwithstanding the difference between the judgment and the issued order, based on my review of the above authorities, I conclude that the portion of the decision holding that the claim is not statute-barred is a final order and leave to appeal is not required in relation to it.

[53] It is important to observe, parenthetically, that there may be situations where an appellate court will find that the issue is not settled for the purposes of trial: particularly where it can be anticipated that further relevant evidence will be led on the timing of the discoverability of the action and its commencement. I also note the cautionary words of the Alberta Court of Appeal in *Canada Trust*. If the parties did not ask for a final determination, it may be an error to remove a defence from the trial process. Given the positions of the parties, both before the Chambers judge and this Court, as well as the narrowness of the evidence, those concerns are not present here.

2. Summary judgment dismissal decision is interlocutory

[54] An order declining summary judgment relates to an “intermediate matter at issue in the case, not to the ultimate matter” (*Poffenroth Agri Ltd v Brown*, 2020 SKCA 68 at para 15, [2021] 2 WWR 302), which means the decision on this point is interlocutory: see *First City Trust Company v Woodlawn Properties Ltd.*, 1987 CarswellSask 742 (WL) (CA), and *Gehlen v Bryden*, 2014 SKCA 117.

[55] Thus, we have before us an order that encompasses a final decision and an interlocutory decision. Since leave was not sought with respect to any aspect of the *Chambers Decision*, the issue is whether leave should be granted *nunc pro tunc* regarding the dismissal of the application for summary judgment.

[56] Again, the law in this area is well settled and was recently set forth in *Miller v Miller Estate*, 2024 SKCA 70:

[17] The power to grant leave *nunc pro tunc* is “an extraordinary power that is used sparingly so as not to defeat the object of section 8 of [*The Court of Appeal Act, 2000*]. That object lies in allowing for appeals of interlocutory decisions to be culled in advance for the purpose of avoiding needless expense and delay” (*Grant v Saskatchewan Government Insurance*, 2003 SKCA 17 at para 5; see also *KKS Holdings Ltd. v Foam Lake Savings and Credit Union Limited*, 2017 SKCA 105 at para 9 [KKS]; and *Cowessess First Nation v Phillips Legal Professional Corporation*, 2018 SKCA 101 at para 33, 43 CPC (8th) 237 [Cowessess]).

[18] In determining whether to grant leave *nunc pro tunc*, the first consideration is whether the proposed appeal meets the criteria for granting leave set out in *Rothmans, Benson & Hedges Inc. v Saskatchewan*, 2002 SKCA 119, 227 Sask R 121 [Rothmans]. If the Rothmans criteria are not met, then that ends the matter and there is no need to consider if the Court should exercise the extraordinary power of granting leave *nunc pro tunc* (*Grant* at para 5; *KKS* at paras 11–13). If the appeal meets the test for a grant of leave under *Rothmans*, then the Court looks to such considerations as whether the appellant acted reasonably in not seeking leave, and whether there has been undue delay occasioned by the failure to seek leave, as well as any other circumstances that are relevant in the facts of the particular case (*Cowessess* at paras 33–34; *Poffenroth* at para 44; *Saskatoon (City) v The Canadian Nationalist Party Inc.*, 2021 SKCA 22 at para 26, 456 DLR (4th) 654).

[57] Following this authority, I must keep in mind that the power is an extraordinary one. Notwithstanding this guiding principle, I am persuaded that leave should be granted. I say this because, at least in part, the Chambers judge considered using the *nunc pro tunc* power in favour of Maurice Law in overcoming whatever procedural deficiencies might exist. It would seem that the same sense of justice should prevail on this appeal, when the shoe is on the other foot.

[58] I am also mindful that, if Ms. Lombard had applied in Chambers for leave to appeal the summary judgment dismissal aspect of the matter, leave would probably have been granted because one part of the appeal would have been going forward in any event in relation to the limitations issue. In such circumstances, it would in all likelihood have met the *Rothmans, Benson & Hedges Inc. v Saskatchewan*, 2002 SKCA 119, 227 Sask R 121, criteria.

B. Claim is not statute-barred

1. Applicable legislation

[59] Section 2 of *The Limitations Act* establishes that the lawsuit brought by Maurice Law against Ms. Lombard is a claim:

Interpretation**2** In this Act:

(a) “claim” means a claim to remedy an injury, loss or damage that occurred as a result of an act or omission

[60] Section 3 provides that *The Limitations Act* applies to claims that are “commenced by statement of claim”:

Application of Act

3(1) Subject to subsections (2) to (5), this Act applies to claims pursued in court proceedings that:

- (a) are commenced by statement of claim; or
- (b) are commenced by originating notice and are not proceedings in the nature of an application.

[61] Section 5 establishes a two-year limitation period from discovery for claims to be brought:

Basic limitation period

5 Unless otherwise provided in this Act, no proceedings shall be commenced with respect to a claim after two years from the day on which the claim is discovered.

[62] Section 18 prescribes the burden of proof:

Burden of proof

18 If, in a proceeding, a limitation period is raised against a claimant, the claimant has the burden of proving that:

- (a) the limitation period has not expired; or
- (b) there is no limitation period that applies to the claim.

[63] Reading these various provisions together leads to the conclusion that Maurice Law’s claim would be statute-barred unless it could prove that the proceedings were *commenced* within the time period as specified by s. 5.

2. Ms. Lombard’s arguments

[64] A finding that a limitation period has expired is a question of mixed fact and law. In *Saskatchewan (Highways and Infrastructure) v Venture Construction Inc.*, 2020 SKCA 39, 447 DLR (4th) 316, leave to appeal to SCC refused, 2020 CanLII 81398, the Court, on reviewing the law on this standard of review, wrote as follows:

[33] Whether a limitation period expired before the issuance of a statement of claim is also a question of mixed fact and law: *Guarantee Co. of North America v Gordon Capital Corp.*, [1999] 3 SCR 423 at para 28; *Longo v MacLaren Art Centre*, 2014 ONCA 526 at paras 38–39, 323 OAC 246; *Crombie Property Holdings Limited v McColl-Frontenac Inc. (Texaco Canada Limited)*, 2017 ONCA 16 at para 31, 406 DLR (4th) 252; *Miramichi Lumber Products Inc. v Province of New Brunswick*, 2019 NBCA 61 at para 12, 38 CPC (8th) 426;

York University v Markicevic, 2018 ONCA 893 at para 27, 51 CCEL (4th) 30. The importance, in that analysis, of ascertaining when a claim was discovered or became discoverable gives the question a heavy factual component: *Artis Builders v Kehoe*, 2019 SKCA 14 at paras 3 and 30, [2019] 2 WWR 592; *Asplundh Canada Inc. v Rousseau*, 2012 SKCA 40 at para 23, 393 Sask R 82; *Kassburg v Sun Life Assurance Company of Canada*, 2014 ONCA 922 at para 40, 379 DLR (4th) 665.

See also *Fibabanka A.Ş. v Arslan*, 2023 SKCA 13 at paras 28–29, [2023] 6 WWR 624.

[65] Ms. Lombard makes one argument alleging factual error – notably, that the Chambers judge erred by finding that “the earliest Maurice could have learned of the activity giving rise to this action was on March 1, 2019” (*Chambers Decision* at para 14). Ms. Lombard argues that the Chambers judge erred by not picking February 28, 2019, as the starting date.

[66] If Ms. Lombard’s only concern were the start of the limitation period, the standard of review would be one of palpable and overriding error: *Housen v Nikolaisen*, 2002 SCC 33 at para 23, [2002] 2 SCR 235. If there were an error here, it would be overriding, but it is clearly not palpable. The Chambers judge did not choose February 28, 2019, because Ms. Lombard did not send the letters to the Class Action clients until March 1, 2019. Although she expressed her intention to do so on February 28, as the Chambers judge said, “intention does not attract the right to issue a claim” (*Chambers Decision* at para 13). I can see no palpable error in that. If she had not sent the letters, as the Chambers judge noted, “presumably no action would lie against her” (at para 13). Thus, the start of the limitation period is fixed: March 1, 2019.

[67] Most limitation cases are concerned with the start of the limitation period, which will usually turn on findings of fact or mixed fact and law related to when the actionable conduct was discovered. This case, however, is primarily concerned about when the action was commenced, which is more likely to engage principles of law. In that regard, Ms. Lombard’s remaining arguments are directed at the Chambers judge’s finding that the proceedings were commenced on March 1, 2021, when the lawyer deposited the statement of claim in the Registry’s dropbox. She submits that the Chambers judge erred by misinterpreting *The Limitations Act* and the *Rules*, thereby extending the limitation period beyond the two-year limit established by that Act. Her arguments in this regard raise extricable questions of law, reviewable on a correctness standard, requiring the interpretation of the *Chambers Decision*, the legislation, and the *Rules*.

[68] Ms. Lombard’s main argument is that the Chambers judge extended the limitation period by one day, i.e., to March 2, 2021, by his invocation of the *nunc pro tunc* power. This is what the Chambers judge wrote:

[17] Lombard argues that the date stamp on the statement of claim is, therefore, conclusive and that the claim was, therefore, issued more than two years after the cause of action was discovered. Rule 13-24 is presumptive but not determinative. Even before our Foundational Rules of *The King’s Bench Rules* were incorporated, our Court had reviewed the issue of an irregular problem in having a claim issued. In *Shannon v Topp* (1986), 44 Sask R 100 (QB) [*Shannon*], MacLeod J. was faced with a similar situation. In that case, the claim was sent to the Court House by Priority Post with a request that it be issued. The claim had failed to provide address information required by the Rules and so the Local Registrar returned the claim by mail unissued. After the claim was received by plaintiffs counsel, it was returned by mail but by now the limitation period had expired. At para. 25, MacLeod states:

[25] In 1818 Lord Eldon said:

“There is no general rule with respect to the practice of this court that will not yield to the demands of justice. (*Wales (Princess) v. Liverpool (Earl)* (1818), 1 Swans 114 at 125)”.

I agree.

[18] In *Shannon*, MacLeod J. issued an order *nunc pro tunc* (now for then), making a determination that the claim was issued when it was first presented to the Local Registrar. There is no application for a *nunc pro tunc* order here. Lombard suggests that unless such an order has been applied for, there is nothing I can do in relation to the date of the issuance of the claim. I disagree. Lombard has been aware of this issue from the outset. She has received the affidavit evidence of Mr. Dusevic and cross-examined him on his affidavit for this very purpose. I do not believe it is necessary within our Foundational Rules that such an application be made in the context of this case. If so, however, I am prepared to order formally that the statement of claim was issued on March 1, 2021. On the evidence before me, it is determined that the earliest date that Maurice would have been aware of the facts necessary to commence this action was March 1, 2019; he has complied with that and, therefore, the defence of *The Limitations Act* is not valid.

(Emphasis added)

[69] On my reading of these paragraphs, the Chambers judge did not prolong the limitation period beyond the two-year limit, which would be a clear error of law. Nor did he invoke the *nunc pro tunc* doctrine to backdate the issuance of the statement of claim – although he was prepared to do so. As I interpret his reasons, he held Rule 13-24(1) as being “presumptive but not determinative” (*Chambers Decision* at para 17). In other words, he found that, in the circumstances of this case, the proceedings were commenced when the statement of claim was placed in the dropbox.

[70] As I see it, nothing in the *Rules* declares – as an absolute and invariable rule – that “proceedings are commenced when they are signed, dated and issued”. Part 3 of the *Rules*, entitled “Court Actions”, speaks to commencing and starting actions:

What this Part is about: This Part describes the documents to be used to commence and defend court actions and the options that parties have during court proceedings.

The Part begins by describing how court actions are commenced (either by a statement of claim or by an originating application) and in which court office the commencement document must be filed to start the court action.

The Part then deals with actions started by statement of claim, time limits for serving the commencement document and the options that the defendant has.

[71] Rule 3-2 prescribes how to start an action:

How to start an action

3-2(1) An action, other than a family law proceeding, may only be started by filing in the appropriate judicial centre described in rule 3-3 or 3-4:

- (a) a statement of claim by a plaintiff against a defendant;
- (b) an originating application by an originating applicant against a respondent; or
- (c) a notice of appeal, reference or other procedure or method specifically authorized or permitted by an enactment.

(2) A statement of claim must be used to start an action, unless an enactment or these rules provide otherwise.

[72] Rule 13-24(1) follows on from this to state that “a commencement document is issued when the local registrar has signed, sealed and dated the document on filing” (emphasis added).

[73] The obvious implication from Rule 13-24(1) is that one can usually decisively and reliably say that actions are commenced when the “local registrar has signed, sealed and dated the document on filing”. However, the Rule does not say that actions are commenced for the purposes of s. 5 of *The Limitations Act* when the local registrar takes those steps. That is a question of the proper interpretation of s. 5 as applied to the facts of any given case. Having regard for the non-prescriptive terms of Rule 13-24(1), the Chambers judge could weigh what has to be an exceptional circumstance, i.e., how the courts in this province operated during the COVID-19 pandemic. He therefore made no error when he held that Rule 13-24(1) is “presumptive, but not determinative”. He also then made no error when he concluded that, for the purposes of s. 5, the proceedings were commenced on March 1, 2021.

[74] A major part of Ms. Lombard's argument is that the Chambers judge erred by invoking the *nunc pro tunc* power *and* doing so without an application before him. If the Chambers judge did backdate the local registrar's work, which I do not conclude he did, it would have been within his authority to act without a specific application. The *Rules* confer substantial powers on the judges of the Court of King's Bench: see Rule 1-4, found in Part 1: Foundational Rules. As the Chambers judge observed, Ms. Lombard would not have been caught off guard by his invoking of the power.

[75] Nor would the Chambers judge have been in error if he had resorted to using the authority of *nunc pro tunc*; but he did not need to. In other words, it would have also been an appropriate exercise of that doctrine, as outlined in *Canadian Imperial Bank of Commerce v Green*, 2015 SCC 60 at paras 85, 86 and 90, [2015] 3 SCR 801, for the Chambers judge to have held that the local registrar would be taken to have signed, sealed, and dated the document as of March 1, 2021. Maurice Law did not contravene the *Rules*. Rather, they complied with them. It is to be inferred from the Chambers judge's findings that the registry staff did not empty the dropbox until the next day. In such circumstances, if it were necessary to relax Rule 13-24(1), I do not think the Chambers judge could be said to have fallen into error on that point either.

C. Dismissing the balance of the application

1. The Release

[76] Following Ms. Lombard's departure from Maurice Law, she alleged that the firm did not provide her with pay in lieu of notice nor did it pay her the outstanding bonus to which she was entitled. As a result, Ms. Lombard initiated the Small Claims Action in Ontario against Maurice Law to seek payment of the monies owing to her. Maurice Law and Ms. Lombard eventually settled the Small Claims Action pursuant to the Release, dated on or around February 4, 2021. Less than one month later, on March 1, 2021, the within action was commenced. The claims in it are far-reaching and extend to the non-parties to this appeal as well as to Ms. Lombard.

[77] Ms. Lombard puts forward several arguments intended to illustrate that the Chambers judge made errors of law in dismissing her application. Principally, she submits that the Chambers judge erred when he said he could not interpret the Release on the evidence before him regarding the parties' intention. Ms. Lombard takes issue with this, saying that the words are clear. In that

regard, she relies on *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53 at paras 50 and 57, [2014] 2 SCR 633; *Best v Best*, 2002 SKQB 416 at paras 7–8 and 15; and *Haider v Rizvi*, 2023 ONCA 354 at para 42. No issue can be taken with the authorities she cites. The question is whether her argument amounts to an extricable question of law requiring or justifying appellate intervention.

[78] I begin by noting that, on its face, the Release ends litigation between the parties with respect to what appears to be every conceivable claim “arising out of [Ms. Lombard’s] employment” with Maurice Law, “including all claims or matters related to or arising out of or in any way connected with the matter *Lombard v Ronald S. Maurice Professional Corporation* in the Ontario Superior Court of Justice, Small Claims Court bearing File No. SC-19-00154674” (Release at 1). But then it goes on to use the words, “For greater certainty” and says, “the release ... shall not be a release from any claims relating to breach of fiduciary duty, interference with contractual and/or economic relations or any claims or complaints relating to breach of Law Society Rules and or Code of Professional Conduct in any jurisdiction in Canada” (at 1–2).

[79] Ms. Lombard relies on paragraph 42 of *Haider* to assert that “the carve outs included by Maurice Law in the release such as fiduciary duty ought to be strictly construed” (appellant factum at para 56). But, depending on the parties’ intention, the words, *for greater certainty*, could be read as an expression of the parties’ intention that the Release is not as broad as Ms. Lombard submits. More importantly, each side led affidavit evidence in support of opposing positions:

- (a) the Release was intended to be a broad release; and
- (b) the Release was directed to the Small Claims Action only.

[80] Relying on *L. & V. Enterprises Ltd. v Dave’s Diesel Ltd.*, 2022 SKQB 87, and *Corner Brook (City) v Bailey*, 2021 SCC 29, [2021] 2 SCR 540, the Chambers judge held that he must look at both the text and context and was unable to resolve how to interpret the Release (*Chambers Decision*):

[23] The context of this release is as follows: Lombard commenced a small claims action in Ontario alleging that Maurice owed her money for unpaid employment amounts. The small claims action was commenced and settled by way of a mutual release before this action was commenced. It is clear from the terms of the release that it was intended to apply to the small claims action, at the very least. Lombard alleges that the release was intended

to and did provide a waiver of any right that Maurice would have had against her in this action. An examination of the wording of the release by itself suggests that there is no further basis for claims to be made by or against Lombard in respect of her employment. The Court, however, is not to restrict its view of this solely based on the wording of the release but must also examine the circumstances surrounding its execution. Maurice, in his affidavit, avers that it was meant to only deal with the small claims action and anything similar arising out of it. Lombard argued that it is not necessary to look at the surrounding circumstances and that the release is sufficient by itself to end Maurice's action. I agree with the approach of Maurice. This is not an issue that can be decided by affidavit evidence. The discussion and context with respect to the signing of the release is important. I am not in a position from the affidavit evidence to say conclusively or even on a balance of probabilities that the release was intended to settle the claim before the Court. This issue needs to go to trial and the application for summary judgment based on this position is dismissed.

[81] In *Hryniak*, the Supreme Court considered Ontario's summary judgment rules, which permit the use of the summary judgment powers "unless it is in the interest of justice for them to be exercised only at a trial" (at para 45). In Saskatchewan, the summary judgment powers authorize the Court of King's Bench to grant summary judgment if "the Court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence" (Rule 7-5(1)(a)). However, turning back to *Hryniak*, Karakatsanis J. held that "whether it is against the 'interest of justice' to use the new fact-finding powers will often coincide with whether there is a 'genuine issue requiring a trial'" (at para 59). She went on to expand on what is meant by the interests of justice:

[60] The "interest of justice" inquiry goes further, and also considers the consequences of the motion in the context of the litigation as a whole. For example, if some of the claims against some of the parties will proceed to trial in any event, it may not be in the interest of justice to use the new fact-finding powers to grant summary judgment against a single defendant. Such partial summary judgment may run the risk of duplicative proceedings or inconsistent findings of fact and therefore the use of the powers may not be in the interest of justice. On the other hand, the resolution of an important claim against a key party could significantly advance access to justice, and be the most proportionate, timely and cost effective approach.

[82] The Chambers judge did not refer to this aspect of *Hryniak*. Nevertheless, from an appellate perspective, it appears that this is one of those situations where it would not be in the interests of justice to grant summary judgment. If the Chambers judge had granted judgment on this issue, the action would still proceed against all other defendants – and indeed against Ms. Lombard with respect to the breach of fiduciary duty claims. It would be a partial granting of a summary judgment application, which would appear to seriously increase the costs to the parties and would appear to be contrary to the principles set out in *Hryniak*. It would also clearly risk the possibility of inconsistent findings.

[83] In any event, I do not see a proper basis to intervene based on the standard of review. For this, I return to *Hryniak* again. It is worthwhile in this appeal to quote all of what Karakatsanis J. wrote:

[80] The Court of Appeal concluded that determining the appropriate test for summary judgment — whether there is a genuine issue requiring a trial — is a legal question, reviewable on a correctness standard, while any factual determinations made by the motion judge will attract deference.

[81] In my view, absent an error of law, the exercise of powers under the new summary judgment rule attracts deference. When the motion judge exercises her new fact-finding powers under Rule 20.04(2.1) and determines whether there is a genuine issue requiring a trial, this is a question of mixed fact and law. Where there is no extricable error in principle, findings of mixed fact and law should not be overturned absent palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 36.

[82] Similarly, the question of whether it is in the “interest of justice” for the motion judge to exercise the new fact-finding powers provided by Rule 20.04(2.1) depends on the relative evidence available at the summary judgment motion and at trial, the nature, size, complexity and cost of the dispute and other contextual factors. Such a decision is also a question of mixed fact and law which attracts deference.

[83] Provided that it is not against the “interest of justice”, a motion judge’s decision to exercise the new powers is discretionary. Thus, unless the motion judge misdirected herself, or came to a decision that is so clearly wrong that it resulted in an injustice, her decision should not be disturbed.

[84] Of course, where the motion judge applies an incorrect principle of law, or errs with regard to a purely legal question, such as the elements that must be proved for the plaintiff to make out her cause of action, the decision will be reviewed on a correctness standard (*Housen v. Nikolaisen*, at para. 8).

(Emphasis added)

See also *Deren v SaskPower*, 2017 SKCA 104 at para 41; *Stromberg v Olafson*, 2023 SKCA 67 at paras 117–121, 45 BLR (6th) 171; and *Frank and Ellen Remai Foundation Inc. v Bennett Jones LLP*, 2024 SKCA 71 at para 4.

[84] Casting the *Chambers Decision* in terms of the standard of review as above quoted, I cannot say that the Chambers judge (a) erred with respect to a purely legal question, (b) applied an incorrect principle of law, (c) committed a palpable or overriding error of fact or of mixed fact and law, or (d) arrived at a clearly wrong decision. Thus, there is no basis for appellate intervention with the Chambers judge’s conclusion that he could not interpret the Release on the basis of the affidavit evidence alone.

2. Merits

[85] Ms. Lombard’s position under this ground is essentially a repetition of what she asserted the Chambers judge should have found but did not. In her written argument, she says that the Chambers judge “did not correctly interpret the law regarding summary dismissal and what merits a genuine issue to proceed to trial” and that “[t]hese are pure legal issues” (appellant factum at para 76). She then reviews all of the findings that the Chambers judge should have allegedly made in much the same way as the statement of defence asserts that none of her actions amount to contractual breaches or tortious acts. She ends by saying that this Court “should conclude that Maurice Law’s claims are either not actionable or lack sufficient merit to warrant a trial” (at para 105). In my respectful view, this is asking this Court to stand in the shoes of the Chambers judge and make the evaluations of credibility, relevance, and weight that he declined to make. Quite simply, that is not this Court’s role.

[86] The Chambers judge reviewed the law and the *Rules* regarding summary judgment. He summarized the affidavit evidence. He decided that “there must be a trial of the issue to resolve the matters that are outstanding in the claim” (*Chambers Decision* at para 34). I can find no basis in principle, fact, or mixed fact and law that would justify appellate intervention.

V. Conclusion

[87] The appeal is dismissed with costs on Column 2.

“Jackson J.A.”

Jackson J.A.

I concur.

“Tholl J.A.”

Tholl J.A.

I concur.

“Kalmakoff J.A.”

Kalmakoff J.A.