KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 133**

Date: **2025 08 21**
File No.: QBG-SA-00361-2021
Judicial Centre: Saskatoon

BETWEEN:

SASKATCHEWAN CROP INSURANCE CORPORATION

PLAINTIFF

- and -

WORK SMARTER SYSTEMS LTD. and
STEPHEN KENNETH BURKHOLDER

DEFENDANTS

Counsel:

Randy T. Klein, K.C.	for the plaintiff
Glenn Wright	for the defendants

FIAT — SINCLAIR J.
August 21, 2025

INTRODUCTION

[1] There are two applications before the Court.

[2] The first is an application by the plaintiff, Saskatchewan Crop Insurance Corporation [SCIC], for:

a. summary judgment under Rule 7-2 of *The King's Bench Rules*;

b. resolution of a particular question or issue under Rule 7-1;

c. striking portions of the defendants' defence under Rule 3-14; and

d. costs.

[3] On this first application, SCIC's counsel submits that the Court should apply General Application Practice Directive #9 [GA-PD #9] and set deadlines to allow the summary judgment and other related applications to proceed in an orderly fashion.

[4] The second application is brought by the defendants, Work Smarter Systems Ltd. and Stephen Kenneth Burkholder [Burkholder], to apply for leave to amend their statement of defence and add a counterclaim against the plaintiff.

FACTS

[5] SCIC's action is premised on the following:

a. SCIC claims that the defendants are indebted to SCIC for crop insurance overpayments of $4,277.21 arising from a 2017 flax claim adjustment and $24,164.20 resulting from a 2017 canola claim adjustment.

b. SCIC alleges that the defendants are also indebted to SCIC in the amount of $9,213.56 for unpaid 2019 crop insurance premiums.

c. SCIC alleges that Burkholder was overpaid AgriStability benefits in the total amount of $107,039 for the 2014, 2015 and 2016 years [AgriStability Overpayment]. SCIC seeks recovery of that sum from Burkholder.

d. Interest is claimed on all of the aforementioned amounts.

[6] The defendants deny all claims against them excepting the indebtedness for the 2019 crop insurance premiums.

[7] SCIC's application seeks summary judgment solely on the issue of the AgriStability Overpayment. SCIC argues that AgriStability, through the federal-provincial Growing Forward 2 Agreement, created an administrative structure complete with built-in appeal processes and specialized administrative powers. SCIC argues that SCIC's determination that Burkholder was overpaid AgriStability benefits cannot be disputed by Burkholder in this litigation. SCIC indicates that to challenge SCIC's determination of the AgriStability Overpayment, Burkholder was limited to following the SCIC processes in an appeal of SCIC's determination. If Burkholder was unsatisfied by the outcome of the appeal, SCIC argues that Burkholder's remedy was to seek judicial review of the AgriStability appeal decision.

[8] Following SCIC's determination that Burkholder was overpaid AgriStability benefits, Burkholder initiated the AgriStability appeal process. Subsequently, SCIC determined that Burkholder did not provide the information necessary for his appeal to be heard. As a result, the appeal was not accepted for consideration.

[9] Burkholder denies that SCIC's decision on the AgriStability Overpayment is conclusive and binding on him or the Court.

[10] The defendants seek to amend their defence to allege that the "Contract of Crop Insurance" is unconscionable. The specific contracts alleged to be unconscionable are not defined in the proposed amended statement of defence, despite the capitalization used for the words "Contract of Crop Insurance". Based on the submissions of counsel and the materials filed by the defendants, I understand that the pleading should relate to the "Contracts of Crop Insurance", in that the defendants take issue with the AgriStability program terms and SCIC crop insurance contract. The defendants seek leave to plead that the "insurance contract" (also left undefined in the proposed statement of defence) is unconscionable as it offends s. 8 of the *Canadian*

Charter of Rights and Freedoms and that the provisions respecting interest are ill-defined and unreasonable.

[11] The defendants' proposed counterclaim seeks:

a. an order of *mandamus* to have SCIC complete the defendants' appeal of SCIC's decision regarding the AgriStability Overpayment;

b. an order that SCIC process the defendants' 2020-2024 AgriStability benefits or provide the defendants with SCIC's calculation of benefits if the benefits have been determined. Alternatively, if the calculation of benefits has been processed for 2020 to 2022, an order that SCIC provide the defendants with the calculation of benefits issued for those years and that the 18-month adjustment period commence immediately after disclosure;

c. an order for set-off of any amounts found owing by SCIC to the defendants for the 2020 to 2024 years against any amounts owing by the defendants to SCIC;

d. costs (related to both professional services retained by the defendants to engage with the AgriStability program and to defend/bring this claim); and

e. an order permitting the defendants to apply for reinstatement of cancelled crop insurance pursuant to section 9 of *The Saskatchewan Crop Insurance Corporation Regulations*, RRS c S-12.1 Reg 1, and if such application is denied by SCIC, to require that SCIC disclose its reasons to refuse insurance to the defendants.

ISSUES

[12] The issues for me to determine are:

a. Should the defendants be given leave to amend the statement of defence?

b. Should the defendants be given leave to add a counterclaim?

c. Should the matter be set down for a hearing under GA-PD #9?

ANALYSIS

a. Should the defendants be given leave to amend the statement of defence?

[13] The relevant portion of Rule 3-72, which governs amendments to pleadings, indicates as follows:

> **3-72**(1) A party may amend the party's pleading, including an amendment to add, remove, substitute or correct the name of a party, as follows:
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> …
>
> (c) after a statement of defence is filed:
>
> …
>
> (ii) with the Court's permission, in any manner and on any terms that the Court considers just.

[14] To grant leave to amend pleadings, I must be satisfied that the proposed amendment is a *proper pleading*, in that it would survive an application to strike the pleading under Rule 7-9(2): *Cupola Investments Inc. v Zakreski*, 2021 SKCA 86, para 48.

[15] There are some amendments sought by the defendants which are mostly clerical in nature. Those amendments are not opposed by SCIC and are clearly

appropriate. As a result, leave is granted to amend paragraphs 1, 3, 4, 5, 7 and 8 as proposed by the defendants.

[16] The only matter of controversy is paragraph 10 of the proposed amended statement of defence which pleads that the terms of the AgriStability program are unconstitutional and unconscionable. I will review those arguments separately.

- **Alleged Breach of Section 8 of the *Charter***

[17] The defendants allege that SCIC's power to indefinitely demand access to records and information from producers breaches s. 8 of the *Charter*. Section 8 of the *Charter* guarantees individuals the right to be free from unreasonable search and seizure.

[18] For s. 8 of the *Charter* to be engaged, the state must have conducted "a search or seizure that interferes with an individual's reasonable expectation of privacy": *R v Wright*, 2025 SKCA 52, para 44.

[19] Although there are several problems with the defendants' proposed amendment, including the fact that the pleading does not define what acts by SCIC constituted either a "search" or "seizure", it is sufficient to note that the pleading does not indicate that the defendants had any reasonable expectation of privacy in any of the records requested by SCIC. Thus, the pleading fails to outline the necessary elements to engage s. 8 of the *Charter*. Because the necessary material facts to engage s. 8 of the *Charter* are not pled, the proposed pleading does not disclose a reasonable defence as set out at Rule 7-9(2)(a).

[20] Even if I interpreted the defendants' pleadings to say that all records requested by SCIC from the defendants were subject to a reasonable expectation of privacy, I would find such argument to be frivolous (as set out at Rule 7-9(2)(b)). Burkholder agreed to be bound by the terms of the AgriStability program and the SCIC

crop insurance contract. As a result, Burkholder could not have a reasonable expectation of privacy in documents that he had earlier agreed to provide upon request.

[21] The Supreme Court in *R v Hufsky*, [1988] 1 SCR 621 (CanLII), indicated at para. 23:

> 23. … In my opinion the demand by the police officer, pursuant to the above legislative provisions, that the appellant surrender his driver's licence and insurance card for inspection did not constitute a search within the meaning of s. 8 because it did not constitute an intrusion on a reasonable expectation of privacy. Cf. *Hunter v Southam Inc.*, [1984] 2 S.C.R. 145. <u>There is no such intrusion where a person is required to produce a licence or permit or other documentary evidence of a status or compliance with some legal requirement that is a lawful condition of the exercise of a right or privilege</u>. …
>
> [Emphasis added]

[22] Participation in AgriStability and SCIC crop insurance is not obligatory. The defendants agreed to be bound by the terms of these programs. Relatedly, they agreed to provide documents to SCIC. The defendants cannot now say that they had a reasonable expectation of privacy in the documents that they agreed may be required to be produced.

[23] As a result, paragraph 10(a) of the proposed amended statement of defence discloses no reasonable defence and is frivolous. Leave is not granted to make this amendment.

- **Alleged Unconscionability of the AgriStability Program and Crop Insurance Contract**

[24] To evaluate the proposed pleading of unconscionability, a basic understanding of the AgriStability program is required. The program was described in *Hyota Farms Ltd. v Canada (Attorney General)*, 2025 FC 304 [*Hyota*], as follows:

> …
>
> [4] The *Farm Income Protection Act*, SC 1991, c 22 [*FIPA*] provides the legal foundation for the AgriStability Program. Pursuant to paragraph 4(1)(a) of the *FIPA*, the Governor in Council may authorize the Minister of AAFC to enter into agreements with provinces to provide for a net income stabilization program.
>
> [5] The AgriStability Program is intended to assist agricultural producers with large, significant losses in income. It is administered through the AgriStability Program Guidelines ("Guidelines"); see also *Mac Berry Farms Limited v Canada (Agriculture and Agri-Food)* 2022 FC 264 [*Mac Berry*] at paras 2-4).
>
> [6] The Guidelines are an extension of the authority of the Canadian Agricultural Partnership, a Federal-Provincial-Territorial Framework Agreement on Agriculture, Agri-Food and Agri-Based Products Policy ("Agreement") that provides authority and guidance for the management of the AgriStability Program.
>
> …
>
> [45] I agree with the Applicant that the Guidelines are policy and not law. …

[25] The AgriStability program terms are outlined in the Growing Forward 2 Agreement between the Government of Canada and the provinces.

[26] As noted in *Hyota*, the AgriStability program terms are government-policy. In attacking certain terms of the AgriStability program as being "unconscionable", the defendants are attacking the policy decisions of the government in approving the terms of the Growing Forward 2 Agreement.

[27] As noted by Danyliuk J. in *Amin v Saskatchewan (Economy)*, 2017 SKQB 142 at para 28, 49 Imm LR (4th) 202, the Court cannot generally judicially review government policy choices. Similar comments were made in *Great Lakes United v Canada (Minister of the Environment),* 2009 FC 408 at para 81, [2010] 2 FCR 515.

This is subject to the ability of the Court to review government policymaking under constitutional and jurisdictional considerations, none of which are engaged in this case.

[28] In short, the defendants' proposed unconscionability pleadings invite the Court to do what it cannot – review the wisdom or appropriateness of the terms of the Growing Forward 2 Agreement, which is a policy decision of the government. Given that the Court lacks the ability to overturn such a policy or portions thereof, the proposed pleading is destined to fail and is not a reasonable defence. Thus, the proposed pleading would be subject to being struck under Rule 7-9(2)(a).

[29] Likewise, SCIC's crop insurance contract is a creature of statute: *Saskatchewan Crop Insurance Corporation v Deck*, 2008 SKCA 21, [2008] 8 WWR 501 [*Deck*]. As noted in *Deck,* the parties do not negotiate the contract and it cannot be amended by the parties. The Court cannot imply terms into the contract. The Court is limited, with such a statutory contract, to applying the express terms of the crop insurance contract: *Saskatchewan Crop Insurance Corporation v Hicks*, 2009 SKCA 12 at paras 26 to 28, [2009] 6 WWR 627.

[30] Given this analysis, I agree with SCIC's position that SCIC's crop insurance contracts cannot be modified or determined to be unenforceable by the Court based on equitable doctrines such as unconscionability.

[31] As a result, the proposed amendment relating to unconscionability is not permitted.

b. Should the defendants be given leave to add a counterclaim?

[32] The relief sought against the plaintiff in the counterclaim is: (1) an order of *mandamus* to complete the defendants' appeal; (2) a mandatory injunction to require SCIC to process the defendants' 2020-2024 AgriStability benefits; (3) a set-off of anything owing by the defendants to the plaintiff if amounts are owing by the plaintiff

to the defendants for the 2020-2024 years; and, (4) an order for reinstatement of cancelled crop insurance.

[33] A significant concern about the proposed counterclaim is whether some of the proposed relief is proscribed by s. 17 of *The Proceedings Against the Crown Act, 2019*, SS 2019, c P-27.01 [*PAC Act*]. That section states:

> 17(1) If, in proceedings against the Crown, any relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but may instead make a declaratory order of the rights of the parties.
>
> (2) The court shall not in any proceedings grant an injunction or make an order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in proceedings against the Crown, but may instead make a declaratory order of the rights of the parties.

[34] Some of the defendants' requested relief is in the nature of injunctive relief. Specifically:

a. The defendants request that the Court order that the plaintiff process the defendants' 2020-2024 AgriStability benefits or require SCIC to deliver certain documentation to the defendants. The defendants' requests are asking that the Court compel the plaintiff to take certain actions. No specific jurisdiction is cited in the counterclaim for the Court's authority to make such an order. I infer that the defendants, without framing it as such, are seeking mandatory injunctive relief against SCIC.

b. The request for set-off is premised on the request by the defendants that the plaintiff be directed to process the defendants' AgriStability

benefits. Thus, this request is made part and parcel with the earlier request for mandatory injunctive relief.

c. The request that the Court direct SCIC to reinstate the defendants' crop insurance is again a request for mandatory injunctive relief.

[35] In *Howard v Saskatchewan Crop Insurance Corp.*, [1992] 4 WWR 31 (Sask QB) [*Howard*], the Court applied the precursor to the *PAC Act* to SCIC. Because SCIC was an agent of the Crown, the Court found that the Crown was not subject to a garnishee summons. *Howard* was recently cited, with approval, in the case of *Tuttle v Ermine*, 2024 SKKB 107 [*Tuttle*].

[36] The defendants argue that, because SCIC is an agent of the Crown, SCIC is not entitled to the protection of s. 17 of the *PAC Act*.

[37] I reject the defendants' submission in this regard. The Court in *Howard* and *Tuttle* applied the *PAC Act* to Crown agents. In *Howard*, the Court noted:

> [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* [SS 1983-84, c C-47.2] 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 *Proceedings against the Crown Act* [RSS 1978, c P-27], 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.
>
> [28] As observed by Mr. Justice Addy of the Federal Court (Trial Division) in *Re Public Service Alliance of Canada, Local 660 and Canadian Broadcasting Corporation*, [[1976] 2 FC 145, 66 DLR (3d) 760 (FCTD)] at p. 761:
>
> > "It seems clear that corporations that are, in the performance of their duties, acting solely as delegates or agents of the Crown enjoy as such the same prerogatives and immunities as the Crown itself. See ..."
> >
> > [Emphasis in original]

[38] The defendants rely on *Canada (Attorney General) v Saskatchewan Water Corp.*, [1993] 7 WWR 1 (Sask CA), for the proposition that Crown immunity does not attach to agents of the Crown. However, the case does not stand for that proposition. In particular, the Court at para. 11 indicated:

> [11] ... *Wittal* [(1988), 51 DLR (4th) 641] (as now elucidated by Professor Wade's commentary) holds that **to determine whether the Crown immunity preserved by s. 17 attaches to a particular governmental person or agency one looks not only at who the person or agency is but at what function or power the person or agency is exercising at the critical time. If it is a function or power of the Crown, immunity attaches. If it is a function or power conferred by statute upon the person himself or the agency itself, immunity does not attach**.
>
> [Emphasis added]

[39] The proper approach to determining whether Crown immunity attaches is explained in the text by Peter W. Hogg, Patrick J. Monahan & Wade K. Wright, *Liability of the Crown*, 4th ed (Toronto: Thomson Reuters, 2011). The relevant selections from that book indicate:

> At common law, a prohibitory injunction is available against a Crown servant to restrain an unlawful act. For example, in *Nireaha Tamaki v. Baker* (1901) [[1901] AC 561 (PC, NZ)], the Privy Council held that an injunction would lie to restrain a Crown officer from acting outside his statutory powers in selling land to which the plaintiff claimed title. In *Rattenbury v. Land Settlement Board* (1929) [[1929] SCR 52], the Supreme Court of Canada held that an injunction would lie against the Land Settlement Board, although it was an agent of the Crown, to restrain the Board from levying an ultra vires tax on the plaintiff. In *Conseil des Ports Nationaux v. Langelier* (1969) [[1969] SCR 60], the Supreme Court of Canada held that an injunction would lie against the National Harbours Board, although it was an agent of the Crown, to restrain the Board from committing a tort.
>
> **The principle underlying these cases is that an individual Crown servant or a corporate Crown agent whose act is unauthorized by statute or the prerogative is personally liable for that act to the same extent as a private individual would be liable**. When an injunction is sought against a Crown servant (or a corporate Crown agent) no issue is raised as to whether the Crown itself can be enjoined, for the Crown servant is personally liable when he or she acts without legal justification. That is why, at common law, an injunction may be obtained against a Crown servant in those jurisdictions where the Crown itself is not liable to be enjoined.
>
> [Emphasis added]

[40] Looking at the proposed counterclaim, the defendants do not allege that SCIC was unauthorized by statute to act as it has. The defendants, likewise, do not plead that SCIC has acted outside of its statutory powers or that the claim is brought to restrain SCIC from committing a tort. The acts complained of by the defendants are that SCIC should operate their programs in a different manner than it does.

[41] In short, I find that the defendants' requested relief that the Court order

SCIC to process the defendants' SCIC benefits for the years 2020-2024, the related relief of set-off regarding the 2020-2024 processing of SCIC benefits and the request that the Court direct SCIC to take certain actions regarding reinstatement of crop insurance are barred by s. 17 of the *PAC Act*.

[42] As for the defendants' request for a writ of *mandamus*, it is unclear why the defendants bring this request through a counterclaim, as opposed to seeking to judicially review the plaintiff's decision not to consider the defendants' internal AgriStability appeal.

[43] The Court of Appeal in *MacPhee v Box*, [1936] 2 WWR 129 (CanLII) (Sask CA) [*MacPhee*], indicated:

> [18] In the second place it is doubtful to my mind if relief by way of *mandamus* can properly be granted against the mining recorder in an action of this kind, for what the plaintiffs are really seeking in the portion of their prayer quoted above is an order against him as a public official to compel him to do what they allege to be his duty. The usual and proper way to obtain such a form of relief is through application to a competent Court for a prerogative writ of *mandamus* as was done in *Seguin's* [[1922] 1 WWR 1169 case [PC]]. See also 9 *Halsbury*, 2nd ed., p. 752; *Robertson's Civil Proceedings by and against the Crown* (1908), pp. 111 *et seq.; Reg. v. Holt* (1890) 24 Q.B.D. 178, 59 L.J.Q.B. 113; *Drysdale v. Dominion Coal Co.* (1904) 34 S.C.R. 328. In this province such an application may be made either to a Judge of the Court of King's Bench or to this Court under Crown Practice Rules numbers 20 to 31 inclusive.
>
> [19] The kind of *mandamus* obtainable in an action is, according to modern authority, altogether distinguishable from that which must be pursued by a prerogative writ. The former was first made available to litigants under sec. 68 of *The Common Law Procedure Act, 1854*, ch. 128, which has since been superseded in England by Marginal Rule 719, the counterpart of which is to be found in our King's Bench Rules, numbers 494, 495 and 496. It has been held repeatedly in England that the *mandamus* spoken of in Marginal Rule 719 "is not the prerogative *mandamus* but only a *mandamus* which may

> be granted to direct the performance of some act, of something to be done which is the result of an action where an action will lie." *Glossop v. Heston & Isleworth Local Board* (1879) 12 Ch. D. 102, 49 L.J. Ch. 89, per Brett, L.J., at 122. The same view was taken in *Baxter v. London County Council* (1890) 63 L.T. 767; *Smith v. Chorley District Council*, [1897] 1 Q.B. 678, 66 L.J.Q.B. 427; and *Rex v. Wilts and Berks Canal Co.; Ex parte Berkshire County Council*, [1912] 3 K.B. 623, 82 L.J.K.B. 3.
>
> [20] The same has also been held by the Courts in Ontario in respect of the corresponding provisions and the practice in that province. Thus in *Rich v. Melancthon Board of Health* (1912), 26 O.L.R. 48 (Ont. Div. Ct.), Middleton, J., after distinguishing the *mandamus* referred to in the rules from the prerogative writ of that name, goes on to say at p. 53:
>
> > "The *mandamus* which may be awarded in an action is either in the nature of the old equitable mandatory injunction, or is merely ancillary to the enforcement of a legal right for which an action might be maintained at law."
>
> [21] See also *In re Rowe and Harris* (1928) 63 O.L.R. 163; *Holmested's Ontario Judicature Act*, 1915, pp. 50 and 1278; *7 C.E.D.* (Ont.) p. 123. *In Hudson v. Biddulph (Tp.)* (1919) 46 O.L.R. 216, it was held by a strong Court upon a consideration of the authorities that the weight of judicial opinion is against the right to invoke the remedy of the prerogative writ of *mandamus* in an action. On that ground and also because the persons to whom, if issued, it would be directed were not parties to the action, the Court refused to award such relief. it will be observed that the circumstances upon which the Court came to such a decision in that case are very similar to those existing in this one. See also *Harris v. Leask R.M.*, [1923] 3 W.W.R. 720, at 724, 17 Sask. L.R. 415, at 419.

[44] In an earlier case, the Court in *Harris v Rural Municipality of Leask*, [1923] 3 WWR 720 (CanLII) (Sask KB) [*Harris*] indicated:

> [10] … At that stage the plaintiff, had he wished to preserve his right to the office, could have made application for a prerogative writ of *mandamus*. This writ affords a proper remedy in cases where the party has not any other means of compelling specific performance and is confined to rights of a public nature.

> The procedure governing the application for and issue of the writ is laid down in our Crown Practice Rules, and is not to be confused with the action claiming a *mandamus* under Rule 494 of the Rules of Court. The latter action does not supersede the prerogative writ and usually lies where the right to be enforced is of a private rather than a public nature. *Rex v. Wilts and Berks Canal Co.*, [1912] 3 K.B. 623, 82 L.J.K.B. 3. The plaintiff instead of applying for prerogative writ of *mandamus* commenced an action claiming *mandamus* and asking for an injunction restraining the defendant from proceeding to fill the seat. As already intimated, such an action did not lie, even if there had been no change in the situation after the passing of the resolution. …

[45] The type of *mandamus* sought by the defendants in this case is in the nature of the traditional prerogative writ of *mandamus* in that it seeks an order that SCIC consider the defendants' appeal. Such a request for *mandamus* is to be brought by application, as opposed to a claim as set out in *MacPhee* and *Harris*. As a result, that relief sought by the defendants is unavailable by claim or counterclaim.

[46] There may also be a question as to whether *mandamus* lies against SCIC given the traditional common law rule that *mandamus* does not lie against the Crown. Given that this issue was not argued by the parties and my finding that *mandamus* cannot be sought by claim, it is unnecessary for me to rule on that issue.

[47] The defendants argue that, to the extent that there is any procedural irregularity with the *mandamus* request, I should nonetheless allow the issue to proceed for the sake of judicial economy. The trouble with that approach is that allowing the proposed counterclaim to proceed as part of the main action would have the opposite result. The plaintiff's claim would be combined with another matter which may have the effect of delaying timely resolution of the plaintiff's claim. This is the antithesis of the goals of the Foundational Rules.

[48] Consequently, all of the relief sought by the defendants in the proposed counterclaim is either in the nature of injunctive relief, which is statutorily barred, or is

relief that is to be brought by application, as opposed to statement of claim.

[49] If I am incorrect in this regard, I would not have permitted the counterclaim in any event because there is no discernible cause of action. It is not clear whether the defendants are bringing a tort claim, a claim for a breach of contract or any other cause of action known at law. The counterclaim further fails to link any material facts to a cause of action.

[50] As a result, the counterclaim discloses no reasonable cause of action against the plaintiff. Leave is, therefore, not granted to bring the counterclaim.

c. Should the matter be set down for a hearing under GA-PD #9?

[51] The plaintiff asks that its applications be set down for determination under GA-PD #9. As part of that process, the plaintiff seeks case management to determine filing deadlines and steps needed to bring the matter before the Court. The plaintiff submits that it would be appropriate that all of the relief that it requests be set down for the same hearing, despite that not all of the relief is in the nature of a summary judgment application under Rule 7-2.

[52] The defendants submit that the plaintiff does not meet the test necessary for summary judgment. The defendants argue that, as there is a genuine issue of material fact requiring a trial, the matter should not be set down for hearing. The defendants invite me to dismiss the summary judgment application.

[53] GA-PD #9 sets out the process to address applications for summary judgment. It indicates that the role of the judge in the initial appearance in chambers is to manage the application and, if appropriate, set a date and time for the hearing of the application. In rare circumstances, the initial chambers judge may hear and decide the application.

[54] I do not find that this case falls within one of the rare circumstances where I should determine the summary judgment application brought by the plaintiff at the initial hearing. The issues raised by the plaintiff are complex and require proper time and briefing by the parties. As a result, the application brought by the plaintiff for summary judgment and other relief may proceed.

[55] I note that the parties have filed affidavits and briefs of law in relation to the plaintiff's application. I find that the matter is ready to be set down for hearing. As a result, the Local Registrar is to set a date for the hearing.

[56] With respect to management of this summary judgment application, I direct:

a. If the plaintiff wishes to reply to the affidavit of Stephen Burkholder, sworn May 30, 2025, that affidavit shall be served and filed within 15 days of the date of this fiat.

b. If either party seeks to cross-examine any affiant on the contents of their affidavits, any application to seek leave to cross-examine on affidavit under Rule 6-13 shall be brought no later than 45 days from the date of this fiat.

c. All cross-examinations on affidavits are to be completed by no later than November 30, 2025.

d. If either party wishes to file additional briefs of law, they shall do so within the timelines set out in Rule 7-4.

e. All timelines set out above may be modified by further order of the Court.

f. If either party wishes to file any further affidavits with the Court, they

may apply for leave to do so in accordance with Rule 6-9(7).

CONCLUSION

[57] In summary:

a. The defendants' application to amend the statement of defence is granted in part. All amendments are permitted, except paragraph 10 of the proposed amended statement of defence.

b. The defendants' application to add the proposed counterclaim is dismissed.

c. The Local Registrar is directed to set a date for the plaintiff's application filed on May 22, 2025.

d. The following deadlines are given in relation to the plaintiff's application:

i. If the plaintiff wishes to reply to the affidavit of Stephen Burkholder, sworn May 30, 2025, that affidavit shall be served and filed within 15 days of the date of this fiat.

ii. If either party seeks to cross-examine any affiant on the contents of their affidavits, any application to seek leave to cross-examine on affidavit shall be brought by no later than 45 days from the date of this fiat.

iii. All cross-examinations on affidavits are to be completed by no later than November 30, 2025.

iv. If either party wishes to file additional briefs of law, they shall do so within the timelines set out in Rule 7-4.

v. All timelines set out above may be modified by further order of the Court.

vi. If either party wishes to file any further affidavits with the Court, they may apply for leave to do so in accordance with Rule 6-9(7).

[58] The plaintiff has largely been successful on the defendants' application to amend pleadings. As a result, it is entitled to some costs. The defendants shall pay to the plaintiff costs in the sum of $1,500, payable forthwith. The costs of the first appearance of the plaintiff's application for summary judgment are left to the judge that hears the summary judgment application.

_____J.
S.M. SINCLAIR