Court of Appeal for Saskatchewan

Docket: CACV4204

Citation: ***Goertz v The Owners of Condominium Plan No. 98SA1201*, 2026 SKCA 43**

Date: 2026-03-26

Between:

Robin James Goertz

Appellant (Applicant)

And

The Owners of Condominium Plan No. 98SA12401

Respondent (Respondent)

Before:	Schwann, Kalmakoff and Drennan JJ.A.
Disposition:	Appeal dismissed
Written reasons by:	The Honourable Justice Jillyne M. Drennan
In concurrence:	The Honourable Justice Lian M. Schwann The Honourable Justice Jeffery D. Kalmakoff
On appeal from:	2023 SKKB 95, Saskatoon
Appeal heard:	September 16, 2025
Counsel:	E.F. Anthony Merchant, K.C., and Casey Churko for the Appellant Lauren Wihak, K.C., and Gabrielle Robitaille for the Respondent

2026 SKCA 43 (CanLII)

2026 SKCA 43 (CanLII)

Drennan J.A.

I. OVERVIEW

[1] The litigation giving rise to this appeal is rooted in a long-standing condominium dispute between Robin Goertz, a condo unit owner and developer, and The Owners of Condominium Plan No. 98SA12401 [Condo Corporation], a condominium corporation in which Mr. Goertz holds condo units.

[2] The conflict between the parties led to the Condo Corporation suspending Mr. Goertz's right to vote at its annual general meeting of owners due to his failure to pay outstanding amounts owed to the Condo Corporation. Mr. Goertz eventually brought an originating application against the Condo Corporation in the Court of King's Bench, seeking orders: (a) declaring that certain bylaws [bylaws] of the Condo Corporation were ultra vires, (b) for the production of documents from the Condo Corporation's Board, (c) that he be permitted to attend and vote at the Condo Corporation's annual general meeting, (d) pursuant to s. 99.2 of *The Condominium Property Act, 1993*, SS 1993, c C-26.1 [*CPA*], prohibiting the Board of the Condo Corporation from taking oppressive action against him, (e) that the Board comply with the *CPA* and not pass bylaws that are contrary to the *CPA*, and (f) pursuant to s. 101 of the *CPA* appointing an administrator of the Condo Corporation.

[3] Mr. Goertz's application was dismissed by a King's Bench judge sitting in Chambers. The Chambers judge awarded the Condo Corporation "costs of the proceedings […] against Goertz, on a solicitor-client basis, to be taxed" (at para 69): *Goertz v The Owners Condominium Plan No. 98SA12401*, 2017 SKQB 135 [*Goertz #1*]. Mr. Goertz appealed against both the substantive decision and the costs ruling that was made in *Goertz #1*. This Court dismissed his appeal on all matters: *Goertz v The Owners of Condominium Plan No. 98SA12401*, 2018 SKCA 41, leave to appeal from SCC denied, 2019 CanLII 14406 (SCC) [*Goertz SKCA*].

[4] Several years later, the Condo Corporation applied pursuant to Rule 11-20 of *The King's Bench Rules* for an order "assessing the costs of the action [*Goertz #1*] on a solicitor-client basis, including solicitor-client costs from the within application" Mr. Goertz opposed the assessment, arguing that (a) as he was an insured under the Condo Corporation's liability insurance policy

[Policy], he did not have to pay the costs award because he was entitled to be indemnified under the Policy , (b) the Policy provided a waiver of subrogation rights against him as an owner of units within the Condo Corporation, (c) even if the insurer had a right of subrogation, the Condo Corporation admitted this was not a subrogated claim, and because the proper procedure was not followed by the insurer the claim was statute barred, and (d) even if Mr. Goertz was not an insured under the Policy, permitting assessment of the costs ordered would amount to double recovery because the Condo Corporation's insurer covered its legal fees and provided full indemnity. Mr. Goertz adduced evidence in support of these assertions, in the form of his affidavit sworn April 19, 2023, to which he exhibited the Policy, various riders, and correspondence he had exchanged with the Condo Corporation's counsel. The Condo Corporation asserted in response that none of these arguments should be entertained by the Chambers judge, as he was *functus officio* with respect to the costs award (except for the assessment of the quantum) and could not entertain Mr. Goertz's arguments opposing the assessment. It also submitted that Mr. Goertz's arguments at the assessment stage were a collateral attack on it.

2026 SKCA 43 (CanLII)

[5] The Chambers judge rejected all of Mr. Goertz's arguments in a decision dated May 4, 2023: *Goertz v Owners of Condominium Plan No. 98SA12401*, 2023 SKKB 95 [*Goertz #2*]. He determined that (a) Mr. Goertz was not an insured under the Policy, (b) payments made by the insurer to reimburse the Condo Corporation for solicitor-client costs in defending the claim were not payments that Mr. Goertz could claim as having been made on his behalf, and (c) the Condo Corporation's application to have costs assessed was the appropriate procedure to pursue costs paid by the insurer for the Condo Corporation's defence. In the closing paragraphs of *Goertz #2*, the Chambers judge determined that he was *functus* in respect of the matter of costs but was not *functus* respecting "any new issues raised with respect to the rights or absence of rights with respect to insurer subrogation" (at para 31).

[6] Mr. Goertz was granted leave to appeal from *Goertz #2 nunc pro tunc* (*Goertz v The Owners of Condominium Plan No. 98SA12401* (12 November 2024), Regina CACV4204 (SKCA) [*Leave Decision*]). On appeal, Mr. Goertz says that the Chambers judge erred in concluding that the costs awarded in *Goertz #1* and their assessment did not amount to double recovery in favour of the Condo Corporation. In essence, Mr. Goertz advances the same arguments he did before the Chambers judge, asserting that (a) a claim against him for costs was prohibited because the Condo

Corporation had been indemnified and a claim by the insurer was statute barred, (b) he is a co-insured on the Policy with the Condo Corporation and there was no dispute as to his status under the Policy – and alternatively, the rule against double recovery applied even if he was not a co-insured under the Policy, and (c) subrogation serves to avoid double recovery.

2026 SKCA 43 (CanLII)

[7] In response, while the Condo Corporation says that Mr. Goertz's substantive grounds of appeal reveal no reviewable error by the Chambers judge, its overarching submission is that the Chambers judge was *functus officio* with respect to the matter of costs and was barred from considering Mr. Goertz's arguments on insurer subrogation and double recovery.

[8] I agree with the Condo Corporation that the Chambers judge was *functus officio* with respect to the award of costs related to *Goertz #1*, and as a result, could not entertain the arguments that Mr. Goertz advanced at the assessment. At bottom, Mr. Goertz was not seeking that the costs be assessed at a certain amount or even assessed at a quantum of zero; he was opposing the enforcement of the award of costs that was made in *Goertz* #1 by resisting the assessment of those costs. In short, he is seeking to revisit the Condo Corporation's entitlement to costs, previously determined in a final order, without establishing any proper basis for the Chambers judge to do so. The Chambers judge had no jurisdiction to revisit those final determinations and could only conduct the assessment and determine the quantum of the costs. Mr. Goertz made no submissions on that issue. For this reason alone, I would dismiss Mr. Goertz's appeal.

[9] Alternatively, even had the Chambers judge not been *functus officio*, Mr. Goertz's appeal would fail on the merits, as he has not identified any reviewable error in *Goertz #2*.

II. ANALYSIS

A. The Chambers judge was *functus officio* in relation to the award of costs and Mr. Goertz's arguments at the assessment sought to revisit that award

[10] Before the Chambers judge and this Court, the Condo Corporation's primary position is that the Chambers judge was *functus officio* respecting the award of costs made in the *Goertz #1,* and the arguments made by Mr. Goertz at the assessment sought to revisit that award.

[11] For clarity, entertaining the Condo Corporation's submission on this point falls within the well settled law established by *R v Perka*, 1984 CanLII 23, [1984] 2 SCR 232 at p 240 (SCC), being that "[i]n both civil and criminal matters it is open to a respondent to advance any argument to sustain the judgment below, and he is not limited to appellants' point of law" (see also *R v Toulejour*, 2022 SKCA 20; S. Cameron, *Civil Appeals in Saskatchewan: The Court of Appeal Act & Rules Annotated*, 1st ed (Law Society of Saskatchewan Library, 2015) at p 20). The Condo Corporation rightly points out that an appeal is from the result and not the reasons, and the result here was appropriate, even if it disagreed with the Chambers judge's conclusion on the doctrine of *functus officio*.

[12] Having that matter sorted, I return to the tail end of the Chambers judge's reasons in *Goertz #2*, in which he determined that he was *functus officio* with respect to the costs order he had made in *Goertz #1* and all that remained was an assessment of the quantum and Mr. Goertz's arguments respecting insurer subrogation:

> [31] I am of the opinion that I am functus in respect of my judgment awarding solicitor-client costs in favour of the Condo Corp. As such, I must proceed to the assessment of those solicitor-client costs as requested. Having said that, I accept that I am not functus in respect of deciding any new issues raised with respect to the rights or absence or rights with respect to insurer subrogation.
>
> [32] I have, for the reasons outlined above, rejected all of the arguments presented for Mr. Goertz. As I have previously concluded, those positions and arguments are not supported by the facts or the law. The arguments advanced were based upon invalid propositions of law regarding subrogation rights, obligations, procedure and the interpretation of the Policy.

[13] Cutting to the bottom line, I agree with the Condo Corporation that the Chambers judge was incorrect to conclude that, despite his *functus* ruling in paragraphs 31 and 32 above, he could entertain Mr. Goertz's general insurer subrogation and double recovery arguments. Aside from the question of the assessment, he was *functus officio* with respect to Mr. Goertz's claim to be immunized from that award.

[14] To explain this conclusion, it is helpful to expand on why I see Mr. Goertz's arguments before the Chambers judge as challenging liability for and entitlement to costs – matters that had already been decided in *Goertz #1* – rather than addressing the quantum of costs on the assessment.

2026 SKCA 43 (CanLII)

2026 SKCA 43 (CanLII)

[15] In the *Leave Decision*, a panel of this Court commented that Mr. Goertz's arguments may not involve a challenge to the costs awarded per se, but instead, be an argument that the costs awarded should be assessed at zero (at para 15). I note that the panel granting leave did not have the benefit of the respondent Condo Corporation's written submission on the appeal proper at that time. However, with the Court now having the benefit of the parties' full submissions on the appeal proper, it is clear that Mr. Goertz has not, at any time in the proceedings, argued that the costs should be assessed at a certain amount – or even assessed at zero. Instead, before the Chambers judge, Mr. Goertz opposed the assessment occurring on the basis that insurance, subrogation and double recovery prevented the Condo Corporation's entitlement to "recover solicitor and client costs" (at paras 10, 11, and 60). He also argued that the application for the assessment and the "quantum of costs [was] rendered completely irrelevant" (at para 13), because the Condo Corporation had "[…] already been fully indemnified" (at paras 59 and 60).

[16] In a similar vein, Mr. Goertz asks this Court to set aside the order of the Chambers judge and order that the costs awarded against him be "declared as having been paid or settled". He does not seek that the costs be assessed in any amount; he asks that they never be assessed at all. In his oral and written submissions, he also argued, in various ways, that solicitor-client costs should not have been ordered pursuant to the bylaws in the first instance.

[17] The record also shows that none of Mr. Goertz's arguments addressed the quantum of costs, which remained a proper issue to be decided when the matter came before the Chambers judge. Again, and to repeat, his submissions challenged the Condo Corporation's *entitlement* to solicitor-client costs and Mr. Goertz's liability for the same. They also explicitly took issue with the Chambers judge's ability to assess the costs – something he had previously directed in the award of costs in *Goertz #1*. Because the Chambers judge had made a final determination on these issues, it was not open to him to reopen the matter for new evidence to be heard or to amend that final decision (*Harle v 101090442 Saskatchewan Ltd.*, 2016 SKCA 66 at para 18 [*Harle*], citing *Doucet-Boudreau v Nova Scotia (Department of Education)*, 2003 SCC 62 at para 113 [*Doucet-Boudreau*]; see also *In re Swire* (1885), 30 Ch D 239 (UKCA); *Paper Machinery Ltd. v J.O. Ross Engineering Corp.*, 1934 CanLII 1, [1934] SCR 186 (SCC) [*Paper Machinery*]). In other words, because the Chambers judge had "performed his…office" by deciding the matter and making a final determination on entitlement and liability for costs, and the nature of those costs being

solicitor-client (to be taxed), he had "discharged [his] office and did not have the ability to return to and correct [his] decision" (*Canadian Broadcasting Corp. v Manitoba*, 2021 SCC 33 at para 32 [*Canadian Broadcasting*], citing A.S.P. Wong, "Doctrine of *Functus Officio*: The Changing Face of Finality's Old Guard" (2020) 98 *Canadian Bar Review* at pp 546-547; see A. Mayrand, *Dictionnaire de maximes et locutions latines utilisées en droit*, 4th ed (Yvon Blais Publishing, 2007), who also uses the term *functa officio*).

[18] To put the matter more starkly, as a formal judgment had been entered in *Goertz #1* (and upheld on appeal), the Chambers judge had lost jurisdiction to consider Mr. Goertz's arguments at the time of the assessment, which were designed to revisit the Condo Corporation's entitlement to costs as ordered in *Goertz #1* (see *Canadian Broadcasting* at para 33, citing *R v Adams*, 1995 CanLII 56, at para 29, [1995] 4 SCR 707 (SCC); *R v Smithen-Davis*, 2020 ONCA 759 at paras 33-34; see also *Peltier*). The arguments further amounted to an impermissible collateral attack on the Chambers judge's decision to award solicitor-client costs to the Condo Corporation in *Goertz #1* (see on this point generally, *R v Bird*, 2017 SKCA 32 at para 32, citing *R v Litchfield*, [1993] 4 SCR 333 at 348 (SCC); *Solgi v College of Physicians and Surgeons of Saskatchewan*, 2022 SKCA 96 at paras 69-72). Put colloquially, the ship had sailed on the entitlement arguments, and the only issue remaining was the assessment of those costs.

[19] I accept that, in the context of *Goertz #1*, none of these arguments were advanced by Mr. Goertz before the Chambers judge. Mr. Goertz also did not make these submission, or adduce fresh evidence supporting the same, in in his appeal to this Court in *Goertz SKCA*. Instead, he argued that the Chambers judge erred in principle by awarding solicitor-client costs pursuant to the bylaws. Only when the matter came before the Chambers judge for assessment under Rule 11-20 did Mr. Goertz raise the subrogation and double recovery arguments. Nonetheless, these arguments do not provide a basis for Mr. Goertz to seek to overturn the costs award made in *Goertz #1*.

[20] In my view the doctrine of *functus officio* is intended to prevent the exact type of litigation approach taken by Mr. Goertz.

[21] Along with the doctrines of collateral attack, *res judicata*, and the principle of *stare decisis* the doctrine of *functus officio* is one of "many rules of law and maxims of equity [that] reinforce

2026 SKCA 43 (CanLII)

the principle of finality of litigation" (*Harle* at paras 15-22). To that end, the doctrine guards against "the recurring danger of the trial process becoming or appearing to become a 'never closing revolving door' through which litigants could come and go as they pleased" (*Doucet-Boudreau* at para 116, citing *R v H. (E.F.)*, 1997 CanLII 418, 115 CCC (3d) 89 at p 101 (ONCA)). The Supreme Court in *Canadian Broadcasting* spoke to the important economic, psychological, and practical finality achieved by the doctrine, including that it ensures a "reliable basis from which to launch an appeal":

> [34] This rule serves goals of finality and, by stabilizing judgments subject to review, of an orderly appellate procedure (*Chandler*, at p. 861; *H. (E.)*, at p. 214). As Doherty J.A. wrote in *Tsaoussis (Litigation Guardian of) v. Baetz* (1998), 1998 CanLII 5454 (ON CA), 41 O.R. (3d) 257 (C.A.), for the parties to litigation, finality meets both an economic and psychological need as well as serving as a practical necessity for the system of justice as a whole (pp. 264-65). More specifically, if lower courts could continuously reconsider their own decisions, litigants would be denied a reliable basis from which to launch an appeal to a higher court (*Doucet-Boudreau*, at para. 79; see also *Ayangma v French School Board*, 2011 PECA 3, 306 Nfld. & P.E.I.R. 103, at paras. 11-12). The appeal record would be written on "shifting sand", ultimately inhibiting effective review (*Wong*, at p. 548).

[22] Here, Mr. Goertz's arguments, at their core, seek to undercut the finality of *Goertz #1*, creating a "revolving door" on the costs issue generally. He has now effectively argued the costs matter twice before the Chambers judge: first, by making submissions as to whether costs should be awarded for or against the Condo Corporation, and on what basis; and second, by asserting that costs should not be assessed as insurer subrogation and double recovery principles negated his liability for costs and the Condo Corporation's entitlement to costs altogether. He has also now had two appeals arising from the same matter: the first, in which he argued that costs should not have been awarded in light of the mixed success on the application, and not on a solicitor-client basis under the bylaws; and the second, (under the rubric of assessment of an existing order that has been sustained by this Court) arguing that the assessment of costs will result in double recovery. All of this has occurred without costs having yet been assessed, and without Mr. Goertz having ever made submissions on what the quantum of costs should be.

[23] I am also not persuaded that Mr. Goertz advanced or established a "very limited circumstance" by which the Chambers judge could have amended the costs award, being "where there is a statutory basis to do so, where necessary to correct an error in expressing its manifest intention, or where the matter has not been heard on its merits" (*Canadian Broadcasting* at para 33, citing *Chandler v Alberta Association of Architects*, 1989 CanLII 41, [1989] 2 SCR 848 at p 861

2026 SKCA 43 (CanLII)

(SCC), citing *Paper Machinery*; *R v H.(E.F.)* at pp 214-215, citing *The Queen v Jacobs*, 1970 CanLII 143, [1971] SCR 92 (SCC); see also *R v Burke*, 2002 SCC 55 at para 54). I also observe that there *may* be other narrow circumstances where a court could revisit a final judgment, being where there "has been a fraud upon the court, or a miscarriage of justice" (*P.R.C. v C.K.C.*, 2025 BCCA 441 at para 6, citing *Coad v Lariviere*, 2023 BCCA 458 at para 16; see also *Yang v Yang*, 2025 BCCA 328 at para 61), but there is no suggestion that such circumstances exist here.

2026 SKCA 43 (CanLII)

[24] Mr. Goertz did not put forward any statutory basis to justify an order which effectively revisited or set aside the costs portion of *Goertz #1*, nor did he suggest that his arguments served any corrective purpose. He also did not argue that any fraud upon the court or miscarriage of justice was occasioned by the costs order. It is clear he did not do so because he took the position that the Chambers judge was not *functus officio* and, as it turned out, his arguments were entertained on the assessment – even though all those arguments were geared to escape liability for the costs previously ordered.

[25] This is also not a circumstance where issues relating to costs had not been heard on the merits. All matters *relevant* to costs, being whether the Chambers judge should award costs, the nature of those costs (party and party or solicitor-client), and Mr. Goertz's liability to pay those costs to the Condo Corporation as the successful party, *were* fully argued before and addressed by the Chambers judge prior to *Goertz #1* being rendered. To that end, I accept the Condo Corporation's submission (which is also relevant to the merits of Mr. Goertz's appeal) that the insurer's payments for the Condo Corporation's defence are irrelevant to the discretionary determination of whether to award costs against Mr. Goertz in favour of the Condo Corporation as the successful party, or to the assessment of costs on *Goertz #1* (see on this point *Armand v Carr*, 1927 CanLII 4, [1927] SCR 348 (SCC); *Harach v Schubert*, 1999 SKQB 49; see also *Wanner v Christie*, 2016 SKQB 147). In other words, any potential indemnity for legal defence costs is strictly between the insurer and its insured (the Condo Corporation), and therefore of no moment to the legal principles or factual considerations bearing upon the discretionary decision of a judge to award costs.

[26] I would also observe that, although not entirely on all fours with the present case, the decision in *1022049 Alberta Ltd. v Medicine Hat (City of),* 2006 ABQB 208, is of some assistance.

In that case, the trial judge ordered costs payable by the plaintiff night club owner to the successful respondent, the City of Medicine Hat. Thereafter, the plaintiff sought to argue that the respondent City should not receive costs due to the City's bad faith conduct occurring following the costs judgment. The trial judge dismissed the plaintiff's application because she determined that she was *functus* "on the issue of who is to receive costs in these proceedings", given that the costs had already been awarded to the respondent City. She went on to say that "ruling otherwise after the fact, would be inconsistent with the [costs] judgement", and that no errors had been identified that required amendment (at paras 22-24). The same can be said of Mr. Goertz's position here. His arguments on subrogation and double recovery amount to a request for a ruling from the Chambers judge that he owed no costs, and that the Condo Corporation was not entitled to costs against him, on a solicitor client basis. He offers no legal authority for the proposition that a costs award can be negated or reversed at the assessment stage, based on new arguments not advanced when the costs award was made.

2026 SKCA 43 (CanLII)

[27] For all these reasons, I conclude that the Chambers judge was *functus officio* and had no jurisdiction to entertain Mr. Goertz's insurer subrogation and double recovery arguments at the assessment stage, all of which were aimed squarely at revisiting the costs award.

B. The Chambers judge did not err in rejecting Mr. Goertz's submissions on the assessment respecting insurer subrogation and double recovery

[28] While my determination on the *functus officio* point is dispositive of the appeal – as well as the jurisdiction of the Chambers judge and this Court (see on this point *Moore v Hurst*, 2021 SKCA 27 at para 12) to address Mr. Goertz's submissions which sought to undercut *Goertz #1* – for the sake of completeness, I will offer a few brief comments respecting the merit of Mr. Goertz's substantive grounds of appeal.

[29] In broad terms, Mr. Goertz says that the Chambers judge made errors of law and of mixed fact and law by dismissing his arguments and by concluding that there was no double recovery of costs by the Condo Corporation. In his oral submissions, Mr. Goertz raised additional arguments, including that: (a) the Policy should not have applied at all, and the insurer wrongly triggered the duty to defend, and (b) that the bylaws cannot justify a solicitor and client costs award, as the Condo Corporation never assigned its rights under the bylaws to its insurer. From this, Mr. Goertz

made new submissions on the proper interpretation of the Policy, the Policy being a standard form contract, and the standard of review applicable to the Chambers judge's interpretation of that Policy.

[30] Dealing first with Mr. Goertz's new arguments on appeal, the decision to entertain them is a discretionary one, having regard to whether the issue is truly new, the evidentiary record, and the interests of justice as they affect the parties (see *Kupsar v Regina Provincial Correctional Centre*, 2020 SKCA 142 at para 29, citing *R v Ahmed*, 2019 SKCA 47 at para 15). Here, the issues raised, the evidentiary record, and the interests of justice weigh heavily and definitively against entertaining these arguments. None of these submissions were addressed by the Chambers judge, and the respondent Condo Corporation had only a passing opportunity to respond to the matters in oral argument. Moreover, I am also of the view that these new arguments would not raise any meaningful challenge to Chambers judge's reasoning, and that they are again geared towards undermining the Condo Corporation's entitlement to solicitor-client costs. I will therefore not consider them further in these reasons.

[31] Returning to Mr. Goertz's core arguments on appeal, in my view, they primarily attack the Chambers judge's factual findings, thereby attracting the palpable and overriding error standard of review. That standard requires Mr. Goertz to demonstrate that the Chamber's judge's errors are obvious and go to the core decision he made, such that they are capable of changing the result (*Yorkton (City) v Mi-Sask Industries Ltd*., 2021 SKCA 43 at paras 26-27; *Canada v South Yukon Forest Corporation,* 2012 FCA 165 at para 46; see also *Patel v Dermaspark Products Inc*., 2025 FCA 145 at paras 9-12).

[32] In addressing Mr. Goertz's submissions, it is helpful to review what findings the Chambers judge made in *Goertz #2* and how he made them. He began his analysis by considering whether Mr. Goertz was an "insured" within the meaning of the Policy whom the insurer was obliged to defend in the proceedings. He found as a fact that Mr. Goertz was not an insured (at paras 9, 12 and 14). He also found that the plain text of the Policy indicated that a condo unit owner (such as Mr. Goertz) was insured only for liability arising out of "common property", and not for matters arising from their occupation or use of condo units (at paras 9-14). He concluded as well that

2026 SKCA 43 (CanLII)

"common property" did not include "everything in any way connected to the Condo Corp, including its governing bylaws" (at paras 9, 11-12).

[33] The Chambers judge went on to determine that the payments for legal fees made by the insurer to the Condo Corporation were not payments Mr. Goertz could claim as having been made on his behalf because he was not an insured under the Policy with respect to the risk in issue. He found that "Mr. Goertz's proceedings against the Condo Corporation were an intentional act, and there is no basis in the Policy language or under insurance law that he can claim to be an insured in respect of the loss or damage he occasioned. The arguments advanced by counsel in this and other respects simply ignore basic principles of insurance law and the provisions of the Policy in effect" (at paras 11-13).

[34] As to the subrogation and double recovery aspects of Mr. Goertz's submission, the Chambers judge found as a fact that the insurer had not waived its rights of subrogation as against Mr. Goertz (at para 16). He concluded that the Condo Corporation's application for the assessment was "the appropriate procedure to follow in this case to enforce the insurer's subrogation rights" (at para 29), that "there was no need for a separate action to be commenced by the insured in the Condo Corporation's name to pursue its subrogation claim" (at para 24), and that no admission was made by the Condo Corporation's counsel that the assessment of solicitor-client costs was not part of a subrogation claim (see paras 17-20, referencing exhibit "A" to the affidavit of Mr. Goertz, being a letter from Mr. Mager, counsel for the Condo Corporation, respecting legal costs paid by the insurer for which the Condo Corporation sought recovery). In the end, he determined that there would be no "double recovery since the Condo Corp must account to the insurer for the solicitor-client costs recovered from Mr. Goertz" (at para 30).

[35] Mr. Goertz's appeal is premised largely on his assertion that the Chambers judge erred in concluding that he was not an insured within the meaning of the Policy. However, he has failed to demonstrate any palpable and overriding error in that finding, nor any extricable legal error in the Chamber judge's interpretation of the Policy itself. It was this factual finding that necessitated the Chambers judge's corollary conclusion, being that Mr. Goertz could not claim payments made by the insurer to reimburse the Condo Corporation's legal fees as payments made on his behalf.

2026 SKCA 43 (CanLII)

[36] Similarly, it was open to the Chambers judge, on the record before him, to find that the insurer had not waived its rights of subrogation against Mr. Goertz. I see no palpable and overriding error in that determination. Further, I do not see any error in the Chambers judge's identification and application of the legal principles respecting subrogation and double recovery, which led him to conclude that: (a) the Condo Corporation properly brought the application for the assessment on behalf of the insurer and that no separate action by the insurer was required (citing Barbara Bilingsley, *General Principles of Canadian Insurance Law*, 2nd ed (Canada, Lexis Nexus Canada Inc., 2014) at pp 343-344 at paras 21-23), and (b) double recovery would not occur because the Condo Corporation was pursuing the assessment to account to the insurer for the payment of the Condo Corporation's legal fees. He also, in my view, correctly rejected Mr. Goertz's submission that this Court's decision in *Insurance Company of the State of Pennsylvania v Cameco Corporation* 2010 SKCA 95, was supportive of his argument that the insurer was required to commence a separate action.

[37] In the end, Mr. Goertz's arguments on appeal are the same ones he made before the Chambers judge, and he has not identified any error warranting this Court's intervention. As noted previously, the only legal error I see in the Chambers judge's reasoning respects his application of the doctrine of *functus officio*, which does not assist Mr. Goertz on appeal.

[38] For these reasons, if I had not already disposed of Mr. Goertz's appeal on the basis of the *functus officio* issue, I would find that it fails on its merits.

2026 SKCA 43 (CanLII)

III. CONCLUSION

[39] I would dismiss the appeal and order that Mr. Goertz pay the costs of the appeal to the Condo Corporation, on a solicitor-client basis pursuant to its bylaws.

2026 SKCA 43 (CanLII)

"Drennan J.A."
Drennan J.A.

I concur. "Schwann J.A."
Schwann J.A.

I concur. "Kalmakoff J.A."
Kalmakoff J.A.