
Court of Appeal for Saskatchewan
Docket: CACV4270

**Citation: *Edge v Moose Jaw Downtown and Soccer/Field-House Facilities Inc.*,
2025 SKCA 17**

Date: 2025-02-13

Between:

Graham Edge

Appellant
(Plaintiff (Respondent))

And

**Moose Jaw Downtown and Soccer/Field House Facilities Inc., Ted Schaeffer,
Brian Swanson, Scott McMann and Crystal Froese**

Respondents
(Defendants (Applicants))

Before: McCreary, Bardai and Kilback JJ.A.

Disposition: Appeal allowed in part

Written reasons by: The Honourable Justice Keith D. Kilback
In concurrence: The Honourable Justice Meghan R. McCreary
The Honourable Justice Naheed Bardai

On appeal from: 2023 SKKB 207, Moose Jaw
Appeal heard: December 3, 2024

Counsel: M. Danish Shah for the Appellant
C. Kelsey O'Brien and Michael A. MacDonald for the Respondents

Kilback J.A.

I. INTRODUCTION

[1] The central issue in this appeal is whether the one-year limitation period in s. 307(1) of *The Cities Act*, SS 2002, c C-11.1 [Act] applies to a wrongful dismissal claim against a city-controlled corporation and its directors.

[2] Moose Jaw Downtown and Soccer/Field House Facilities Inc. [DFHF] was a non-profit corporation established by the City of Moose Jaw to manage certain real estate and public facilities owned by the City. The individual respondents were members of the DFHF board of directors.

[3] Not long after he was hired, Graham Edge was dismissed as the general manager of DFHF. He subsequently commenced an action for wrongful dismissal against DFHF and the directors in the Court of King's Bench. A Chambers judge found that the limitation period in s. 307(1) of the Act applied to Mr. Edge's claims and that the statement of claim was issued and served after this limitation period had expired. The judge determined that the action was therefore statute barred in its entirety and struck the statement of claim under Rule 7-9 of *The King's Bench Rules: Edge v Moose Jaw Downtown and Soccer/Field House Facilities Inc.*, 2023 SKKB 207, 44 MPLR (6th) 297 [Decision].

[4] Mr. Edge appeals from the *Decision*. He says the Chambers judge erred in finding that the one year limitation period in s. 307(1) of the Act applied. He contends that the two year limitation period set out in s. 5 of *The Limitations Act*, SS 2004, c L-16.1 governs his claims against both DFHF and the directors. Mr. Edge also argues the Chambers judge erred in not finding that the respondents had intentionally concealed certain documents and not ordering their production.

[5] For the reasons that follow, I would allow the appeal of the order striking the claim against the directors and dismiss the appeal of the order striking the claim against DFHF. In my respectful view, the Chambers judge erred in summarily determining that the limitation period in s. 307(1) of the Act applied to the claims against the directors and striking those claims under Rule 7-9. However, the Chambers judge made no error in striking the claim against DFHF.

II. BACKGROUND

[6] In 2010, the City incorporated DFHF under *The Non-profit Corporations Act, 1995*, SS 1995, c N-4.2, which was later repealed by *The Non-profit Corporations Act, 2022*, SS 2022, c 25. Brian Swanson, Scott McMann and Crystal Froese were elected City councillors who were appointed to the DFHF board of directors by the City. Ted Schaeffer was employed as the City's Director of Parks and Recreation and was an ex officio member of the board, without voting rights.

[7] Mr. Edge was hired as the general manager of DFHF effective January 15, 2018. The board of directors terminated Mr. Edge's employment for cause on May 24, 2018, during his six-month probationary period. The reason given by the board was "incompatibility with staff and relationships with third party groups". DFHF continued to pay Mr. Edge's salary until June 15, 2018.

[8] On April 15, 2020, Mr. Edge commenced an action against DFHF and the directors for wrongful dismissal. He claimed he was not dismissed for misconduct but instead because he had started an investigation into allegations that another employee was verbally and sexually harassing staff. He also claimed against the directors personally for breach of their duty to act honestly and in good faith under *The Non-profit Corporations Act, 1995*.

[9] On March 24, 2023, DFHF and the directors applied under Rules 7-9(2)(a), (b) and (e) of *The King's Bench Rules* for an order striking the statement of claim on the basis that it disclosed no reasonable cause of action, was scandalous, frivolous, or vexatious, or was otherwise an abuse of process. The primary argument was that the claim was issued and served after the one year limitation period in s. 307(1) of the *Act* had expired.

[10] On June 9, 2023, Mr. Edge responded with his own application. He applied for production of certain documents and for orders finding (i) that s. 307 of the *Act* is unconstitutional and does not govern the relationship between the City and its employees; and (ii) that the directors failed to act honestly and in good faith contrary to *The Non-profit Corporations Act, 1995*. Mr. Edge also applied for orders finding that DFHF and the directors:

- (a) intentionally acted in bad faith by failing to provide documents to allow him to determine if he had sustained damages for discriminatory action under s. 2-42 of *The Saskatchewan Employment Act*, SS 2013, c S-15.1;
- (b) intentionally concealed documents in their possession; and
- (c) wilfully misled him and concealed that his loss was caused or contributed to by them, thereby suspending the limitation period for commencing an action for wrongful dismissal by operation of s. 17 of *The Limitations Act*.

[11] On September 28, 2023, the Chambers judge found that the one year limitation period in s. 307(1) of the *Act* applied and that the statement of claim was issued and served after this limitation period had expired. For this reason, the Chambers judge struck the statement of claim in its entirety without considering the other grounds advanced by DFHF and the directors. Since he concluded the statement of claim should be struck, the Chambers judge also dismissed Mr. Edge's application without substantively considering it.

III. ISSUES

[12] Mr. Edge raises six grounds of appeal. I reframe the issues as follows:

- (a) Did the Chambers judge err in finding that the limitation period in s. 307(1) of the *Act* applied to the claim against DFHF and striking that claim?
- (b) Did the Chambers judge err in finding that the limitation period in s. 307(1) of the *Act* applied to the claims against the directors and striking those claims?
- (c) Did the Chambers judge err in not ordering production of documents?

IV. APPLICATION TO ADDUCE FRESH EVIDENCE

[13] Before turning to the substantive issues, I will address Mr. Edge's application pursuant to Rule 59 of *The Court of Appeal Rules* to adduce evidence on the appeal.

[14] Mr. Edge seeks to file an affidavit exhibiting an email exchange between his counsel and a reference librarian at the Saskatchewan Legislative Assembly library together with excerpts from the Legislative Assembly record of *Debates and Proceedings (Hansard)*. The *Hansard* excerpts are records of debates held in the spring and summer of 1985 regarding amendments to *The Urban Municipality Act, 1984*, SS 1983-84, c U-11 [UMA], which was later repealed and supplanted by the *Act*.

[15] Mr. Edge argues this evidence is relevant to a proper understanding of the legislative history of the *Act* and would be helpful in interpreting it. *Hansard* evidence can play a limited role in the interpretation of legislation and may be admitted as relevant to both the background and purpose of legislation. See: *R v Morgentaler*, [1993] 3 SCR 463 (WL) at para 31; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 35 [*Rizzo Shoes*]; *Reference re Firearms Act (Can.)*, 2000 SCC 31 at para 17, [2000] 1 SCR 783; *H.L. v Canada (Attorney General)*, 2005 SCC 25 at para 106, [2005] 1 SCR 401; and *Reference re Impact Assessment Act*, 2023 SCC 23 at para 89, 486 DLR (4th) 379.

[16] There was some discussion at the outset of the hearing as to whether an application was required, because it is sometimes appropriate to take judicial notice of *Hansard* debates. See: *Newfoundland (Treasury Board) v N.A.P.E.*, 2004 SCC 66 at para 56 and *Copper Sands Land Corporation v Edwards*, 2017 SKCA 7 at para 34, 411 DLR (4th) 659. In light of this discussion, I would admit the evidence in this case. Without deciding the point, I observe there is some authority for the proposition that the test for admission of new evidence on appeal set out in *R v Palmer*, [1980] 1 SCR 759 (WL), does not govern the admissibility of *Hansard* evidence: *Kennedy v Leeds, Grenville and Lanark District Health Unit*, 2009 ONCA 685 at paras 23–25, 99 OR (3d) 215, leave to appeal to the SCC refused, 2010 CanLII 19305.

V. ANALYSIS

A. The claim against DFHF

[17] Mr. Edge argues the Chambers judge erred in finding that the limitation period in s. 307(1) of the *Act* applied to his wrongful dismissal claim against DFHF. He says that limitation period applies only where the cause of action is correlated to the exercise of a public power or duty, and

does not apply to employment relationships. Respectfully, I am not persuaded by this argument. In my view, the Chambers judge made no error in concluding that s. 307(1) applied to Mr. Edge's wrongful dismissal claim against DFHF.

[18] Section 307(1) of the *Act* reads as follows:

Limitation of action

307(1) Notwithstanding *The Limitations Act*, no action is to be brought against a city for the recovery of damages after the expiration of one year from the time when the damages were sustained, and no action is to be continued unless service of the statement of claim is made within that one-year period.

[19] In the proceedings before the Chambers judge and on this appeal, the parties agreed that the term “city” in s. 307(1) includes DFHF. This is because under s. 301.1 of the *Act*, “city” includes a “controlled corporation”, and the parties agree that DFHF is a controlled corporation as defined in s. 2(1). It is therefore not disputed that the limitation period in s. 307(1) applies, in general terms, to claims against DFHF.

[20] The Chambers judge found that Mr. Edge was suing for the recovery of damages sustained on or about May 25, 2018, when his employment was terminated. The judge found that the statement of claim was issued and served more than one year after the damages were sustained and that the claim was therefore statute barred by operation of s. 307(1) because the claim was not issued or served in time.

[21] Mr. Edge does not challenge the finding of when his claim was discovered for limitations purposes. Rather, he argues that the one year limitation period in s. 307(1) does not apply to his wrongful dismissal claim as a matter of law because of the nature of that claim.

[22] Mr. Edge contends that s. 307(1) establishes the limitation period for actions against a city only where the plaintiff's cause of action is correlated to the city's exercise of a public power or duty. He submits that since his wrongful dismissal action against DFHF was based on an alleged breach of a private employment contract, it did not have the necessary public character for s. 307(1) to apply. Instead, he asserts that his action, and all actions for wrongful dismissal against cities, are subject to the two-year limitation period in s. 5 of *The Limitations Act*.

[23] In advancing this argument, Mr. Edge relies heavily on *Des Champs v Conseil des écoles séparées catholiques de langue française de Prescott-Russell*, [1999] 3 SCR 281 [*Des Champs*]. In that case, the Supreme Court of Canada considered the effect of s. 7 of the Ontario *Public Authorities Protection Act*, RSO 1990, c P.38, which established a six month limitation period for actions against public authorities for acts “done in pursuance or execution or intended execution of any statutory or other public duty or authority”.

[24] The Supreme Court held that this language restricted the protection of the limitation period to actions involving the execution of public duties and powers. As a result, it was necessary for a court faced with “similarly worded limitations statutes” to examine the nature of the statutory power or duty imposed on the defendant public authority, as well as the character of the particular conduct about which the plaintiff complains, in order to determine whether the limitation period applied. See: *Des Champs* at paras 12 and 50, and *Berendsen v Ontario*, 2001 SCC 55 at para 15, [2001] 2 SCR 849, citing *Bradford (Corp.) v Myers* (1915), [1916] 1 AC 242 (HL) per Lord Buckmaster L.C. at 247–248.

[25] Mr. Edge argues that the Chambers judge erred in failing to follow *Des Champs* and failing to consider whether the termination of his employment involved DFHF executing a public duty or authority before finding that s. 307(1) of the *Act* established the applicable limitation period.

[26] The argument that a *Des Champs* analysis was required was considered and rejected by the Chambers judge. He determined that *Des Champs* is distinguishable and did not apply to the circumstances before him, because s. 307(1) of the *Act* was not a “similarly worded limitations statute” to s. 7 of the *Public Authorities Protection Act* that was considered in that case:

[24] Mr. Justice Binnie writing in *Des Champs* stated: “A court confronted with a pleading under s. 7 of the *Act* or similarly worded limitations statute may wish to proceed as follows” (para. 50, emphasis added) and then went on to provide some guidance apropos to that type of statutory wording. In comparing s. 7 discussed in *Des Champs* with s. 307(1) of *The Cities Act*, s. 7 is more pithy and refers to “an act done in pursuance ... of any statutory or other public duty”, whereas s. 307(1) of *The Cities Act* is far less discerning; it is a straight forward legislated interdiction commanding “no action is to be brought”.

(Emphasis in original)

[27] The Chambers judge stated that his conclusion dovetails with this Court’s ruling in *Platana v Saskatoon (City)*, 2006 SKCA 10, 263 DLR (4th) 603 [*Platana*]. In that case, the Court considered whether the one year limitation period in s. 314(1)(a) of the *UMA* (which, as noted,

was later repealed and supplanted by the *Act*) applied to all causes of action against an urban municipality, or whether it only applied to causes of action arising out of an act or omission by a municipality in relation to a statutory duty: *Platana* at para 74. In a passage quoted by the Chambers judge, Jackson J.A. (for the majority) held that s. 314(1)(a) was sufficiently broad to “encompass a claim for damages arising out of every conceivable legal relationship that could exist between a municipality and a claimant who is seeking damages which in some way arose out of that legal relationship” (at para 86; *Decision* at para 25).

[28] The Chambers judge therefore distinguished *Des Champs* and relied on *Platana* to conclude that s. 307(1) of the *Act* established the limitation period governing Mr. Edge’s wrongful dismissal claim against DFHF. In my view, he was correct to do so.

[29] I agree with the Chambers judge that *Des Champs* is distinguishable because s. 307(1) of the *Act* and s. 7 of the *Public Authorities Protection Act* are not similarly worded limitations statutes. For ease of comparison, the text of both provisions read as follows:

Public Authorities Protection Act, s. 7:

No action, prosecution or other proceeding lies or shall be instituted against any person for an act done in pursuance or execution or intended execution of any statutory or other public duty or authority, or in respect of any alleged neglect or default in the execution of any such duty or authority, unless it is commenced within six months next after the cause of action arose, or, in case of continuance of injury or damage, within six months after the ceasing thereof.

The Cities Act, s. 307(1):

Notwithstanding *The Limitations Act*, no action is to be brought against a city for the recovery of damages after the expiration of one year from the time when the damages were sustained, and no action is to be continued unless service of the statement of claim is made within that one-year period.

(Emphasis added)

[30] The language in *Des Champs* that was central to the Supreme Court’s conclusion that s. 7 of the *Public Authorities Protection Act* was limited to actions involving the execution of public duties and powers (i.e., “for an act done in pursuance or execution or intended execution of any statutory or other public duty or authority”) is not found in s. 307(1) of the *Act*. On a plain reading, the limitation period in s. 307(1) is not limited only to acts done in pursuance or execution of a public duty. As observed by the Chambers judge, “*The Cities Act* is far less discerning; it is a straight forward legislated interdiction commanding ‘no action is to be brought’” (*Decision* at para 24).

[31] In addition, the distinction between public and private acts and the possible restriction of the limitation period in s. 314(1)(a) of the *UMA* to public acts was considered and rejected by Jackson J.A. in *Platana*. This was discussed in *Herle v Lalonde*, 2013 SKCA 131, [2014] 3 WWR 275 [*Herle*], where this Court also affirmed that there is no distinction between the kinds of acts that might give rise to a damages claim covered by the limitation period in s. 307(1) of the *Act*:

[22] The public/private acts distinction argued by Mr. Herle typical of public authorities protection act cases, such as *R. v. Berardinelli v. Ontario Housing Corp.*, [1979] 1 S.C.R. 275, does not arise on the facts of this case. Section 307(1) makes no distinction respecting the kind of acts which might give rise to the damages covered by the section. Moreover, regarding this question Jackson J.A. specifically determined that *Berardinelli* had no application.

[32] The Chambers judge also appropriately applied *Platana* in interpreting the scope of s. 307(1) of the *Act*. Section 314(1)(a) of the *UMA* considered in *Platana* and s. 307(1) of the *Act* considered by the Chambers judge are similarly worded. Both provisions state that “no action is to be brought” against a city or urban municipality for the recovery of damages unless the action is commenced, and the claim is served, within one year:

The Urban Municipality Act, 1984, s. 314(1)(a):

(1) No action is to be brought against an urban municipality for the recovery of damages:

(a) after the expiration of one year from the time when the damages were sustained, and no such action is to be continued unless service of the statement of claim is made within that one-year period[.]

The Cities Act, s. 307(1):

Notwithstanding *The Limitations Act*, no action is to be brought against a city for the recovery of damages after the expiration of one year from the time when the damages were sustained, and no action is to be continued unless service of the statement of claim is made within that one-year period.

[33] Neither provision restricts the application of the limitation period to claims based on acts done in the pursuance or execution of a public duty. In this respect, the two provisions are identical: see *Herle* at para 15. For this reason, the conclusion in *Platana* (that the limitation period governs all causes of action in which a claimant seeks damages that in some way arise out of a legal relationship with the city, not only those grounded in the city’s execution of a public function) was appropriately applied by the Chambers judge to his interpretation of s. 307(1) of the *Act*. Indeed, this Court in *Herle* found the Chambers judge in that case made no error in applying *Platana* when interpreting s. 307(1) of the *Act*.

[34] Mr. Edge's claim for wrongful dismissal damages was based on an alleged breach of his employment contract. As such, his damages claim arose out of his legal relationship with DFHF, which brings it within the scope of s. 307(1) of the *Act* as interpreted in *Platana*. It follows that the Chambers judge did not err in distinguishing *Des Champs* and determining that s. 307(1) of the *Act* barred Mr. Edge's claim against DFHF because it was not initiated and served in time.

B. The claims against the directors

[35] The second issue is whether the Chambers judge erred in determining that the one year limitation period in s. 307(1) of the *Act* also applied to Mr. Edge's claims against the directors and striking the claims against them. To put this issue in context, it is helpful to examine the basis upon which the Chambers judge relied on another aspect of *Platana* to conclude that s. 307(1) applied to those claims.

1. The Chambers judge relied on the reasoning in *Platana* to find that s. 307(1) of the *Act* applied to the claims against the directors

[36] In *Platana*, the plaintiffs were injured in a motor vehicle accident in which the other vehicle was owned by the City of Saskatoon and driven by a city employee. The plaintiffs brought an action against both the city and the driver. After concluding that the one year limitation period in s. 314(1)(a) of the *UMA* barred the claim against the city, the Court went on to consider whether it also applied to bar the claim against the employee.

[37] Under s. 57 of the *UMA*, an urban municipality was (i) liable for loss or injury arising from an act or omission of a municipal employee acting in the course of his duties; and (ii) required to defend and indemnify the employee: see *Platana* at para 115. Justice Jackson questioned why, in those circumstances, the legislature would have chosen to limit the liability of the urban municipality by enacting the one year limitation period in s. 314(1)(a) if it could be circumvented by suing the employee who committed the negligent act (*Platana*):

[117] When one considers that the typical lawsuit commenced against an urban municipality will be in relation to the actions of an employee, it would seem peculiar to adopt an interpretation which would see the employee remain liable and completely indemnified by the urban municipality when one can no longer make a claim against the urban municipality directly. Why would the legislature choose to limit the liability of the urban municipality, if one could simply circumvent that limited liability by suing the employee who committed the negligent act?

[38] Justice Jackson held that, in the circumstances before her, the legislature could not have intended a result that would permit the action to continue against an employee when it was barred as against the urban municipality: see *Platana* at para 121. For this reason, the limitation period in s. 314(1)(a) of the *UMA* also applied to the negligence claim against the employee.

[39] The Chambers judge applied this reasoning to conclude that the limitation period in s. 307(1) of the *Act* also barred Mr. Edge's claims against Mr. Schaeffer, Mr. Swanson, Mr. McMann and Ms. Froese. He held that the reasoning in *Platana* applied to the claim against Mr. Schaeffer because he was an employee of the City of Moose Jaw, and to the claims against the others because, although they were not employees, they were agents or officers of the City (*Decision*):

[30] ... The striking order also applies to the plaintiff's claim against Ted Schaeffer who was an employee of the City at the material time (see *Platana* at paras 111–121). I find the reasoning in this regard applies to the remaining defendants (Brian Swanson, Scott McMann and Crystal Froese) but I will add to this as follows.

[31] These remaining defendants were not employed by the City. They were elected members of the City's council and appointed to be on the board of directors of DFHF by bylaw. I find that these defendants were "agents" and/or "officers" of the City. While the term "agent" is not defined by *The Cities Act*, the term "City Officer" is defined by *The Cities Act* under s. 316(a) reproduced as follows:

316 In this Division:

(a) "city officer" means all employees of the city and of any committee or other body established by council;

[32] I am of the view that these remaining defendants became "agents" of the City once they were appointed by the City to be on the board of directors of DFHF (see also Ian MacFee Rogers, *The Law of Canadian Municipal Corporations*, loose-leaf (2007-8) 2d ed, vol 1 (Toronto: Carswell, 2007) at 5-7 to 5-8).

[33] I find that the same reasoning in *Platana* regarding an employee must logically apply to City councillors. Accordingly, I find that the plaintiff's Claim against the remaining defendants, Brian Swanson, Scott McMann and Crystal Froese should also be struck.

[40] In my respectful view, the Chambers judge erred in summarily determining that the limitation period in s. 307(1) of the *Act* applied to the claims against the directors based on the reasoning in *Platana* and striking those claims under Rule 7-9(2)(e) in the circumstances of this case.

2. It was not plain and obvious that the reasoning in *Platana* was determinative of the applicable limitation period

[41] The issue before the Chambers judge was whether Mr. Edge’s claims against the directors should be struck under Rule 7-9(2)(e) of *The King’s Bench Rules* because they were barred by the expiry of the limitation period in s. 307(1) of the *Act*.

[42] Where it is clear that a plaintiff has commenced a claim knowing that it is statute barred, it may properly be struck under this rule as an abuse of process: see *GHC Swift Current Realty Inc. v BACZ Engineering (2004) Ltd.*, 2022 SKCA 38 at para 24, 29 CLR (5th) 294 [*GHC*], citing *Walker v Mitchell*, 2020 SKCA 127 at paras 18–23, [2021] 4 WWR 555, and *Campbell v Cooper*, 2017 SKCA 55 at para 11. A claim should be struck on this basis only where it is plain and obvious that allowing the action to proceed would amount to an abuse of process. Where there is an arguable issue as to whether the claim is statute barred, it is an error in principle for a Chambers judge to strike the claim under Rule 7-9(2)(e). See: *GHC* at para 25, *Nelson v Teva Canada Limited*, 2021 SKCA 171 at paras 17–18, and *CPC Networks Corp. v McDougall Gauley LLP*, 2021 SKCA 127 at para 92, [2022] 3 WWR 291.

[43] In my view, the Chambers judge erred in principle in summarily striking the claims against the directors under Rule 7-9(2)(e). It was not plain and obvious that the reasoning in *Platana* applied because there is an arguable issue as to whether Mr. Edge’s claims against the directors, who are materially different from employees, were barred by the expiry of the limitation period in s. 307(1) of the *Act* on the same basis that claims against employees acting in the course of their duties are barred.

[44] The applicable limitation period was a disputed issue in the litigation. The Chambers judge framed the issue before him as whether the claim against all the defendants ought to be struck because it was commenced and served outside the one-year limitation period in s. 307(1) of the *Act*. However, Mr. Edge had brought an application for a determination that s. 307 did not apply to his claims at all, and he took the position that the two-year limitation period in s. 5 of *The Limitations Act* governed.

[45] The issue before the Chambers judge raised a question of statutory interpretation – whether the term “city” in s. 307(1) of the *Act* should be read to include the directors of DFHF. Although

it was not disputed that “city” included DFHF because it was a controlled corporation, the parties did not agree that this term also included the individual directors of DFHF. Given the dispute over the applicable limitation period, it was not plain and obvious that the reasoning in *Platana* applied and supported the interpretation that “city” in s. 307(1) included the directors of DFHF, because the factual and legal landscape in *Platana* was materially different than what was before the Chambers judge.

[46] In *Platana*, the parties filed an agreed statement of facts acknowledging that the allegedly negligent employee was driving the city vehicle in the course of his duties when the accident occurred. As discussed above, the rationale for the majority finding that the limitation period also applied to the claim against the employee driver was that the legislature could not have intended the action to continue against the employee when he was acting in the course of his duties and the city was liable for any loss or injury and obliged to defend and indemnify the employee anyway.

[47] The context here is considerably different. The claims advanced against Mr. Schaeffer, Mr. Swanson, Mr. McMann and Ms. Froese were based on alleged acts or omissions in their capacity as directors of DFHF, an independent legal entity. The amended statement of claim raised specific allegations in relation to the conduct of certain board meetings, the board’s failure to follow DFHF policies, and the board’s failure to address Mr. Edge’s concerns arising out of the misconduct investigation he had initiated. The thrust of Mr. Edge’s claims was that “the Board Members breached their duty of care to act honestly and in good faith under *The Non-profit Corporations Act*”. Among other relief, damages were sought for breach of this alleged duty “as part of the responsibility of their position as board members”. The factual and legal context of Mr. Edge’s claim against the directors is therefore distinct from the claim in *Platana*.

[48] Notwithstanding this different context, the Chambers judge found that the limitation period applied to the claim against Mr. Schaeffer based on the reasoning in *Platana* because he was an employee of the City of Moose Jaw. This conclusion overlooks the potentially distinguishing fact that, unlike in *Platana*, the claim against Mr. Schaeffer appears to have nothing to do with his employment as the City’s Director of Parks and Recreation. It is pleaded only that Mr. Schaeffer and the other individual defendants “were at all material times members of the Board of Directors of DFFH”. Mr. Schaeffer’s status or role as an employee of the City is not mentioned in the

amended statement of claim, and no claim is advanced based on an act or omission alleged to have been committed by Mr. Schaeffer in that capacity.

[49] Although Mr. Swanson, Mr. McMann and Ms. Froese were not City employees, the Chambers judge relied on the reasoning in *Platana* to find that the limitation period also applied to the claims against them because they were “agents” or “officers” of the City (*Decision* at para 32). He also found that “the same reasoning in *Platana* regarding an employee must logically apply to City councillors” (at para 33).

[50] This conclusion overlooks the potentially distinguishing fact that the Court in *Platana* did not address whether the limitation period in s. 314(1)(a) of the *UMA* applied to claims against an agent, officer, or city councillor carrying out duties as a director of a city-controlled corporation. The vicarious liability and indemnity provisions in s. 57 of the *UMA* considered by the Court in *Platana* that were important in the majority’s reasoning were not identical to those in the *Act* and did not mention city officers or councillors: see *Platana* at para 115. As such, it was not plain and obvious that the reasoning in *Platana* supported the interpretation that the limitation period in s. 307(1) of the *Act* applied to bar the claims against Mr. Swanson, Mr. McMann and Ms. Froese based only on the finding that they were “agents” or “officers” of the City, or because they also happened to be elected City councillors.

[51] In determining that the limitation period applied to these directors because they were “agents” or “officers” of the City, the Chambers judge appears to have accepted the respondents’ submission that the limitation period in s. 307(1) of the *Act* applies to any claim against an individual for whom a city could *potentially* be vicariously liable, whether an employee – or a city officer, volunteer worker, or agent.

[52] Respectfully, the majority’s reasoning in *Platana* was more nuanced. Section 57 of the *UMA* considered in *Platana* provided that “[a]n urban municipality is liable for loss or injury arising from any act or omission of a municipal employee ... acting in the course of his duties” (*Platana* at para 115, quoting s. 57(1) of the *UMA*). The fact that the employee was driving in the course of his duties – a condition that would have to be met for vicarious liability to arise – was an important element in the majority’s reasoning.

[53] Unlike in *Platana*, it was not plain and obvious that the conditions that would have to be met for vicarious liability to arise under the *Act* were present in the circumstances before the Chambers judge. This was also a potentially distinguishing factor.

[54] Under s. 318(1) of the *Act*, a city is vicariously liable for loss or injury arising from an act or omission of a city officer, volunteer worker, or agent where that person (i) is acting in the course of his or her duties; and (ii) would otherwise be personally liable:

Acts of members of city bodies, city officers, volunteers, etc.

318(1) A city is vicariously liable for loss or injury arising from any act or omission of a city officer, a volunteer worker or an agent of the city acting in the course of his or her duties if the officer, volunteer worker or agent would otherwise be personally liable.

[55] The first condition that must be met for vicarious liability to arise is that the city officer or agent must be acting in the course of their duties. The thrust of Mr. Edge’s claim was that the directors *breached* their duties as directors, which, unlike the situation in *Platana*, made it arguable that they were not “acting in the course of their duties” when the relevant acts or omissions occurred.

[56] The second condition that must be met for vicarious liability to arise is that the city officer or agent would otherwise be personally liable. Whether the directors would be personally liable for the claimed losses was also an issue in this case, because the respondents pleaded and relied on statutory limitations on director liability set out in s. 112.1 of *The Non-profit Corporations Act, 1995*.

[57] In general terms, s. 112.1(2) and s. 112.1(3) of that Act provide that a director of a non-profit corporation is not liable in a civil action for loss arising out of an act or omission in the exercise or supposed exercise of a power as a director, provided that the director was acting in good faith. Section 112.1 reads, in part, as follows:

Directors’ and officers’ liability limited

112.1(1) In this section, “loss” means any pecuniary or non-pecuniary loss respecting, arising out of or stemming from any act or omission of:

- (a) the corporation; or
- (b) any director, officer, employee or agent of the corporation in the exercise or supposed exercise of any of his or her powers or in the carrying out or supposed carrying out of any of his or her duties.

(2) Unless another Act expressly provides otherwise, no director or officer of a corporation is liable in a civil action for any loss suffered by any person.

(3) The limitation on liability mentioned in subsection (2) applies only if the director or officer was acting in good faith at the time of the act or omission giving rise to the loss.

(Emphasis added)

[58] Whether this statutory limitation of liability applied to the directors therefore turned, in part, on whether they were acting in good faith. If the directors were acting in good faith, they may not be liable by operation of s. 112.1(2). If they were acting in bad faith, they could be liable because that limitation may not apply by operation of s. 112.1(3).

[59] Whether the directors were acting in good faith was also a disputed issue. Mr. Edge pleaded that the directors “breached their ethical duty of care to act honestly and in good faith under *The Non Profit Corporation Act*”, and the respondents pleaded that “they acted in good faith at all relevant times, and as a result no action or proceeding can be maintained against them” based on s. 112.1(2) of *The Non-profit Corporations Act, 1995*. Consequently, it was not plain and obvious that the directors “would otherwise be personally liable” for the claimed losses such that the City could be vicariously liable under s. 318(1) of the *Act*.

[60] As this discussion illustrates, the factual and legal landscape in *Platana* was materially different than what was before the Chambers judge. As such, the reasoning in *Platana* was not necessarily determinative of whether the term “city” in s. 307(1) of the *Act* was properly interpreted to include the directors of DFHF, particularly since the applicable limitation period was a contested issue.

[61] For these reasons, it was not plain and obvious that Mr. Edge’s claims against the directors were barred by the expiry of the limitation period in s. 307(1) of the *Act* based on the reasoning in *Platana*. In my respectful view, the Chambers judge therefore erred in principle in summarily striking the claims against the directors under Rule 7-9(2)(e).

C. Production of documents

[62] The third issue is whether the Chambers judge erred in not addressing Mr. Edge’s application for (i) a determination that the respondents had intentionally concealed documents pertaining to the employee who was the subject of the harassment investigation started by Mr. Edge; and (ii) an order compelling their production.

[63] The Chambers judge found that he did “not need to address” Mr. Edge’s application because he had decided that the statement of claim should be struck in its entirety (*Decision* at para 34). For this reason, the Chambers judge dismissed Mr. Edge’s application without substantively considering it.

[64] Since I have concluded that the Chambers judge erred in striking the claim against the directors based on the expiry of the limitation period in s. 307(1) of the *Act*, I would remit this aspect of Mr. Edge’s application to the Chambers judge for determination in the context of the remaining claims against the directors.

VI. CONCLUSION

[65] For the reasons set out above, I would dismiss the appeal of the order striking the claim against DFHF. I would allow the appeal of the order striking the claim against the directors and set aside that order. I would also remit the matter to the Chambers judge to consider the following:

- (a) Whether the claim against the directors should be struck on any of the other grounds advanced in the respondents’ application dated March 20, 2023;
- (b) Whether the relief sought against the directors in paragraph 7 of Mr. Edge’s notice of application, dated May 19, 2023, should be granted; and
- (c) Costs of the applications in their entirety.

[66] Given the divided success on this appeal, I would make no order as to costs in this Court.

“Kilback J.A.”

Kilback J.A.

I concur.

“McCreary J.A.”

McCreary J.A.

I concur.

“Bardai J.A.”

Bardai J.A.