KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 113**

Date: **2025 07 28**
File No. KBG-SA-00017-2024
Judicial Centre: Saskatoon

BETWEEN:

TERRI WOLFE

PLAINTIFF

- and -

SASKATCHEWAN POLYTECHNIC

DEFENDANT

Counsel:

Nicholas B. Hatch	for the plaintiff
Robert J. Affleck	for the defendant

FIAT
July 28, 2025

CURRIE J.

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[1] In this action Terri Wolfe sues her former employer, Saskatchewan Polytechnic, for damages arising from Saskatchewan Polytechnic having dismissed her without cause or notice.

[2] In its statement of defence Saskatchewan Polytechnic admits, as alleged in the statement of claim, that it employed Ms. Wolfe from August 19, 2019 to June 26, 2023. Saskatchewan Polytechnic also admits, as alleged in the statement of claim, that it terminated her employment without cause on June 26, 2023.

[3] Saskatchewan Polytechnic, though, denies that Ms. Wolfe is entitled to any payment arising from the dismissal, in part on the basis of Ms. Wolfe's legal

obligation to attempt to mitigate any loss by seeking other employment during the appropriate notice period.

[4] On this application Ms. Wolfe applies for summary judgment. As set out in her notice of application, she seeks:

1. An order for summary judgment in favour of the plaintiff, determining that the defendant is liable to her and granting an award of damages in an amount to be determined by the Court, together with pre-judgment interest thereon;

2. In the alternative, an order for summary judgment in favour of the plaintiff determining that the defendant is liable to the plaintiff on the basis of wrongful dismissal and directing that the matter of damages be set for trial; and

3. An order that the plaintiff shall have the costs of this application and the costs of this action.

[5] Saskatchewan Polytechnic argues that the application for summary judgment is premature, since there has been no discovery in the action. Ms. Wolfe has served and filed her statement of claim, and Saskatchewan Polytechnic has served and filed its statement of defence. The mandatory mediation session has been conducted. Those are the steps that have been taken in the action to date. The parties have not exchanged affidavits of documents under Part 5 of *The King's Bench Rules*, and there has been no questioning under Part 5. Saskatchewan Polytechnic asks me to dismiss the application for this reason, without prejudice to the right of either party to apply for summary judgment once discovery has been conducted.

[6] This application came to me under the court's General Application Practice Directive #9, by which an application for summary judgment initially is dealt

with by a judge in chambers, for management towards the goal of scheduling a summary judgment hearing.

[7] That process, as set out in paragraph 5 of the Practice Directive, may include "determining the parties' readiness to proceed" and "resolving preliminary issues".

[8] There is no question that, today, the parties are not ready to proceed to a summary judgment hearing. At a minimum, if the summary judgment process continues, Saskatchewan Polytechnic will be serving and filing affidavit evidence in response to the application. The real question is whether I should manage the proceedings until the parties are ready to proceed to a hearing, or whether I should dismiss the application.

[9] The principles governing a summary judgment application are established in the decisions of Justice Karakatsanis in *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87, and of Justice Barrington-Foote in *Tchozewski v Lamontagne*, 2014 SKQB 71, [2014] 7 WWR 397. The judge hearing the application must determine first whether there is a genuine issue requiring a trial, or whether instead the matter can be decided fairly and justly without a trial.

[10] The judge makes that determination by examining the evidence that has been filed on the application. In filing evidence, each party is required to "put its best foot forward" in the sense of placing before the court as complete an evidentiary package as is possible: *Peter Ballantyne Cree Nation v Canada (Attorney General)*, 2016 SKCA 124, [2017] 1 WWR 685 at paras 30-31.

[11] The concept behind this requirement is that in some cases, with proper evidence, the judge can be placed in a position to make a sufficiently-informed decision about the matter, without the need for a trial.

[12] Here Ms. Wolfe says that she has put her best foot forward by way of the affidavit that she has filed in support of her application. Saskatchewan Polytechnic, she says, can file its affidavit evidence in response, and there will be no need for there to be any further evidence. The court will be as informed as is possible as to the facts of this action, and so the court will be in a position to decide that the matter can be determined summarily.

[13] The broad question to be answered in this action is whether any damages flow from the dismissal. As I have noted, Saskatchewan Polytechnic relies on Ms. Wolfe's obligation to attempt to mitigate loss arising from the dismissal. In that regard, in her affidavit Ms. Wolfe provides some information about her efforts to mitigate, including evidence as to the position that she obtained eventually.

[14] Another aspect of the damages question flows from Ms. Wolfe's claim for damages based on an employment period of about 38 years (of which she was employed by Saskatchewan Polytechnic for four years). She pleads that she "has provided continuous employment services to the Province of Saskatchewan, including Sask Poly, for a collective and continuous period, exceeding 38 years".

[15] On this basis, in her statement of claim Ms. Wolfe claims pay in lieu of notice in the range of 24 months.

[16] In the context of these issues, Saskatchewan Polytechnic says that it cannot be ready to proceed to a summary judgment hearing until it has had the opportunity to examine Ms. Wolfe's documents and until it has had the opportunity to question her, all in the course of normal discovery. For her part, Ms. Wolfe says that she has produced her documents as the exhibits to her affidavit, and that Saskatchewan Polytechnic can ask for an order allowing it to cross-examine her on her affidavit. In effect, she says, she had met her discovery obligations because the documents attached to her affidavit effectively are the same as an affidavit of documents, and a cross-

examination on her affidavit effectively is the same as questioning.

[17] Thus, Ms. Wolfe asks me to exercise my discretion to permit the summary judgment process to proceed. That discretion was referred to by Justice Schwann in *Loraas v Loraas Disposal North Ltd*, 2023 SKCA 131 at para 77:

> [77] The *Chambers Decision*, read in its totality, demonstrates that the Chambers judge understood that he was being called upon to exercise his discretion to manage the litigation in keeping with the rules and Practice Directive #9. In quoting extensively from paragraphs 60-62 of *Casbohm v Winacott Spring Western Star Trucks*, 2018 SKQB 15, 30 CPC (8th) 175 [*Casbohm*] - which relied on passages from *Regional Tire Distributors (Saskatchewan) Inc. v Quality Tire Service Ltd.*, 2016 SKQB 411 - he can be seen as accepting the proposition that there are no fixed rules about whether document production or questioning should proceed prior to the hearing of a summary judgment application; rather, it was a question that engaged the exercise of discretion. The Chambers judge's reasoning is aligned with *Burns-CA* [2015 ABCA 390, 79 CPC (7th) 29] and *Casbohm*, which underscore that discretion should be exercised by "giving due consideration to the purposes of the summary judgment provisions, and keeping in mind the need for proportionality, the need to facilitate resolution of the issues, and the need to discourage conduct that unnecessarily or improperly delays proceedings or unnecessarily increases their cost" (*Casbohm* at para 62).

[18] Also pertinent to my exercise of discretion on this application are the remarks of Justice Schwann in *Loraas* at paras 62-63:

> [62] Part 7 sets out the various means by which parties can resolve a claim without the need for a trial, with the rules for summary judgment adjudication laid out in Division 2 thereof. It is of significance that nothing in Division 2 stipulates that the summary judgment process trumps or in any way displaces the operation of the remainder of *The Queen's Bench Rules* once an application for summary judgment is filed. Neither, for that matter, does Part 5 contain language that ousts or suspends a party's right to disclosure, production and questioning in the normal course in the face of a summary judgment application. If the Court of Queen's Bench had intended that result, Rule 5-18

> (which sets out the right of any party to an action to question the opposing party without a court order) could have been prefaced with words, such as, "Subject to Part 7". No such language exists.
>
> [63] Simply put, Part 5 and Part 7 operate independently from each other, and there is nothing in *The Queen's Bench Rules* stipulating that, once a summary judgment application is filed, the process and procedures for discovery, including questioning, are displaced, suspended or deferred to allow for the Part 7 summary judgment adjudication process to run its course. As an aside, I note the drafters of the rules did, in fact, put their mind to adjustments to the questioning process in family law proceedings by prefacing Rule 5-18(1) with the phrase, "Subject to Part 15". From this, it can be reasonably inferred that they were alert to the need to place limitations on those rights and obligations but chose not to adopt the same approach in relation to the summary judgment process.

[19] For three reasons, I am persuaded that Saskatchewan Polytechnic's objection is valid, and that Ms. Wolfe's application must be dismissed.

[20] First, exhibits that are attached to an affidavit are not the same thing as documents that are listed in an affidavit of documents. Exhibits are selected by a party with the aim of putting that party's best foot forward. In contrast, the documents listed in an affidavit of documents are *all* of the documents that are known to the party and that are relevant to any matter at issue in the action (Rule 5-6).

[21] Second, cross-examination on an affidavit is not the same thing as questioning under Part 5 of the Rules. Aside from the circumstance that questioning is a matter of right but cross-examination requires a court order, the scope of cross-examination on an affidavit is more limited than is the scope of questioning. Rule 5-18(1) provides that a party may be questioned "about information relevant to any matter in issue". In contrast, the court authorizes cross-examination on an affidavit only for the purpose of resolving a specified issue, or to address contradictory evidence, or to clarify information that is solely within the knowledge of the affiant: *Wallace v*

Canadian Pacific Railway, 2009 SKQB 178, 338 Sask R 174.

[22] Third, if I were to adopt Ms. Wolfe's suggestion that I should engage in management of this matter through to scheduling a summary judgment hearing, it is reasonable to expect that I would be managing and ensuring the scheduling of:

- Saskatchewan Polytechnic's application for an order for cross-examination;
- the conduct of that cross-examination;
- delivery of responses to undertakings, including both further information and production of documents;
- service and filing of Saskatchewan Polytechnic's affidavit evidence in response to the application;
- potentially, cross-examination on Saskatchewan Polytechnic's affidavit evidence; and
- potentially, delivery of Saskatchewan Polytechnic's responses to undertakings.

[23] If I were to adopt Ms. Wolfe's suggestion, then, I would be managing what is a rough equivalent of the normal discovery process – a process that parties typically navigate without having a judge oversee it. Furthermore, that rough equivalent is more restricted than is the normal discovery process, and so the parties would be deprived of the benefits of normal discovery.

[24] Even when read in conjunction with the Practice Directive, the purposes of the summary judgment provisions do not include truncating the normal discovery process. They do not include the effective installation of a case management judge.

[25] In the circumstances of this action, an application for summary judgment

is premature. The parties are not ready to proceed to a summary judgment hearing. They cannot truly become ready without engaging in the normal discovery process. Consequently, the application is dismissed without prejudice to the right of either party to apply for summary judgment in the future.

[26] Having opposed the application successfully, Saskatchewan Polytechnic will have the costs of this application, under column 2, in any event of the cause.

_____J.
G.M. CURRIE