
Court of Appeal for Saskatchewan

Citation: *Arnault v Kimble*, 2025 SKCA 120

Docket: CACV4641

Date: 2025-11-27

Between:

Amanda Arnault

Appellant
(Plaintiff/Respondent)

And

**Ross B. Kimble, Charlene Arnault, Edward Clarke and Saskatchewan Government
Insurance**

Respondents
(Defendants/Applicants)

Before: Kalmakoff, J.A. (in Chambers)

Disposition: Application granted

Written reasons by: The Honourable Justice Jeffery D. Kalmakoff

On application from: QBG-SA-00710-2011 and QBG-SA-00119-2012, Saskatoon

Application heard: November 24, 2025

Counsel: Jonathan Abrametz for the Appellant
Valerie Warwick for the Respondents

Kalmakoff J.A.

I. INTRODUCTION

[1] Amanda Arnault is the plaintiff in two civil tort actions arising from motor vehicle accidents in which she was involved. She filed civil jury demand notices in each action. Saskatchewan Government Insurance [SGI] – a named defendant in each action – applied to strike the jury notices. SGI took the position that, by virtue of its status as a Crown corporation, a jury trial is prohibited by s. 14 of *The Proceedings Against the Crown Act, 2019*, SS 2019, c P-27.01 [PACA 2019].

[2] A Court of King’s Bench judge, sitting in Chambers, granted SGI’s application and struck the jury notices (*Arnault v Arnault; Arnault v Kimble* (19 September 2025) Saskatoon, QBG-SA-00710-2011 and QBG-SA-00119-2012 (Sask) [*Decision*]). In that regard, the Chambers judge concluded that the principles of judicial comity bound him to follow the decision in *Tuttle v Ermine*, 2024 SKKB 107 [*Tuttle*], which had held that jury trials are prohibited in proceedings in against SGI.

[3] Ms. Arnault seeks leave to appeal from the *Decision*. For the reasons that follow, leave to appeal is granted.

II. BACKGROUND

A. The actions

[4] As noted above, Ms. Arnault is the plaintiff in tort actions related to two separate motor vehicle accidents. In the first action, which she commenced on May 25, 2011, the named defendants are Charlene Arnault, Edward Clarke, and SGI. In the second action, which Ms. Arnault commenced on January 20, 2012, the named defendants are Ross Kimble and SGI.

[5] In both actions, SGI was named as a defendant in its capacity as the statutory insurer under *The Automobile Accident Insurance Act*, RSS 1978, c A-35 [AAIA]. The actions have proceeded jointly through the litigation process.

B. The *Decision*

[6] On July 3, 2024, Ms. Arnault provided her jury demand notices to the Registrar of the Court of King’s Bench with respect to both actions. On July 15, 2025, SGI filed an application to strike the jury demand notices. In the *Decision*, the Chambers judge granted SGI’s application and struck the jury demand notices.

[7] In the hearing before the Chambers judge, *Tuttle* was front and centre. In *Tuttle*, the defendant, who was driving while impaired by alcohol, was involved in a collision with the plaintiff. The plaintiff sued in tort to recover damages related to her injuries. SGI was added as a third party to the action because the defendant was uninsured, given that she had been impaired at the time of the collision. The plaintiff sought a jury trial. SGI applied to have the jury notices struck. A judge of the Court of King’s Bench granted SGI’s application and struck the jury notices because she concluded that *PACA 2019* applies retrospectively, and that SGI is properly treated as “the Crown” for the purpose of s. 14 of *PACA 2019*.

[8] SGI contended that *Tuttle* was a complete answer to the question raised by the application and that the principles of judicial comity required the Chambers judge to follow and apply its reasoning. Ms. Arnault argued that *Tuttle* should not be followed because it was factually distinguishable and wrongly decided.

[9] The Chambers judge agreed with SGI’s position and determined that principles of comity required him to follow *Tuttle*. In that respect, he began by referring to *R v Sullivan*, 2022 SCC 19, [2022] 1 SCR 460 [*Sullivan*] at paras 65–86, noting that judges should decline to follow decisions of their own court only where (*Decision* at para 5):

- a. the rationale of the earlier decision has been undermined by subsequent appellate decisions;
- b. the earlier decision was reached *per incuriam*, i.e., through carelessness or inadvertence;
or
- c. the earlier decision was not fully considered, e.g., was taken in exigent circumstances.

[10] The Chambers judge then proceeded to analyse whether there existed a proper basis for him to decline to follow *Tuttle*. He began by cataloguing what he viewed as the operative findings in *Tuttle*, which were: (i) *PACA 2019* has retrospective application; (ii) as a third-party defendant, SGI was a “party” for the purpose of determining the applicability of s. 14 of *PACA 2019*; (iii) by

virtue of s. 45 of the *AAIA*, SGI has status that goes beyond that accorded to ordinary insurers; and (iv) SGI is properly treated as “the Crown” for the purpose of s. 14 of *PACA 2019* (*Decision* at para 13). He went on to say:

[15] The last of the four findings above is of great importance here. It means that unless (i) *Tuttle* can be distinguished factually, or (ii) an exception to judicial comity applies such that I should not follow *Tuttle*, I am bound to follow *Tuttle* and leave it to Court of Appeal to decide whether it was decided incorrectly. ...

[11] The Chambers judge concluded that *Tuttle* was not factually distinguishable. He held that the fact SGI came on board as a third party in *Tuttle*, as opposed to being named as a defendant from the outset in Ms. Arnault’s actions, was of no consequence; SGI was a party in either case (*Decision* at paras 16–24).

[12] The Chambers judge also determined that none of the *Sullivan* exceptions were applicable. In that respect, he noted that the only argument Ms. Arnault had raised concerning that point was that the decision in *Tuttle* was *per incuriam* or wrong. He found that submission unpersuasive, as he saw nothing in *Tuttle* to suggest that the judge who decided that case had made the decision carelessly or inadvertently, and nothing to suggest there was any obvious error in her analysis. He concluded by saying:

[39] All of that said, it is not my role to sit in appeal of [the judge who decided *Tuttle*]. The plaintiff’s onus was to establish that *Tuttle* was *per incuriam*, that it was arrived at through carelessness or inadvertence. The plaintiff has failed to meet that onus. I have undertaken the above analysis simply to assess the care utilized by [the judge who decided *Tuttle*] in making her decision. Having examined her reasons, I see no deficiencies that would suggest that it was determined carelessly or through inadvertence.

[40] As a result, I conclude that *Tuttle* was not decided *per incuriam*, and I am bound to follow it. I therefore find that SGI has immunity from jury trials pursuant to s. 14 of *PACA 2019*. It is appropriate to grant SGI’s application and strike the jury notices in each of the Actions. I so order below.

III. ANALYSIS

A. The governing test

[13] The test for leave to appeal is well known. Where leave to appeal is required, the determination as to whether it should be granted is guided by two key considerations: merit and importance. An applicant for leave to appeal bears the onus of establishing that the prospective appeal is “of *sufficient merit* to warrant the attention of the Court of Appeal” and “of *sufficient*

importance to the proceedings before the court, or to the field of practice or the state of the law, or to the administration of justice generally, to warrant determination by the Court of Appeal” (*Rothmans, Benson & Hedges Inc. v Saskatchewan*, 2002 SKCA 119 at para 6, 227 Sask R 121, emphasis in original [*Rothmans*]; see also *Hawryliw v Smith*, 2020 SKCA 92 at para 9, 18 RPR (6th) 179; and *Michel v Saskatchewan*, 2023 SKCA 97 at para 19).

B. The proposed grounds of appeal

[14] Ms. Arnault’s draft notice of appeal frames her proposed grounds of appeal as follows:

The Honourable [Chambers judge] relied on law not considered by this Court; and in error by misinterpreting *The Proceedings Against the Crown Act, 2019* and ordering that a jury is not available in claims where an Agent of the Crown is a third-party defendant by:

- i. Conflating a Crown corporation’s limited intervention authority with a direct action against the Crown;
- ii. Inferring that the legislature intended to remove a substantive right to a jury without explicit language;
- iii. Equating an Agent of the Crown as the Crown absent explicit language; and
- iv. Such further and other grounds as Counsel may advise and this Honourable Court deem appropriate.

[15] SGI attempts to characterize the proposed appeal as attacking the decision to apply horizontal *stare decisis*. I do not agree with that characterization. The real question raised by the proposed appeal, in my view, is whether the interpretation of s. 14 of *PACA 2019* settled on by the Chambers judge, through his adoption of the reasoning in *Tuttle*, was incorrect. I will analyse Ms. Arnault’s application for leave on that basis.

C. Application of the governing test

[16] I am persuaded that leave to appeal should be granted in this case, as considerations of the merit and the importance of the proposed appeal both tilt the balance decisively in that direction. Since I am granting leave, I will be circumspect in my reasons, recognizing that the merits of the appeal are for the panel that hears the appeal to determine (see, for example: *Saskatoon (City) v North Ridge Developments Ltd.*, 2015 SKCA 13 at para 51, 451 Sask R 265, and *Lepage Contracting Ltd. v Saskatchewan (Employment Standards)*, 2020 SKCA 29 at para 25).

[17] Beginning with the merit criterion, I observe that the bar Ms. Arnault must clear at this stage is not high. I am not required to decide whether her proposed appeal will succeed, but rather whether it is *prima facie* frivolous or vexatious or destined to fail, bearing in mind the applicable standard of review (*Rothmans* at para 6; *Verdient Foods Inc. v United Food and Commercial Workers, Local 1400*, 2019 SKCA 137 at para 15).

[18] The central question at issue in the proposed appeal is one of statutory interpretation. Such questions attract a correctness standard of review on appeal. I am satisfied that Ms. Arnault's proposed appeal gives rise to, at the very least, an arguable point about whether the interpretation of s. 14 of *PACA 2019* adopted by the Chambers judge was correct and, as such, it cannot be said that her appeal is frivolous, vexatious or destined to fail.

[19] Under the merit branch of the test, I am also required to consider whether the proposed appeal would unduly delay the proceedings or add unduly or disproportionately to their cost (*Rothmans* at para 6). While an appeal at this stage would undoubtedly delay the proceedings and add to their cost, I am unable to conclude that such delay or cost would be *undue* in this case, in light of all the circumstances.

[20] The second branch of the *Rothmans* test requires consideration of whether the issues raised by the proposed appeal are of sufficient importance to the proceedings before the court, the field of practice or the state of the law, or the administration of justice generally to warrant determination by the Court of Appeal. This branch asks questions such as:

- does the decision bear heavily and potentially prejudicially upon the course or outcome of the particular proceedings?
- does it raise a new or controversial or unusual issue of practice?
- does it raise a new or uncertain or unsettled point of law?
- does it transcend the particular in its implications?

[21] Cutting directly to the bottom line, I am also persuaded that the proposed appeal is of sufficient importance to merit a grant of leave to appeal. The question of whether s. 14 of *PACA 2019* prohibits jury trials in matters where SGI is a party has not been addressed by this Court. SGI

is a highly-prolific litigant in this province, by virtue of its role as a public insurer and in light of the statutory framework of the *AAIA*. Considering all of that, I have no hesitation in concluding that a definitive answer to the question raised by the proposed appeal would be of benefit to the law, as it deals with an unsettled point and has implications that transcend the particulars of this case.

IV. CONCLUSION

[22] For the foregoing reasons, I am satisfied that leave to appeal should be granted in this case. Ms. Arnault’s application is allowed. The question of costs for this application shall be left for determination by the panel that hears the appeal.

“Kalmakoff J.A.”

Kalmakoff J.A.