Court of Queen's Bench of Alberta

Citation: Prodaniuk v Calgary (City), 2021 ABQB 906

Date:
Docket: 1901 03329
Registry: Calgary

Between:

Kimberly Prodaniuk (nee Baird)

Plaintiff/Respondent

- and -

The Corporation of the City of Calgary, City of Calgary Police Service, Chief of Police of the City of Calgary Police Service, and The Calgary Police Association

Defendants/Applicants

Reasons for Judgment
of the
Honourable Mr. Justice J.T. Eamon

I Introduction

[1] The plaintiff, Ms Prodaniuk, joined the City of Calgary Police Service in March 2008. At the same time, she became a member of the Calgary Police Association (CPA). At all material times, she was (and still is) a union member under a collective agreement and the CPA was (and still is) her bargaining agent.

[2] In March 2017 Ms Prodaniuk went on stress leave. She says she suffered harassment by other members of the force over a period of years. She says she approached the City and CPA for

help, but they refused to respond and instead, suppressed the problem. She says they were motivated by a male dominated sub-culture within the police. She says she suffered to the point where she was forced on leave from her policing career. She remains on leave to this day.

[3] She sued the City, the Calgary Police Service, the Chief of Police, and CPA for damages, compensation and other remedies.

[4] The defendants applied to dismiss her claim for lack of jurisdiction.

[5] The primary issue I must decide is whether the dispute resolution processes of Alberta labour law assign exclusive jurisdiction over Ms Prodaniuk's claims to either or both of a labour arbitrator and the Alberta Labour Relations Board.

[6] The City, Calgary Police service and the Chief of Police also submit the claims against them are barred under the *Worker's Compensation Act*, RSA 2000, c W-15, s 21. For the reasons set out below, it is not necessary to decide this point.

II Ms Prodaniuk's claims and parties' positions

[7] In her Amended Amended Amended Statement of Claim, and her Affidavit of January 29, 2021, Ms. Prodaniuk details a number of incidents that she alleges occurred from the fall of 2008 through the spring of 2017 while employed in the Calgary Police Service.

[8] I emphasize at the outset that these allegations are not yet tested. The defendants did not cross-examine on Ms Prodaniuk's affidavit or otherwise challenge her evidence or set out their version of events, because they say her affidavit is premature, inadmissible and should be struck out (see Part III below). I outline Ms Prodaniuk's allegations and evidence not as fact findings but to explain the nature of her claim for the purpose of deciding whether it can or might proceed in Court or has to be left to the specialized labour relations dispute resolution processes.

[9] Ms Prodaniuk describes, in her affidavit, suffering numerous incidents of harassment and being exposed to a workplace culture in which the incidents were accepted or tolerated, or went unchecked because those in the chain of command and CPA were unwilling to investigate or respond.

[10] The alleged incidents include being subjected to inappropriate sexual conversations and questions by fellow officers while on duty and during police training; being forced to work alone in unsafe situations; being required to perform simulated sexual acts or being humiliated during training for the sex trade unit; being threatened or ostracized by fellow police officers for speaking out about her treatment; being forcefully taken against her will to the location of a bar hosting a wet t-shirt contest during a stay at a facility outside Calgary for police training; damage to her reputation; being effectively or informally demoted or denied opportunities to advance in her career; and being prevented from seeking redress for her concerns or injuries.

[11] Ms Prodanuik alleges that her employer ignored the problem and left her to resolve the issues on her own, through their policy of expecting officers to resolve incidents directly with coworkers, then escalating a complaint through the chain of command.

[12] Ms Prodaniuk alleges she was treated as though the incidents were simply personality conflicts, and was warned that those who make complaints are labelled as a rat and deemed untrustworthy by other officers. She states that she was transferred or effectively forced to transfer on more than one occasion to avoid harassment.

[13] Ms Prodaniuk states that none of her supervisors suggested she could or should report the sexual harassment or discrimination as a grievance under the collective agreement. In 2012, Ms Prodaniuk accessed the Calgary Police Service's Respect Matters Program to address her concerns, and launched a complaint. She says that the Calgary Police Service did not meaningfully respond to her complaint. She says that, among other things, her complaint was referred for handling to a senior member who had previously told her, "the word on the street is that you're a bit of a bitch." She described the program as ineffective.

[14] Ms Prodaniuk states that she approached CPA for help with the problematic conduct in 2012, 2016, and 2017. CPA is her bargaining agent and a party to the collective agreement. She alleges that CPA failed to properly address her complaints, and on the first occasion when she sought CPA's help, it dismissed her as a "sensitive girl". She states CPA refused to file a grievance on her behalf for numerous reasons, including that the collective agreement does not cover complaints against other members ("blue on blue" complaints), leaving her with no avenue of redress.

[15] Ms Prodaniuk alleges that the defendants' refusal or failure to address the misconduct led her to suffer from psychological consequences, culminating in her prolonged stress leave. She alleges she is unable to return to work at the Calgary Police Service and has suffered loss of earnings, benefits and pension.

[16] Ms Prodaniuk states in her Amended Amended Amended Statement of Claim that the facts amount to harassment, sexual harassment, intentional infliction of emotional distress, intimidation, breach of fiduciary duty, conspiracy, sexual discrimination under s 15 of the *Charter*, equitable fraud, and constructive dismissal. She claims that the Chief of Police is vicariously liable for torts committed against her by other members of the Police Service (*Police Act*, RSA 2000, c P-17, s 39(2)).

[17] Ms Prodaniuk also challenges the collective agreement. She claims the limitation period for grievances in the collective agreement is unauthorized and unconscionable, an unconstitutional denial of her access to justice rights, and a violation of her s 15 *Charter* rights because it is too short.

[18] She further seeks remedies arising out of CPA's by-laws. CPA's objectives, defined in its corporate bylaws, include fostering an environment of integrity, trust and mutual respect between its members and the citizens of Calgary and improving working conditions for CPA's members. Ms Prodaniuk claims that CPA's actions breached the bylaws and are oppressive behaviour entitling her to a remedy under the corporate oppression[1] provisions of the *Business Corporations Act*, RSA 2000, c B-15 ("*ABCA*") that are applicable to societies including CPA under the *Societies Act*, RSA 2000, c S-14, s 35. She seeks compensation, an order that CPA be wound up, and permission to bring an action in the name of CPA (a derivative action) against the other defendants in this action "in a forum of convenience".

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[1] Throughout this judgment, when I use the words "oppression" or "oppressive" with reference to allegations against CPA it means claims that " an act or omission of the corporation … effects a result, the business or affairs of the corporation … are or have been carried on or conducted in a manner, or the powers of the directors of the corporation … are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer" (*ABCA*, s 215).

[19] The defendants say that the allegations in Ms Prodaniuk's claim are all workplace claims, and are subject to the dispute resolution mechanism contained in the collective agreement that provides exclusive jurisdiction to a labour arbitrator. Further, they claim, her complaints about the CPA are essentially claims for breach of CPA's duty of fair representation, for which exclusive jurisdiction is assigned by law to the Alberta Labour Relations Board. Finally, the defendants say that Ms Prodaniuk's claims relating to the limitation period and the bylaws are creative attempts to find jurisdiction in this Court, however they do not change the true nature of her claims.

III Basis of application and preliminary issue

[20] The defendants apply to strike Ms Prodaniuk's claims under rule 3.68(2)(a), which allows the court to strike a claim in cases where the Court has no jurisdiction. The City, Calgary Police Service and Chief of Police also rely on rule 3.68(2)(d) - abuse of process - but the argument is the same: the Court has no jurisdiction so the action must be struck out.

[21] As mentioned, the defendants submit the matter is in the exclusive jurisdiction of the labour relations regime and the defendants other than CPA also say the claim is precluded by the workers compensation regime.

[22] The Court can only strike a statement of claim under these rules if it is plain and obvious that the court has no jurisdiction, after considering evidence on the surrounding facts (***Kniss v Stenberg,*** 2014 ABCA 73, at para 21, citing ***Young Estate v TransAlta Utilities Corp***, 1997 ABCA 349 at paras 17-18). This test is different than the more commonly utilized rule to strike a claim under 3.68(2)(b), which is concerned with whether the pleadings disclose a reasonable cause of action. Under the rule applicable here, the court may consider evidence and does not assume every fact plead is true (***Kniss*** at para 21).

[23] This leads to a preliminary issue on this application, which is whether to strike or ignore the affidavit of Ms Prodaniuk filed January 29, 2021 and the affidavit of Ms Lee filed March 29, 2021 because some or all of the evidence is inadmissible and should not be considered.

[24] Ms Prodaniuk's affidavit outlines the history of her employment as a police officer and her dealings with co-workers, supervisors, human resources personnel, and CPA in respect of the alleged misconduct described in her claim. Ms Lee is a legal assistant in a lawyer's office who provided a Gender Perception Survey obtained by the Calgary Police Service on topics such as sexual harassment in their workplace.

[25] The Defendants say the evidence in these affidavits is not admissible.

[26] The case management judge for this matter held that two of Ms Prodaniuk's prior affidavits, that dealt with the whole of her claim, could not be relied on for this jurisdictional application. The reasoning behind her ruling was to limit the cost and time spent on cross-examining the Plaintiff for this application. The case management judge directed Ms Prodaniuk to limit her new affidavit to evidence that was relevant to responding to the jurisdictional application.

[27] Ms Prodaniuk provided a new affidavit on January 29, 2021. The defendants submit that the affidavit repeats and expands on the allegations in her statement of claim, and addresses her whole case on the merits. They submit this evidence is irrelevant to the jurisdictional application.

[28] The Court's jurisdiction to adjudicate Ms Prodaniuk's claims is determined by characterizing the essential nature of the dispute and deciding whether the dispute falls under the ambit of the collective agreement (see for example, ***Beaulieu v University of Alberta***, 2014 ABCA 137 at para 36 and the discussion in Part V(a) below). To do so, the Court must consider the facts surrounding the dispute and examine the collective agreement and the relevant legislation to see if exclusive jurisdiction lies outside of the court process (***Beaulieu*** and ***Kniss***).

[29] I find that Ms Prodaniuk's affidavit is admissible because it informs me of the nature of the dispute in this case. Her evidence expands on details of the alleged conduct, by various members of the police service over many years, and the response to her complaints by those in her workplace and the CPA. This evidence is also relevant to characterizing the nature of Ms Prodaniuk's alternative claims, including whether the CPA has breached its bylaws or behaved oppressively to its members.

[30] The Defendants submit that Ms Lee's Affidavit is irrelevant and, further, was already determined to be irrelevant by the case management judge.

[31] The admissibility of Ms Lee's affidavit depends on the purpose for which it is admitted. Ms Prodaniuk's counsel submits it is relevant to interpreting the ambit of the collective agreement, because it corroborates evidence of CPA's historical position (at odds with its position in this action) that complaints of harassment among members of the Calgary Police Service cannot be subject of a grievance under the collective agreement by showing that most police officers who believed they suffered harassment did not seek redress because they believed nothing would be done about it under the collective agreement.

[32] As explained below (at paras 115-120), the affidavit would be technically admissible if the meaning of the collective agreement were ambiguous. I concluded the meaning was not ambiguous, therefore the evidence is not admissible and in any event the evidence would not be helpful in construing the meaning of the agreement.

[33] It is not necessary to issue a formal order to strike this affidavit. I am entitled to disregard inadmissible evidence and it is very common to do so without issuing a formal order when dealing with affidavits filed in chambers applications. I explain in detail later my approach to extrinsic evidence of contract interpretation and how I reviewed and would consider this evidence. The survey does not appear to be confidential or embarrassing. I see no harm in leaving it on the court file as a record of what I reviewed.

[34] The application to formally strike these affidavits is refused.

IV Issues

1. Is it plain and obvious that this Court does not have jurisdiction over Ms Prodaniuk's personal claims for her losses?

2. Is it plain and obvious that this Court does not have jurisdiction over Ms Prodaniuk's other claims?

3. Might this Court exercise its residual jurisdiction?

V Issue 1 – Is it plain and obvious that this Court does not have jurisdiction over Ms Prodaniuk's personal claims?

(a) Test to Determine Jurisdiction

[35] When considering whether jurisdiction lies with a court, or with a statutory labour relations regime, a court applies the exclusive jurisdiction model. This means that when a dispute resolution process is set out in a statutory labour regime that involves final and binding arbitration, a court will defer to that process and decline to take jurisdiction in a parallel proceeding filed in the courts (***Weber v Ontario Hydro,*** 1995 CanLII 108 (SCC), [1995] 2 SCR 929 at para 58; ***Regina Police Assn Inc v Regina (City) Board of Police Commissioners***, 2000 SCC 14 (CanLII), [2000] 1 SCR 360 at paras 24-25). If the dispute does not expressly or inferentially arise out of the collective agreement, a court may hear a dispute between an employee and employer in a unionized environment (***Weber*** at para 54).

[36] Estey J, speaking for a unanimous Supreme Court, discussed the rationale for this approach in ***St Anne Nackawic Pulp & Paper v CPU***, [1986] 1 SCR 704 at pp 718-719:

> The collective agreement establishes the broad parameters of the relationship between the employer and his employees. This relationship is properly regulated through arbitration and it would, in general, subvert both the relationship and the statutory scheme under which it arises to hold that matters addressed and governed by the collective agreement may nevertheless be the subject of actions in the courts at common law. ... The more modern approach is to consider that labour relations legislation provides a code governing all aspects of labour relations, and that it would offend the legislative scheme to permit the parties to a collective agreement, or the employees on whose behalf it was negotiated, to have recourse to the ordinary courts which are in the circumstances a duplicative forum to which the legislature has not assigned these tasks.

[37] Therefore, the Supreme Court in ***Weber*** adopted an approach that gives exclusive jurisdiction to arbitrators for disputes that arise expressly or inferentially from the ambit of the collective agreement (at para 54).

[38] The Supreme Court of Canada recently summarized the exclusive jurisdiction model as follows:

> [13] It is settled law that the scope of a labour arbitrator's jurisdiction precludes curial recourse in disputes that arise from a collective agreement, even where such disputes also give rise to common law or statutory claims (*St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219*, 1986 CanLII 71 (SCC), [1986] 1 S.C.R. 704, at p. 721; *Weber*, at para. 54; *New Brunswick v. O'Leary*, 1995 CanLII 109 (SCC), [1995] 2 S.C.R. 967; *Allen v. Alberta*, 2003 SCC 13, [2003] 1 S.C.R. 128, at paras. 12-17; *Goudie v. Ottawa (City)*, 2003 SCC 14, [2003] 1 S.C.R. 141, at paras. 22-23; *Bisaillon v. Concordia University*, 2006 SCC 19, [2006] 1 S.C.R. 666, at para. 30). It is similarly beyond dispute that labour arbitrators may apply human rights legislation to disputes arising from the collective agreement (*Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42, [2003] 2 S.C.R. 157, at paras. 1 and 28-29; *Weber*, at para. 56). Indeed, it has been observed that

> labour arbitration is *the primary forum* for the enforcement of human rights in unionized workplaces (E. Shilton, "'Everybody's Business': Human Rights Enforcement and the Union's Duty To Accommodate" (2014), 18 *C.L.E.L.J.* 209, at p. 235; P. A. Gall, A. L. Zwack and K. Bayne, "Determining Human Rights Issues in the Unionized Workplace: The Case for Exclusive Arbitral Jurisdiction" (2005), 12 *C.L.E.L.J.* 381, at p. 397).
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> ...
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> [15] ... Properly understood, the decided cases indicate that, where labour legislation provides for the final settlement of disputes arising from a collective agreement, the jurisdiction of the arbitrator or other decision-maker empowered by this legislation is exclusive. This applies irrespective of the nature of the competing forum, but is always subject to clearly expressed legislative intent to the contrary.
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> (***Northern Regional Health Authority v Horrocks***, 2021 SCC 42 at paras 13, 15).

[39] The nature of the dispute is determined by defining its "essential character", and considering whether the differences between the parties arise from the interpretation, application, administration or violation of the collective agreement (***Weber*** at para 52 ; ***Allen v Alberta***, 2003 SCC 13 (CanLII), [2003] 1 SCR 128 at para 15). In some cases, aspects of the alleged conduct may arguably extend beyond the ambit of the collective agreement but this might not alter the essential character of the dispute (***Beaulieu*** at para 43; ***Kniss*** at para 24). Similarly, the fact incidents occurred outside the workplace does not necessarily alter the essential character of the dispute (***Weber*** at para 52).

[40] Whether the dispute falls under the ambit of the collective agreement will depend on interpretation of the collective agreement, as well as through an understanding of what rises inferentially out of the collective agreement. The collective agreement need not provide for the subject matter of the dispute explicitly (***Regina Police Assn*** at para 25). If the essential character of the dispute arises either explicitly, or implicitly, from the interpretation, application, administration or violation of the collective agreement, the dispute is within the sole jurisdiction of an arbitrator to decide (*ibid* at para 25).

[41] CPA's counsel points out that the Courts have applied these principles even in cases of serious sexual assault or harassment (***K A v Ottawa (City)***, 2006 CanLII 15128 (ON CA); ***Rivers v Waterloo Regional Police Services Board,*** 2018 ONSC 4307, at para 36, app dism 2019 ONCA 267; ***Greenlaw v Scott***, 2020 ONSC 2028; ***De Facendis v Toronto Parking Authority***, 2021 ONSC 1695 at para 33). Of course, each case turns on the essential nature of the dispute, and the meaning of the statute and collective agreement under consideration.

[42] CPA's counsel submits that the essential nature of the dispute determines the jurisdictional outcome, not necessarily on the question whether a specific wrongdoer is or is not a party to the collective agreement. She cited ***De Facendis v Toronto Parking Authority***, 2021 ONSC 1695 at para 33, and ***Greenlaw*** (where the alleged tortfeasor was a member of a different bargaining unit). Other examples are ***Ciulla v The Toronto Catholic District School Board***, 2021 ONSC 3110 at para 36; ***Byrne v Ontario***, 2005 CanLII 42258 (ON SC) at para 25; ***Soulos v Leitch***, 2005 CanLII 13790 (ON SC) at paras 7-8; and ***Piko v Hudson's Bay Co***, 1998 CanLII 6874, 41 OR (3d) 729 (CA).

[43] Laskin JA discusses this aspect of the exclusive jurisdiction model in ***Piko*** at pp 733-734:

> However, the boundaries of *Weber* have not always been easy to apply. *Weber* has spawned a large number of cases in Ontario [See Note 3 at end of document.] in which unionized employees have sought to avoid arbitration and pursue a claim in the courts. In some cases, the employee has sought damages in the courts against another employee or manager, not a party to the collective agreement, but for a workplace wrong. In other cases, the employee has asserted a claim, usually in tort, against the employer (and sometimes individual employees) for a wrong alleged not to arise under the collective agreement.
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> Where an employee has sued another employee for a workplace wrong, this court has held that bringing an action against a person who is not a party to the collective agreement will not give a court jurisdiction if the dispute, "in its essential character", still arises under the collective agreement. For example, in *Ruscetta v. Graham* [1998 CanLII 2118 (ON CA)], the plaintiff had been refused long-term disability benefits and he had appealed the refusal. In reviewing his employment file for his appeal, he discovered a memo written by a fellow employee claiming that the plaintiff was a "problem employee". The plaintiff sued his employer and the employee who had written the memo for damages for defamation, negligent misrepresentation and breach of fiduciary duty. The motion judge dismissed the action, relying on *Weber*. This court agreed. In an endorsement it said that, "[t]he cause of action need only be part of the factual basis of a dispute arising out of the collective agreement to be subject to resolution under the agreement" (at para. 3).
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> In *Dwyer v. Canada Post* [1997 CanLII 1110 (ON CA)], a postal worker had taken several medical leaves of absence. His supervisors suspected the leaves were not justified and wrote a letter to the worker complaining about them and warning that another unjustified leave would be considered "fraudulent". The worker then sued the supervisor for damages for defamation and intentionally inflicting nervous harm. The motion judge dismissed the claim holding that, "the essential character of the acts complained of fall within the ambit of the collective agreement" (at para. 13). Again this court agreed. In an endorsement it held that the motion judge correctly applied the principles in *Weber*.

[44] Whether these authorities apply is a matter of statutory interpretation of the *Police Officers Collective Bargaining Act*, RSA 2000, c P-18 (*POCBA*), the primary statute that regulates labour relations in Alberta's municipal police forces.

[45] As explained later, I agree that these authorities apply to the labour relations regime under the *POCBA*. Where the essential character of the dispute falls within the ambit of the collective agreement, the Court does not have jurisdiction even if some individual defendants are not bound by the agreement. The Legislature chose the exclusive jurisdiction model to provide a comprehensive scheme that governs all aspects of the relationship between the parties in a labour relations setting and ensures that disputes be "resolved quickly and economically, with a minimum of disruption to the parties and the economy" (para 101 below). The labour law remedies might not be as extensive as those provided in the Courts, but absent a real deprivation of remedy the Legislature's choice of exclusive jurisdiction prevails.

[46] A court retains residual jurisdiction to hear a case where there would be a "real deprivation of ultimate remedy" (***Horrocks*** at para 23; ***Weber*** at para 57, citing ***St Anne*** at 723; ***Bisaillon v Concordia University***, 2006 SCC 19, [2006] 1 SCR 666 at para 42; ***Beaulieu*** at para 36). This principle does not require that the remedies available from the arbitrator must be identical to those available from the Court (***Beaulieu*** at para 48; ***Thomson v University of Alberta***, 2014 ABQB 434 at para 89; ***Giesbrecht v McNeilly et al***, 2008 MBCA 22 at para 59; ***K A v Ottawa (City)*** at paras 18-21).

[47] Ms Prodaniuk's main argument is that this dispute does not fall under an exclusive labour relations regime because the collective agreement does not have a mechanism to resolve disputes between members of CPA, including her harassment and assault allegations, or between her and the City or CPA. She submits that the collective agreement only permits grievances as between the parties to the agreement, being the City of Calgary and CPA.

[48] Ms Prodaniuk submits that a reading of the relevant statutes, the collective agreement and the common law support this conclusion, as well as extrinsic evidence which shows that "blue on blue" grievances are not expressly or implicitly treated as grievances under the collective agreement and are sent elsewhere for resolution. She argues that police officers such as her have no recourse to the labour law scheme for harassment from other officers, and this is a proper case for resolution by this Court.

[49] Ms Prodaniuk alternatively argues that the Court should exercise its residual and constitutional jurisdiction to hear this case.

[50] The Defendants argue that the dispute clearly falls within the ambit of the collective agreement and the grievance procedure set out therein. Further, the claims against CPA are essentially claims arising from the representational relationship between Ms Prodaniuk and CPA as her bargaining agent under the collective agreement, and that such matters are within the exclusive jurisdiction of the Alberta Labour Relations Board.

(b) Relevant Documents and Legislation

[51] The following provides excepts from relevant documents and a legislative overview that are relevant to determining the jurisdictional questions.

(i) Collective Agreement

[52] Ms Prodaniuk's employment was governed by a collective agreement throughout her time at the police service. The collective agreement sets out the terms and conditions of employment between members of CPA and the employer, the City of Calgary.

[53] All of the collective agreements, dating from April 1, 2006, are in evidence. Most of the relevant provisions (apart from the revisions to the steps of a grievance made in the 2021 collective agreement) are materially similar. In the following paragraphs I describe the similarities and important differences.

[54] Each collective agreement provides[2]:

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[2] Minor numbering changes in the 2021 collective agreement are not described in this quotation or the quotations of other parts of the collective agreement in this part of my reasons. The substance of the provisions is substantially the same in all versions, unless stated otherwise.

PURPOSE AND COVERAGE

1.00 The purpose of this Agreement is to stipulate the rates of pay and working conditions of those Members covered by the Association as mentioned in this Agreement.

...

RECOGNITION

1.02(a) The City of Calgary recognizes the Association as the sole bargaining agent for and on behalf of all Members covered under the scope of this Agreement.

1.02(b) The Association recognizes that it is the function of the Chief of Police to exercise the regular and customary functions of management, to direct the work and deploy manpower resources of the Calgary Police Service subject however to the terms of this Agreement.

[55] Earlier versions of the collective agreement did not specifically address harassment. Later iterations of the collective agreement (starting with the 2014-2016 collective agreement) provided:

HARASSMENT

8.01 The Calgary Police Service and the Association recognize the negative impact that harassment has in the workplace and they will make every effort to prevent harassment between all CPS employees and outside parties. Neither the Service, nor the Association, will tolerate, ignore or condone workplace harassment.

[56] Each collective agreement starting with the 2014-2016 version recognized the framework for addressing police misconduct:

DISCIPLINE

17.01 Misconduct of a Police Officer is defined in the Alberta Police Act and Police Service Regulation. The Calgary Police Service shall deal with misconduct of a Member in accordance with this Act and Regulation.

[57] Each collective agreement further addresses vacancies and promotions. Each collective agreement also contains a provision for compensation for "Members, who sustain an occupational injury while carrying out their duty as a Police Officer ...".

[58] The grievance procedures changed somewhat over the years. The fundamental provision defining who could lodge a grievance (the opening para of Article 4.01, renumbered Article 3.01 in the 2021 agreement), and the applicable time limitation (Article 4.02, renumbered 3.02 in the 2021 agreement) were identical throughout Ms Prodaniuk's employment (a sample is provided in para 60 below).

[59] Each version of the collective agreement provided a series of steps in the grievance procedure. Earlier versions (which contained minor wording variations) contemplated that (1) members could initially present a grievance to supervisors and if not resolved, an inspector, (2) if not resolved then CPA could take the grievance to the Chief of Police (or designate), and (3) if

not resolved, either the City or CPA could submit the grievance to arbitration. In the last version (agreed to in 2021 and effective from January 6, 2018), the members' rights to present the grievance at supervisor and inspector levels was removed and the CPA was given control over grievances in the process.

[60] The following provisions are representative of the grievance provisions aside from the changes to the grievance steps in the 2021 collective agreement:

> **GRIEVANCE PROCEDURE**
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> 4.01 Either party to this Agreement may lodge a grievance with the other party on a difference, which arises between the parties, bound by this Collective Agreement, as to the interpretation, application or operation or any alleged violation of this Agreement. A copy of all grievances shall be forwarded to corporate Labour Relations, Human Resources.
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> [...]
>
> STEP 1 The Individual Member or group of Members or the Association shall present the grievance orally or in writing to the immediate supervisor. If a satisfactory settlement is not reached within five (5) working days the grievance may proceed as follows:
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> STEP 2 Within ten (10) working days the aggrieved Member, or group of Members, or the Association may present the grievance in writing to the appropriate Inspector in charge of the Member(s)'s work section. The Inspector shall render his decision in writing within ten (10) working days. If a satisfactory settlement is not reached, STEP 3 may be taken.
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> STEP 3 If a satisfactory settlement has not been reached, the Association shall have the right to be heard by the Chief of Police or designated Deputy Chief. In making application for a hearing the Association shall deliver to the Chief of Police or designated Deputy Chief within fifteen (15) working days of the date the Inspector rendered his decision, a statement which shall include an outline in writing of the grievance. The hearing shall be held within fifteen (15) working days of the date the application is received. The Chief of Police or designated Deputy Chief shall, within fifteen (15) working days following the end of such hearing, give his decision in writing to the Association.
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> STEP 4 If a settlement satisfactory to the Association or The City has not been reached, either of the parties may notify the other party in writing within twenty (20) working days of its intent to submit the grievance to an Arbitration Board. The Arbitration Board shall be comprised in accordance with the Police Officers Collective Bargaining Act.
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> 4.02 Grievances not submitted within sixty (60) days after the circumstances giving rise to such grievance occurred or should reasonably have been known, shall not be considered.
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> 4.03 Where the parties mutually agree, a single arbitrator may be appointed in accordance with the Police Officers Collective Bargaining Act.

> 4.04 The time limits as set out in the grievance procedure may be extended by any longer period which is mutually agreed to by the parties. In addition, steps 2 through 3 can be by-passed if mutually agreed to by the parties.
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> ...

[61] The 2021 collective agreement effective from January 6, 2018 revised the grievance steps, and removed direct participation of the members from presenting grievances. Instead, CPA had control over all steps.

(ii) Legislative Regime

[62] Policing in Alberta, and labour relations relating to police officers, are governed by different pieces of legislation, including the *POCBA*, the *Police Act*, and the *Police Service Regulation*, Alta Reg 356/90.

[63] The *POCBA* governs collective bargaining between a municipality and a police association. The Calgary Police Association is an "association" under the *POCBA*, because CPA's membership is limited to the police officers of one municipal police service who hold ranks lower than that of inspector and it has as one of objects collective bargaining on behalf of its members (*POCBA*, s 1(k)). The *POCBA* provides that a collective agreement is an agreement in writing between a municipality and a bargaining agent, which contains the terms and conditions of employment, and is binding on all members (*ibid*, s1(e), s 6).

[64] Under s 20 of the *POCBA*:

> Every collective agreement shall contain a method for the settlement of differences arising
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> > (a) as to the interpretation, application or operation of a collective agreement,
> >
> > (b) with respect to a contravention or alleged contravention of a collective agreement, and
> >
> > (c) as to whether a difference referred to in clause (a) or (b) can be the subject of arbitration
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> between the parties to or persons bound by the collective agreement.

[65] If a collective agreement does not contain such a provision, s 21 deems the grievance procedure set out in that section to apply. Under this default procedure, if a difference arises between the parties to or persons bound by the collective agreement, the parties will attempt to resolve the dispute and if they are unable to resolve it, a party may submit the difference to arbitration.

[66] If a question arises as to whether a matter between the parties is a difference under the collective agreement, or a matter to which the *Police Act* or regulations thereunder apply, a reference may be made to the Court of Queen's Bench (*POCBA*, s 26).

[67] When the grievance procedure uses arbitration or an "other body" to resolve disputes, the *POCBA* governs the process. Among these provisions, the award (decision) of the arbitrator, arbitration board, or other body is "binding on the municipality, the members of the bargaining

unit and the bargaining agent" (*ibid*, s 32), and no award may be appealed to a court and judicial review is permitted (*ibid*, s 33).

[68] An association, such as CPA, has a duty to fairly represent all of its members, failing which a member can bring a complaint of "unfair practice" to the Alberta Labour Relations Board (*POCBA*, s 37 (d), s 38). The Alberta Labour Relations Board's jurisdiction to hear disputes is broad, as set out in ss 43-44. The Board has "exclusive jurisdiction to exercise the powers conferred on it" by the statute and the decision of the Board is "final and conclusive for all purposes" (*ibid*, s 44(1)). Board proceedings and decisions are not be questioned or reviewed by any court, except for in the case of judicial review for certiorari or mandamus (*ibid*, s 44 (2)(3)).

[69] Alberta law divides jurisdiction between disciplinary matters and employment conditions. The *Police Act* governs policing and police oversight in Alberta. It delegates to larger municipalities the responsibility for policing, which in the City of Calgary is done through an independent police force (the Calgary Police Service). The *Act* also establishes oversight roles of provincial entities including the Law Enforcement Review Board and municipal police commissions.

[70] The *Police Act* gives the Chief of Police certain duties in relation to police officer conduct, including "the maintenance of discipline and the performance of duty within the police service, subject to the regulations governing the discipline and performance of duty of police officers" and the "day to day administration of the police service" (s 41).

[71] The *Police Act* also sets out a framework for dealing with complaints against police officers and the chief of police. Any person may file a complaint regarding the conduct of an officer (s 42.1). The procedure for dealing with such complaints is set out in ss 43-48, but generally involves the chief of police either handling the complaint informally or conducting an investigation into the complaint, which in some cases will proceed to a hearing by the chief of police. An appeal of the hearing may proceed to the Law Enforcement Review Board. Complaints may also be made against chiefs of police (s 46).

[72] The *Police Act* specifically refers to the *POCBA* at section 60, noting that "none of the matters in sections 16[3], 20[4], 31[5], 37(1)[6], 41[7] and 43 to 48[8] shall be the subject of a collective agreement referred to in the *Police Officers Collective Bargaining Act*."

[73] Finally, in terms of the legislative context, the *Police Service Regulation* under the *Police Act* prohibits police officers from engaging in improper conduct, including corrupt practice, insubordination, neglect of duty, and discreditable conduct (s 5(1)). Discreditable conduct is further defined in s 5(2)(e), and includes using oppressive conduct towards a subordinate, using abusive or insulting language to any member of a police service or any member of the public,

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[3] Powers of the Law Enforcement Review Board.
[4] Procedures of the Law Enforcement Review Board.
[5] Responsibilities of municipal police commissions.
[6] Termination of employment of a police officer by a municipal police commission.
[7] Various duties of the chief of police, including maintenance of discipline and day to day administration of the police service.
[8] Complaint and serious incident proceedings.

and doing anything prejudicial to discipline or likely to bring discredit on the reputation of the police service.

(iii) Respectful Workplace Policy

[74] The Chief of Police, who has managerial responsibility pursuant to the collective agreement, imposed a Respectful Workplace Policy. The City, Calgary Police Service and Chief of Police point to this as an example of the exercise of managerial rights under Article 1.02(b) of the collective agreement. This policy sets out various workplace behaviour guidelines, including a positive and professional working environment in which all members are treated with respect and dignity. Interactions should be respectful and absent of intimidation, sarcasm, harassment (including sexual harassment) and discrimination.

(c) Discussion

(i) Essential character of claims against City, Calgary Police Service and Chief of Police

[75] It is well established that the essential character of a claim is not determined based on the language in the pleadings, but by looking at the factual circumstances giving rise to the dispute, and assessing whether they arise from the interpretation, application, administration or violation of the collective agreement (***Horrocks*** at para 40 and authorities cited therein; also see ***Greenlaw*** at para 132).

[76] The Plaintiff framed her personal claims widely (paras 16-18 above) including intentional infliction of emotional distress, conspiracy, breach of fiduciary duty, intimidation, breach of her Charter rights, constructive dismissal, and the police chief's statutory vicarious liability for torts.

[77] The vast majority of the alleged incidents took place while working as a police officer. One of the alleged incidents (the attempt to force the plaintiff to attend a wet t-shirt contest) occurred out of working hours but while the employees were staying outside Calgary as a group to attend police training. It is clear from Ms Prodaniuk's factual allegations and affidavit evidence that her claims are grounded in her interactions in the workplace with co-workers, supervisors, and superiors, and her attempts to redress the alleged harassment issues within the chain of command, the Calgary Police Service's human resources department and CPA.

[78] The essential character of her claim against the defendants other than CPA is workplace harassment or similar misconduct and the City's alleged failure to provide safe working conditions that were free from such wrongdoing. Although the Chief of Police and officers holding the rank of Inspector or higher are not parties to the collective agreement, the essential nature of the claim arises from their alleged wrongdoing and failures in the management or supervision of the workplace and, in the case of the Chief of Police, his vicarious liability for the acts of the members of the police service in relation to the workplace. Further, as explained later (paras 121-128), the essential nature of her claims is not a disciplinary matter under the *Police Act* that would displace the jurisdiction of a labour arbitrator.

[79] I therefore proceed to the second issue in the exclusive jurisdiction analysis: the ambit of the collective agreement.

(ii) Ambit of the collective agreement

[80] In my view, the plaintiff's personal claims against the City, Calgary Police Service and Chief of Police arise expressly or inferentially from the interpretation, application, operation or alleged violation of the collective agreement.

[81] The collective agreement's purpose is to stipulate the pay "and working conditions" of the members of CPA (collective agreement, Article 1.00). Effective January 6, 2014, the parties added to the collective agreement a stipulation that the Calgary Police Service and the CPA "will make every effort to prevent harassment between all CPS employees and outside parties" and that neither "will tolerate, ignore or condone workplace harassment" (collective agreement, Article 8.01).

[82] The absence of Article 8.01 in previous iterations of the collective agreement during Ms Prodaniuk's employment does not make any difference in this case. The collective agreement governs conditions of employment. The essential nature of the plaintiff's claims are breaches of her human rights or fundamental rights to a safe workplace free of harassment (that are guaranteed under Alberta human rights and occupational health and safety legislation). Fundamental employment rights can be considered and remedied by an arbitrator (***Parry Sound (District) Social Services Administration Board v Ontario Public Service Employees Union, Local 324 (OPSEU)***, 2003 SCC 42 at para 28, 50-52; ***Horrocks*** at para 13; ***Alberta Union of Provincial Employees v Alberta***, 2010 ABQB 760 at paras 37-46; ***Greenlaw*** at paras 142-151, 160, 168-171, 174).

[83] Exclusive jurisdiction can be displaced in appropriate cases (***Horrocks*** at para 15; ***Edmonton Police Association v Edmonton (City of)***, 2007 ABCA 147 at para 14). Ms Prodaniuk submits that the general statutory regime over labour law in Alberta does not impose exclusive jurisdiction to the same degree as the laws in some other provinces, particularly Ontario. Further, the wording of the collective agreement displaces the general presumption that generally a labour arbitrator has exclusive jurisdiction.

[84] Ms Prodaniuk's argument starts with the wording of s 20 of the *POCBA*, which I set out again for ease of reference:

> 20 Every collective agreement shall contain a method for the settlement of differences arising
>
> > (a) as to the interpretation, application or operation of a collective agreement,
> >
> > (b) with respect to a contravention or alleged contravention of a collective agreement, and
> >
> > (c) as to whether a difference referred to in clause (a) or (b) can be the subject of arbitration
>
> between the parties to or persons bound by the collective agreement.

[85] Her counsel submits that the word "or" in the final part of the sentence - being "between the parties to <u>or</u> persons bound by" [underlining added] - means that collective agreements under the *POCBA* are only required to have a mechanism to resolve differences between "the parties to" the agreement or between "persons bound by" the agreement, but not necessarily both. Consequently, the collective agreement is not required to resolve both types of differences.

[86] Her counsel relies on ***R v Szczerba***, 2002 ABQB 660 at para 28 to interpret the word "or":

> "Or", which is always disjunctive, is presumed to be inclusive unless it is clear from the context in which it is used that it is meant to be exclusive, and, in my opinion, there has been no rebutting of the presumption of an inclusive "or" in s. 37(1). In that regard, reference is had to R. Sullivan, Statutory Interpretation (Toronto: Irwin Law, 1997) at 88-89:
>
> > "Or" is always disjunctive in the sense that it always indicates that the things listed before and after the "or" are alternatives. However, "or" is ambiguous in that it may be inclusive or exclusive. In the case of the exclusive "or," the alternatives are mutually exclusive: (a) or (b), but not both; (a) or (b) or (c), but only one of them to the exclusion of the others. In the case of the inclusive "or," the alternatives may be cumulated: (a) or (b) or both; (a) or (b) or (c), or any two, or all three.
> >
> > [T]he inclusive "or" expresses the idea of "and/or."...
> >
> > In legislation, "or's" are presumed to be inclusive, but the presumption is rebutted where it is clear from the context that the listed alternatives are meant to be mutually exclusive.

[87] Her counsel further relies on the Alberta Court of Appeal decision in ***Olivia v Strathcona Steel Manufacturing Inc,*** 1986 ABCA 246, which interpreted an identical provision in the *Labour Relations Act*, RSA 1980, c L-1.1, and noted at para 17:

> We should point out that a member of a Union is bound by, but not a party to the collective agreement; that the Union enters into the contract as a principal and not as an agent of the members of the Union; and the agreement is not as previously considered by some courts, a bundle of agreements between the employer and each member of the Union.

[88] Based on this, Ms Prodaniuk argues that s 20 of the *POCBA* does not require a method for the settlement of differences between persons bound by the collective agreement, such as differences between fellow officers, so long as it provides a method for settling differences for differences "between the parties", being the police association and the municipality.

[89] To bolster this interpretation, Ms Prodaniuk relies on case law which observes that s 20 of the *POCBA* and similar provisions are different or weaker than similar legislation in Ontario (***Royal Alexandra Hospital v AHEU, Local 41***, 1981 CanLII 1161 (AB QB), [1981] AJ No. 1003; ***ATU Local 583 v Calgary (City)***, 2007 ABCA 121).

[90] In particular, counsel submits that in ***Royal Alexandra Hospital*** the Court held that the provision in s 20 is different than its Ontario counterparts:

> [30] This decision is distinguishable as the Ontario statute requires that arbitration be the means of final settlement of all disputes between the parties. The *Alberta Labour Act, 1973* requires only that every collective agreement contain a method for the settlement of differences between the parties to the agreement or persons bound by the agreement. This leaves the parties free to

> agree that the decision by the employer is the final and binding settlement of the difference. This is what the parties did in this case.

[91] Counsel for Ms Prodaniuk submits that as the parties can agree to a system of dispute resolution that does not require arbitration, Alberta does not follow an exclusive jurisdiction model. Arbitration is only the default when there is no dispute resolution mechanism in the collective agreement. In cases where there is a collective agreement, the agreement is what governs. She argues that parties to a collective agreement could agree, if they wished, to have their collective agreement settle differences through a reference to the Court of Queen's Bench.

[92] Ms Prodaniuk's counsel then focusses on the grievance provisions of the collective agreement. He submits these provisions do not cover the abuses allegedly perpetrated on Ms Prodaniuk by other police officers or her employer. The conduct of other officers were "blue on blue" complaints that are outside the scope of the dispute resolution provisions. Her claims against her employer are not a difference arising between the contracting parties, and the grievance provision does not apply to disputes arising between her and her employer. Therefore, exclusive jurisdiction does not apply or the Court should exercise its residual jurisdiction because Ms Prodaniuk would otherwise be deprived of a meaningful remedy.

[93] Her counsel makes several arguments in support of this interpretation. He observes that the *POCBA* and the *Police Act* both emphasize that disciplinary matters and their resolution are under the purview of the chief of police and the *Police Act.* Section 41 of the *Police Act* states that the chief of police is responsible for the maintenance of discipline and performance of duty for the police service and section 43 sets out how complaints against police officers should proceed. As mentioned above, section 60 of the *Police Act* prohibits a collective agreement from dealing with these matters. Counsel argues that these provisions hamstring the ability of a collective agreement under the *POCBA* to deal with complaints by one member of the police association against another.

[94] Further, counsel relies on Ms Prodaniuk's evidence of her own experience and the evidence of two employees of the Calgary police service, regarding the proper interpretation that should be given to the collective agreement. I will describe the main features of this evidence in the following few paragraphs.

[95] Ms Prodaniuk deposed that CPA's president and in-house counsel told her that CPA did not represent its members for sexual harassment matters committed by one officer against another, or "blue on blue" complaints.

[96] She also relies on affidavit evidence from a former human resources consultant with the Calgary Police Service, who worked for the service from mid-2015 to the spring 2019. The consultant deposed that her office received copies of all grievances filed by the CPA, but that during her time there were no complaints about misconduct by one member against another.

[97] Finally, Ms Prodaniuk relies on an email dated 8 August 2016 from a President of the CPA, contained in the affidavit of another Calgary Police Service employee. The email states:

> I think first off you need to understand that a ***grievance*** is something that is brought when the [Calgary Police Service] violates the terms of our Collective Bargaining Agreement (CBA). It can also include discrimination based on one of the protected grounds listed in the Alberta Human Rights Act. Complaints about treatment by other [Calgary Police Service] members are not generally grievable

> CBA matters, as there are other remedies available (Respectful Workplace & PSR Complaints). In fact, until September 28th, 2015, there was no specifically grievable clause in our CBA in relation to ill treatment. We now have a ***Harassment*** clause which allows us to grieve situations where the CPS fails to take action, once a matter has been brought to their attention for remedy. The employee / CPA member still has an obligation to bring the matter to the attention of the [Calgary Police Service], preferably in writing.
>
> ...
>
> A PSR is a personal complaint made about a police officer's conduct under the Police Service Regulation. Where applicable, the CPA will make members aware of this available option, but we will not lay the complaint as the member's agent. We take this stance as we may also be in a position where we need to assist the complained about member. We have obligations to all our members and cannot be seen to be taking sides. Laying a PSR is a simple matter of putting the complaint in writing and requires no special assistance or skill. Citizens do it effectively on a regular basis. If necessary, we will supply legal assistance to witness officers (including the complainant) and named officers (accused member). I think that is what you are refereeing to in your email reference of "member against member".
>
> ...
>
> [Bold face and underlining in original document]

[98] When taken together, Ms Prodaniuk submits that the wording of the collective agreement, the legislation, and the evidence on how the CPA approached sexual or other harassment allegations, all point to an interpretation of the collective agreement that excludes officer-on-officer complaints from the purview of the grievance procedure under the collective agreement. As such, she argues the collective agreement does not apply to this dispute, and there is no exclusive jurisdiction that lies with an arbitrator to oust the jurisdiction of this Court.

[99] The defendants submit that Alberta law is clear and that the exclusive jurisdiction model applies under the *POCBA*.

[100] I do not agree with the plaintiff's submission that s 20 of the *POCBA* does not require a collective agreement to provide a dispute resolution mechanism for both "parties to" the agreement and "parties bound by" the agreement.

[101] The purpose of labour relations legislation include to provide a comprehensive scheme to govern all aspects of the relationship between the parties in a labour relations setting and ensure that disputes be "resolved quickly and economically, with a minimum of disruption to the parties and the economy" (***St Anne*** at para 16 (CanLII); ***Weber*** at paras 41, 46; ***Regina Police*** at para 34 (CanLII); ***Olivia*** at para 23-25). In speaking to a provision identical to section 20 of the *POCBA* in Alberta's *Labour Relations Act*, RSA 1980, c L-1.1, the Alberta Court of Appeal summarized these objectives as follows:

> [25] I find the same intent in both Acts as that referred to in the *St. Anne's* case, that is, the legislature intended ousting the jurisdiction of the court in claims arising out of differences as to the interpretation, application or operation of a collective agreement with a view to speedily resolving differences, that could lead

> to industrial unrest, by a procedure that is more appropriate and informal than litigation.
>
> (***Olivia*** at para 25).

[102] I see nothing in the *POCBA* to suggest the Legislature intended a partial exclusion, where the employer and bargaining agent would be required to provide a dispute resolution provision (arbitration or otherwise) for disputes between the parties but not among the individuals working in the workplace, or *vice versa*. Such an approach would frustrate the purposes of the exclusive jurisdiction model and provide the worst outcome of divided jurisdiction leading to cost, delay, potentially inconsistent decisions, and different procedural and review processes. The plaintiff did not point to any reason why the Legislature would have intended to bifurcate dispute resolution among multiple forums or inject the cost and delay of Court proceedings at the risk of creating labour unrest.

[103] Section 20 requires a method to settle differences "between the parties to or persons bound by the collective agreement". It means all these persons, not some or other of them. The section uses, in the language of the ***Szczerba*** case, an "inclusive or". This intention is reflected in s 32 of the *POCBA*, that an award is binding on members bound by, as well as the parties to, the collective agreement.

[104] I turn to whether the ambit of the collective agreement's dispute resolution regime includes Ms Prodaniuk's claims arising from the alleged conduct of her employer, co-workers, supervisors, superiors and the Chief of Police, including that her employer or others failed to protect her from, or respond to, harassment and other misconduct in the workplace and her claims against the Chief of Police or others for vicarious liability for the abuses and assaults allegedly committed by other police officers against her.

[105] I find that it does cover such claims. When read as a whole, and within the legislative context, the wording in the collective agreement provides a mechanism for an individual police officer to seek relief from harassment or other unlawful or unsafe conditions in the workplace whether arising from failures to ensure a safe workplace, activity intended or calculated to cover up or hinder complaints, or torts committed against the plaintiff by others in the workplace.

[106] The contracting parties provided for settlement of disputes as follows: "Either party to this agreement may lodge a grievance with the other party on a difference, which arises between the parties, bound by this Collective Agreement....". The agreement then sets out a process whereby members shall present the grievance in the first instance to their supervisor and then to an Inspector. If these first steps do not resolve the matter, CPA has the right of a hearing with the Chief or a designated deputy chief, and then arbitration.

[107] As mentioned, the parties to the collective agreement revised the steps of the grievance process under the most recent iteration. Individual members cannot bring the matter forward in the first instance. This change has to be considered in context. CPA is bound to fairly represent its members in grievances. The agreement does not purport to narrow matters of concern that a member may raise with CPA. The revisions merely change the manner in which the grievance is handled by giving control to CPA over the process. CPA's conduct in handling grievances, as discussed later, is reviewable by the Alberta Labour relations Board.

[108] In applying the objective intention approach to contract interpretation, I must consider the surrounding circumstances as set out in case law (eg, ***IFP Technologies (Canada) Inc v***

EnCana Midstream and Marketing, 2017 ABCA 157 and authorities cited therein). Of course, the surrounding circumstances cannot be used to overwhelm the language chosen by the parties (***Sattva Capital Corp v Creston Moly Corp***, 2014 SCC 53 (CanLII), [2014] 2 SCR 633 at para 57).

[109] The key circumstances are two-fold. First, the parties knew or ought to have known when they negotiated their collective agreement, that it would be binding on every member of the bargaining unit (*POCBA*, s 6). Second, the parties knew or ought to have known when they negotiated their collective agreement, that the purposes of the *POCBA* include to provide a comprehensive scheme to govern all aspects of the relationship between the parties in a labour relations setting and ensure that disputes be "resolved quickly and economically, with a minimum of disruption to the parties and the economy" (para 101 above).

[110] The word "parties" can have more than one meaning in the same document. In the present context, it might mean the parties to the contract or the people bound by the agreement, or both.

[111] In ***Rivers***, the Court interpreted the word "party" broadly in a labour relations scheme, "in keeping with the legislature's intention that the *Act* together with the Collective Agreement 'provide a complete and comprehensive scheme for police officers relating to their employment relationship'..." (at para 36 of 2018 ONSC 4307).

[112] It is unlikely the contracting parties objectively intended that the phrase "parties, bound by this agreement" means only contracting parties, for a number of reasons.

[113] First, that interpretation would leave the words "bound by this agreement" redundant. Contracting parties are always bound by their agreements. Earlier in the same sentence the agreement describes CPA and the City as "Either party to this agreement...". The Court assumes that contracting parties typically do not intend to include redundant words in their contract - every word should be given meaning and effect if reasonably possible. It appears to me that this sentence of the contract is poorly drafted but was objectively intended to mean the contracting entities and the other people bound by the agreement.

[114] Second, it is implausible that the City and CPA intended that parties bound by the agreement who suffered losses arising out of conditions in the workplace would not have access to the speedy and cost effective remedy of labour arbitration, thus undermining the object and purpose of the collective agreement.

[115] I have read the extrinsic evidence that the plaintiff's counsel submits is relevant to interpreting the collective agreement. I will describe how I have treated this evidence and my reasons why, in the following few paragraphs.

[116] Where the meaning of a contract is genuinely ambiguous, extrinsic evidence of the contracting parties' subsequent conduct may be admitted (***IFP Technologies (Canada) Inc v EnCana Midstream and Marketing***, at para 87; ***Shewchuk v Blackmont Capital Inc***, 2016 ONCA 912 at paras 46-50). The weight of such evidence is variable and fact specific (see ***Shewchuk*** at paras 51-56).

[117] I do not think that the meaning of Article 4 (numbered Article 3 of the 2021 version) is open to reasonable competing interpretations. Therefore, it is not ambiguous. The evidence is not admissible for the purpose of interpreting the agreement.

[118] Nevertheless, if I had considered it to assist in discerning the meaning of the agreement, I would have concluded that the evidence has little weight.

[119] The evidence does not address the acts of both parties to the contract or show a pattern of both parties over time as to their mutual interpretation or administration of the dispute resolution provisions of the collective agreement. It merely demonstrates CPA's view of the scope of the collective agreement – a view which may or may not be correct. At most, it illustrates that CPA executives took the position that the collective agreement did not apply to "blue on blue" complaints.

[120] The evidence also touches on information from which I am asked to infer that members did not think the collective agreement applied to abuse by other members (see para 31 above). Their choices whether or not to advance a grievance is not relevant to the meaning of the agreement or if it were, it has little weight because it is the opinion of one group of members that may or may not necessarily be correct and there is no evidence that one of the contracting parties - management - concurred in this view.

[121] Turning to Ms Prodaniuk's last argument, I considered whether the existence of a discipline scheme for police officers outside of the collective agreement alters my analysis on this point. It does not.

[122] The scheme in the *Police Act* and *Police Service Regulation* reserves discipline to a police chief. This is a common approach in police employment relations across Canada. Police officers are governed by both their collective agreements and by the schemes set out in police legislation (***Edmonton Police Assn v Edmonton (City)***, 2007 ABCA 14; ***Regina Police Assn*** at paras 26-27).

[123] This governance does not weaken the exclusive jurisdiction model for labour relations. It simply means that discipline is governed by a different scheme. Both schemes co-exist and have exclusive jurisdiction over their respective subject matters (***Edmonton Police*** at paras 14-15). The collective agreement must not be interpreted in a manner that would offend the legislative scheme in the *Police Act* (***Regina Police Assn*** at para 30; *Police Act*, s 60).

[124] There are occasions where a police officer's actions in the workplace may potentially fall under both the labour relations scheme and the police disciplinary scheme. In some cases, classification may be difficult. When there is uncertainty, regard must be had to the essential character of the dispute (***Edmonton Police*** at para 17). To determine the true nature of the dispute, "regard must be had to the grievance filed and the context in which it arose (*ibid* at para 18; ***Regina Police Assn***, at paras 25-27).

[125] In this case, no actual grievance was filed, but the nature of Ms Prodaniuk's allegations are that she was subject to harassment, discrimination, or other misconduct in her workplace by other officers, and was not protected or aided by her employer or CPA. Although her complaints might have led to disciplinary actions against other officers, and could fit under the definition of "misconduct" in the *Regulation*, the real nature of her dispute is the working conditions which she was allegedly subject to, and the failure of her employer, the Calgary Police Service, the Chief of Police or the CPA to respond to them. This type of complaint relates to her working conditions, which are governed by the collective agreement. Again, she was not (and is not in this action) seeking redress from the officers involved or for them to be disciplined.

[126] Based on the information in Ms Prodaniuk's Amended Amended Amended Statement of Claim and Affidavit, I do not see evidence to suggest that Ms Prodaniuk, her employer, or the CPA saw this as a misconduct/disciplinary matter that was subject to the *Police Act*. Instead, she was encouraged to deal with the matter on her own or to use the Respect Matters Program. According to her Affidavit, the approach from some of her superiors was to dismiss her complaints as personality conflicts and resolve the issues by transferring her to other districts. As for the CPA, there was either reluctance or refusal to treat the issue as a grievance, but no suggestion that Ms Prodaniuk launch a misconduct complaint. I reject the argument that this dispute should be characterized as disciplinary.

[127] Ms Prodaniuk also sought to invoke s 26 of the *POCBA*, to hear a reference whether the collective agreement or *Police Act* applies:

> 26(1) Where a question arises between the parties over whether a matter is a difference as to the interpretation, application, operation, contravention or alleged violation of the collective agreement or is a matter to which the Police Act and the regulations under that Act apply, either party or any arbitrator before whom the matter arises on the arbitrator's own motion may, by application, refer the matter to a judge of the Court of Queen's Bench.

[128] Section 26 does not change the analysis. Under the ***Weber*** analysis, the Court must determine whether the matters are within or outside the ambit of the collective agreement. It is plain and obvious that they are within that ambit.

[129] In view of the contract language and its context, I conclude that the collective agreement in this case provides dispute resolution for matters arising between the parties to the agreement and persons bound by the agreement.

[130] Consequently, I find that Ms Prodaniuk's personal complaints arise expressly or inferentially out of the interpretation, application, operation or alleged violation of the collective agreement, as against the City, the Calgary Police Service and Chief of Police. The issue of whether the regime applies to preclude claims directly against the other officers who assaulted or harassed her does not arise because they are not parties to this action. However, the claims against her employer, the Police Service, or the Chief of Police as explained above, essentially arise from failing to ensure a safe work environment or vicarious liability for workplace wrongs resulting from that unsafe environment. These plainly and obviously arise from the operation and alleged violation of the collective agreement.

[131] If I had found that the provisions of the collective agreement did not address dispute resolution among parties bound by the agreement, then s 21 of the *POCBA* would deem the collective agreement to include a broad dispute resolution leading to arbitration that would bind Ms Prodaniuk. I would have come to the same conclusion, that Ms Prodaniuk's claims against these defendants are within the ambit of the collective agreement.

(iii) Personal claims against CPA

[132] I come to the same conclusion regarding Ms Prodaniuk's personal claims against CPA.

[133] Ms Prodaniuk claims that on more than one occasion she asked CPA for assistance with harassment or similar misconduct in the workplace, but it showed great reluctance or refused to file a grievance and blamed Calgary Police Service for tolerating harassment or obstructing

attempts at recourse. Ms Prodaniuk asserts that CPA owed her a duty to deal with her work conditions, and conspired with other defendants to essentially suppress harassment issues.

[134] The essential character of her claim against CPA is failure to fulfil its duty as her exclusive bargaining agent and workplace representative to fairly represent her. This alleged misconduct is a prohibited practice (*POCBA*, s 37).

[135] Ms Prodaniuk had the right to make a complaint against CPA of unfair practice to the Alberta Labour Relations Board (*POCBA*, s 38).The Labour Relations Board has "exclusive jurisdiction to exercise the powers conferred to it by or under this Act" ... and the "action or decision of the Board ... is final and conclusive for all purposes" (*POCBA*, s 44(1)). Further, no "decision, order, directive, declaration, ruling or proceeding of the Board shall be questioned or reviewed in any court ..." (*ibid*, s 44(2)).

[136] The exclusive jurisdiction model applies to the jurisdictional question as between this Court and the Alberta Labour Relations Board. The Legislature chose the Alberta Labour Relations Board to consider questions of fair representation, not the courts. The Legislature also provided the Alberta Labour Relations Board with broad remedial powers, including issuing "a directive to rectify the act in respect of which the complaint is made" (*POCBA*, s 39(5)). The Board may also direct the parties to proceed to arbitration and waive any time-limits including the time limit under the collective agreements in which to launch a grievance (*ibid*, s 43(1); *Labour Relations Code*, RSA 2000, c L-1, s 153(3)).

[137] In light of these statutory provisions, Alberta courts have no jurisdiction over allegations of breach of the duty of fair representation and such claims must go to the Alberta Labour Relations Board (See ***Kniss*** at para 19 and ***Koenig v Marsh***, 2005 ABCA 118 at paras 8-9 and 14, applying ***Gendron v Supply and Services Union of the Public Service Alliance of Canada, Local 50057***, 1990 CanLII 110 (SCC), [1990] 1 SCR 1298).

VI Issue 2 – Is it plain and obvious that the Court does not have jurisdiction over Ms Prodaniuk's other claims?

(a) Additional claims against CPA

[138] As I reviewed in para 18 above, Ms Prodaniuk advanced several other claims against CPA. She claims that CPA bylaws create a contractual relationship between CPA and its members, and CPA breached this contract when it failed to act on her behalf. She further claims that she is entitled to the oppression remedy. CPA is incorporated under the *Societies Act*, which incorporates the oppression provisions of the *ABCA*. She asserts that she is entitled to advance her a claim as a CPA member.

[139] The thrust of Ms Prodaniuk's position on these claims is that breach of contract and oppression claims against CPA must be heard in the Court of Queen's Bench, not by a labour arbitrator or the Alberta Labour Relations Board.

[140] The task is not to conduct a full inquiry into the merits of these claims. Again, the issue before me is whether the jurisdiction over the breach of contract or oppression claims is not sufficiently plain and obvious such that the application to strike must fail in whole or in part.

(b) Breach of Contract

[141] Ms. Prodaniuk argues that *Societies Act* corporation bylaws create a contractual obligation between the society and its members and that as a member, she is entitled to enforce them.

[142] Traditionally, the bylaws of companies created by memorandum or articles of association created a contractual obligation between the company and its shareholders (***Theatre Amusement Co v Stone*** (1914), 50 SCR 32 at p 37). The Courts applied the same approach to Alberta societies, which were incorporated by articles of association rather than letters patent (***Sandhu v Siri Guru Nanak Sikh Gurdwara of Alberta,*** 2015 ABCA 101 at para 68, leave to appeal ref'd [2015] SCCA No 184, and authorities cited therein; see also ***Knox v Conservative Party of Canada***, 2007 ABCA 295 at para 27 and ***Farrish v Delta Hospice Society***, 2020 BCCA 312 at para 46, leave to appeal denied 2021 CanLII 26929 (SCC)).

[143] Bylaws, even where they are contract-like, have different characteristics from ordinary contracts. As discussed in ***Owners: Condominium Plan No. 7721985 v Breakwell***, 2019 ABQB 674 at paras 50-53, bylaws are not the result of bargaining, and they are enacted and amended unilaterally. It is sufficient for this decision to say that bylaws create binding obligations on societies, and its members are generally entitled to seek relief when the society breaches them.

[144] Ms Prodaniuk claims that CPA breached Article 3.1(g) of its bylaws. Article 3.1(g) is found under the heading "Association Objectives" and reads:

> The Calgary Police Association objectives are:
>
> ...
>
> g. to foster an environment of integrity, trust, and mutual respect between it's [sic] members and the citizens of Calgary.

[145] Ms Prodaniuk argues that CPA did not perform its obligation under this bylaw in accordance with the doctrine of good faith performance from ***Wastech Services Ltd. v Greater Vancouver Sewerage and Drainage District***, 2021 SCC 7.

[146] As stated earlier, the essential character of the claim is determined by the facts that gave rise to the dispute (***Beaulieu***, summarizing ***Kniss***, at para 43).

[147] All of the factual allegations that the plaintiff asserts as a breach of the by-laws relate to CPA's alleged failure to fairly represent her under the collective agreement. These claims are within the exclusive jurisdiction of the Alberta Labour Relations Board.

(c) Oppression

[148] The plaintiff asserts a claim of oppression under the *Societies Act*. She argues that only the Court of Queen's Bench can hear such a claim.

[149] Section 35 of the *Societies Act* states that Part 17 of the *ABCA* applies to a society as if it were a corporation. Section 215 of the *ABCA* provides:

> 215(1) The Court may order the liquidation and dissolution of a corporation or any of its affiliated corporations on the application of a shareholder,
>
> (a) if the Court is satisfied that in respect of a corporation or any of its affiliates

(i) any act or omission of the corporation or any of its affiliates effects a result,

(ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, or

(b) if the Court is satisfied that

(i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or

(ii) it is just and equitable that the corporation should be liquidated and dissolved.

(2) On an application under this section, the Court may make any order under this section or section 242 it thinks fit.

(3) Section 243 applies to an application under this section.

[150] In ***Sandhu*** the plaintiff sought to have the defendant society wound up for the board's practice of excluding potential members who would support the plaintiff's candidacy for a leadership position. The defendant society was incorporated under the *Religious Societies Land Act*, which, like the *Societies Act,* incorporates Part 17 of the *ABCA* in the event of an application to wind up the society. The Court applied the oppression remedy but denied the winding up, instead ordering restructuring of the society's approval process and amending its bylaws.

[151] Ms Prodaniuk has pled a winding-up of the CPA, or alternatively for other oppression remedies including compensation. Therefore, Ms Prodaniuk, as a CPA member, can generally bring an oppression claim against the CPA.

[152] As explained above, the facts of her claim pertain to unfair representation by CPA during her employment. Matters of unfair representation including compensation for breach of the duty are within the exclusive jurisdiction of the Alberta Labour Relations Board. However, only the Court can issue relief for corporate oppression. I will return to this point in my discussion of the third issue -- the Court's residual jurisdiction.

(d) Other claims

[153] Ms Prodaniuk claims that the short limitation period in which to proceed with a grievance under the collective agreement is unauthorized, unconstitutional or contractually invalid, and that this Court has jurisdiction to consider these issues.

[154] The essential character of the constitutional claim and contractual invalidity claims arise from the application or operation of the collective agreement.

[155] The exclusive jurisdiction model applies to Charter remedies, "provided that the legislation empowers the arbitrator to hear the dispute and grant the remedies claimed" (***Weber*** at

para 67). In my view, the same principle applies to Ms Prodaniuk's claim that the arbitration clause is contrary to section 96 of the *Constitution Act, 1867*.

[156] Although an Alberta labour arbitrator does not have jurisdiction to make a binding declaration, they have jurisdiction to refuse to enforce parts of the collective agreement that are unlawful or inoperative because they are contrary to our Constitution (***Douglas/kwantlen Faculty Assn v Douglas College***, 1990 CanLII 63 (SCC), [1990] 3 SCR 570 at pp 594-598; *Administrative Procedures and Jurisdiction Act*, RSA 2000, c A-3, s 11; *Designation of Constitutional Decision Makers Regulation*, Alta Reg 69/2006, ss 1(b)(viii), 2, Schedule 1).

[157] Similarly, I conclude the other claims about the limitation provision including unconscionability are in the jurisdiction of the arbitrator or the Alberta Labour Relations Board.

[158] These are questions of mixed law and fact. The arbitrator has jurisdiction to decide such questions arising from their remit:

> There is not one law for arbitrators and another for the court, but one law for all. If a contract is illegal, arbitrators must decline to award on it just as the court would do.
>
> (***Taylor (David) & Son, Ltd v Barnett***, [1953] 1 All E.R. 843 (C.A.), per Lord Denning MR at p 847, approved in ***Douglas/kwantlen*** at p 597).

[159] I do not regard s 29 of the *POCBA* as precluding an arbitrator from ruling on these questions if they arise in the course of the issues presented in the grievance. The arbitrator can decline to apply a provision if found unlawful. I do not think the Legislature possibly intended that section 29 precludes arbitrators from applying Alberta law and creates one substantive law for union members and another for other employees. See ***Douglas/kwantlen*** at p 598.

[160] If the arbitrator were precluded from granting relief under s 29 of the *POCBA*, the jurisdiction of the Alberta Labour Relations Board includes decisions whether a person is bound by a collective agreement or if a collective agreement is in effect (*POCBA*, s 43(2)). I see no reason why that would not apply to portions of the agreement, again excluding the Court's jurisdiction.

[161] The alternative, that the Legislature intended that parties to or persons bound by a collective agreement could litigate the validity of the agreement outside the specialized labour arbitrators and tribunals is not plausible.

[162] Ms Prodaniuk's counsel questioned, in oral submissions and his supplemental written submissions of May 14, 2021, how the grievance could come before the arbitrator if the contractual time had expired.

[163] There may be cases where the arbitration process itself could be an effective barrier to a claimant's challenge to the validity or applicability of those provisions. In ***Uber Technologies Inc v Heller***, 2020 SCC 16 (CanLII) at para 47, the Supreme Court of Canada discussed this potential, where the fees of an international arbitration seated outside Canada imposed a brick wall between the claimant and the resolution of his challenge that the arbitration provision was unconscionable. In that case the Court cut the "Gordian Knot" by taking jurisdiction.

[164] I do not see this as a concern in the present case. This is not a case where there is a practical bar such as a requirement for fees in an arbitration administered by the ICC. We are dealing with a local labour arbitration, where the CPA's decision whether to take the grievance

to arbitration is subject to review by the Alberta Labour Relations Board, and the decisions of the labour arbitrator and Board are each subject to judicial review in this Court. It is plain and obvious that the arbitrator or the Alberta Labour Relations Board has jurisdiction to decide if Ms Prodaniuk is bound by the time limitation. It would be nonsensical for such decision maker to refuse to decide the legality of the provision by finding the time limitation imposed by the provision itself had expired.

[165] Accordingly, the Court's jurisdiction over these disputes is excluded.

[166] I note all defendants submitted in their arguments in this application that the arbitrator has jurisdiction to decide the constitutional and unconscionability claims.

VII Issue 3 – Might this Court Exercise its Residual Jurisdiction?

[167] Ms Prodaniuk submits that regardless of any exclusions of the Court's jurisdiction, this Court can and should exercise its residual discretion to hear this case.

[168] I do not need to decide if the Court has residual jurisdiction. The question is whether it is plain and obvious that it would not exercise such jurisdiction. The proof lies on the defendants.

[169] She notes that there are times when despite there being a comprehensive statutory scheme, events occur which the scheme could not foresee, and the court's residual, or inherent, jurisdiction needs to be exercised (***Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v Canadian Pacific Ltd***, 1996 CanLII 215 (SCC), [1996] 2 SCR 495 at para 8).

[170] As described earlier, the Court's residual jurisdiction should only be exercised in cases where the court's failure to intervene will result in a "real deprivation of ultimate remedy" (***Horrocks*** at para 23; ***Weber*** at paras 57 and 67; ***Beaulieu*** at para 48 and authorities cited therein) or where the dispute resolution procedures cannot provide the remedy required to resolve the dispute (*ibid*).

[171] Ms Prodaniuk points to several cases in support of her position.

[172] In ***Wanke v University of Calgary***, 2011 ABCA 235, reversing 2010 ABQB 498, the Alberta Court of Appeal found that in an exceptional circumstance where an employee could not comply with a limitation period, and an arbitrator may lack the powers to grant the remedy required, a court may choose to take jurisdiction of the claim. The plaintiff in the case had worked at the university under a collective agreement, but was terminated. She was advised to file a grievance, but did not, due to the short 20-day limitation period and her incapacitation due to illness. The Court of Appeal overturned the motion court's decision to summarily strike the claim because it was not plain and obvious that a Court would refuse to exercise its residual jurisdiction.

[173] ***C(T) v G(M)***, 2001 ABCA 228 concerned a claim alleging "inappropriate and intolerable working conditions, including such matters as sexual assault, sexual harassment, defamation, gender discrimination, assault and environmental concerns" (at para 2). The Court held:

> [3] We are not satisfied that the essential nature of this dispute is covered by the Agreement, or that the Collective Agreement provides an unequivocal exclusive jurisdiction model so as to oust the jurisdiction of the Court. Mr. Meikle

> acknowledges that the language of s. 29.01(c) is equivocal. In our view, the section was not intended to be exclusive.
>
> [4] In addition, the Court retains a residual jurisdiction where there is no adequate or effective remedy provided under the dispute resolution procedure. In our view, no such effective or adequate remedy exists in this case.

[174] That case turned on the wording of the collective agreement between the parties in that case. The parties to the present application did not provide me information that it is similar to the collective agreement in the present case.

[175] She also relies on ***Sulz v Minister of Public Safety and Solicitor General***, 2006 BCCA 582, where an RCMP officer was allowed to bring a harassment claim, despite the existence of a statutory scheme governing RCMP labour relations. The BC Court of Appeal upheld the decision, holding that the plaintiff's dispute involved a real tort claim for injuries suffered due to a manager, most of her income losses occurred after her employment ended, and she was no longer governed by the grievance process under the *RCMP Act*, so had no effective redress. Further, she could no longer bring a human rights complaint due to the expiry of a limitation period.

[176] The plaintiff says the Court should retain residual jurisdiction for a number of reasons.

[177] The plaintiff submits that the only process available to her is a *Police Act* complaint, therefore she is deprived of effective redress for her injuries. For the reasons expressed above (at paras 121-129), I do not agree. It is plain and obvious that the grievance procedure is available.

[178] The plaintiff's counsel submits the plaintiff is a whistleblower and CPA is in a conflict because the issues arise from "blue on blue" interactions. The plaintiff relies on the commentary in ***Sulz***, as follows:

> [28] In [***Pleau (Litigation Guardian of) v Canada (Attorney General)*** (1999), 182 D.L.R. (4th) 373, 1999 NSCA 159, (leave to appeal to the Supreme Court of Canada dismissed [2000] S.C.C.A. No. 83)] the plaintiff's action was against the Attorney General of Canada and nine federal public servants for conspiracy to cause injury to him and his family in the context of his dismissal and subsequent reinstatement in the federal public service. His complaints included harassment by superiors and co-employees. As in [***Vaughan v Canada***, [2005] 1 S.C.R. 146, 2005 SCC 11], s. 91 of the PSSRA provided grievance procedures, but the claims could not be referred to third party adjudication under s. 92. The grievance procedure provided that the final decision lay in the hands of the Deputy Minister, who was responsible for the department in which the persons whose conduct Mr. Pleau complained of were employed. In ***Vaughan***, Binnie J. described these circumstances as "whistle-blower cases" (at paras. 18-24) which "raised serious questions of conflicted interests within the employer department …" (at para. 23).

[179] The cases cited in this passage turned on a finding that the process under consideration did not provide an effective means of redress, because it lacked an independent adjudicator and the decision maker had a conflict of interest.

[180] Those cases are distinguishable. The collective agreement in Ms Prodaniuk's case provides for adjudication by a labour arbitrator. Such arbitrators must be free from conflict and independent. The alleged conflict in the present case is in Ms Prodaniuk's bargaining agent, in relation to "blue on blue" complaints where the CPA must resolve whether to proceed with a grievance where one of its members allegedly behaved inappropriately toward another of its members.

[181] This potential conflict is inherent in the statutory scheme, and might potentially give rise to a concern for deprivation of effective redress. However, the Legislature intended that these issues be regulated under the statute. The *POCBA* guarantees the plaintiff fair representation by CPA (*POCBA*, s 37(d)). The Alberta Labour Relations Board has extensive powers to investigate and remedy the problem, and exclusive jurisdiction in relation to exercising its statutory powers to do so (*POCBA*, ss 37(d), 38(1), 39, 44).

[182] Unlike in the case of her claims against her employer, there is no possibility of a residual discretion in the Alberta courts for duty of fair representation claims, as they were created by statute (***Gendron v Supply & Services Union of the Public Service Alliance of Canada, Local 50057***, [1990] 1 SCR 1298 at para 62; see para 137 above). This Court therefore has no jurisdiction over Ms. Prodaniuk's personal claims against CPA.

[183] The plaintiff further submits the contractual limitation period in which to request a grievance proceeding is unreasonably short, and notes that Alberta law does not provide a mechanism to extend the limitation.

[184] The Court should not exercise its jurisdiction where a party simply failed to exercise their grievance rights under the collective agreement or is dissatisfied with the process and would prefer to proceed in Court (***Transalta Utilities Corporation v Young Estate***, 1997 ABCA 349 (CanLII) at para 34; ***Beaulieu*** at para 48; ***De Montigny v Roy***, 2018 ONSC 858 at paras 45-50, aff'd 2018 ONCA 884).

[185] It is not appropriate to exercise residual jurisdiction absent some additional circumstance that would raise doubt whether the plaintiff's action was doomed to fail. In ***Wanke***, that circumstance was the plaintiff's physical incapacity to pursue the grievance remedy during the 20 day limitation in which to do so.

[186] In the present case, the plaintiff periodically discussed her situation with CPA or the City, but did not further pursue her remedies, including taking the issue of CPA's alleged failures to fairly represent her to the Alberta Labour Relations Board. She does not claim she was incapacitated from pursuing claims or taking advice. On the pleadings and affidavits in the present case, retaining residual jurisdiction in this case would undermine the exclusive jurisdiction model.

[187] The plaintiff submits that the Court should retain jurisdiction over the constitutional issue whether the allegedly short contractual limitation deprives the plaintiff of access to justice or breaches her equality rights.

[188] I agree with the plaintiff that only the Court could issue a binding declaration on the constitutional issues. However, the statutory jurisdictional model does not result in a real deprivation of an effective remedy. As discussed above, the arbitrator or the Alberta Labour Relations Board can decide whether the time limitation is operative or applicable in Ms Prodaniuk's specific case. Even if it is, the Alberta Labour Relations Board can extend the time

if appropriate to remedy any failings of CPA in ensuring Ms Prodaniuk was fairly represented (*POCBA*, s 37(d), 43(1); *Labour Relations Act*, s 153(3)).

[189] Also as discussed above, I do not see any prospect that a rational decision-maker, whatever the forum, would refuse to entertain Ms Prodaniuk's claim that the contractual limitation period is legally or constitutionally ineffective on the basis that she did not seek the grievance within the period purportedly imposed by that same provision.

[190] After much consideration, I have concluded the winding up and oppression claim should not be summarily dismissed so far as it relates to claims other than for financial compensation or damages for the plaintiff's injuries.

[191] The arbitrator does not have jurisdiction to issue orders to wind up CPA or remedy oppression that CPA or its leadership have allegedly committed on members in Ms Prodaniuk's situation. Under the *ABCA*, only the Court of Queen's Bench can issue an order for winding up or to remedy oppression.

[192] The onus is on CPA to persuade me that it is plain and obvious that the claim is outside the Court's jurisdiction. CPA has not established that it exists only to act as a bargaining agent under *POCBA*. Its objects include "to foster an environment of integrity, trust, and mutual respect between it's [sic] members and the citizens of Calgary". It is arguable that if CPA is not respecting its objects in fostering trust and respect in the police service and instead is tolerating or condoning gender based discrimination or harassment, then a member should be able to apply to the Court to force it to change its ways for the good of the membership and the citizens of Calgary. That might involve a winding up order, or some more targeted remedy such as a Board change. These are remedies that the arbitrator or labour board cannot grant. Applying the reasoning in ***St Anne***, Alberta labour law does not oust Queen's Bench jurisdiction to grant remedies of winding up or to remedy oppression.

[193] I do not suggest this claim should be tried while other claims are pending in other forums. That would be a scheduling matter that is beyond the scope of the present application.

[194] Ms Prodaniuk's claim to commence and prosecute a derivative action is not particularized. The materials do not suggest the nature of such a matter that CPA might dispute against the other defendants that is outside the jurisdiction of the labour arbitrator or the Alberta Labour Relations Board. If it is inside their jurisdiction, then Ms Prodaniuk's claims are covered by the grievance provisions and the Alberta Labour Relations Board's jurisdiction over unfair practices. There is no concern for lack of effective redress for her losses. If she is seeking to have CPA sue the other defendants for such matters as the validity of the contractual time limitation in the collective agreement, then as explained that can be dealt with in Ms Prodaniuk's grievance and if CPA refuses to pursue it then the refusal is reviewable by the Alberta Labour Relations Board. It is plain and obvious that the Court would not exercise residual jurisdiction to grant permission for a derivative action.

VIII WCB bar

[195] In light of the foregoing conclusions, it is not necessary to deal with the City's argument that the claims are barred by worker's compensation legislation.

IX Conclusion

[196] The plaintiff's claims are struck for lack of jurisdiction, other than the oppression claim to the extent it seeks winding up or alternative remedies for corporate oppression other than financial compensation or damages. If the parties cannot agree on the required alterations to Ms Prodaniuk's pleadings they may apply to me for directions within 60 days.

[197] The parties may arrange to speak to costs if necessary.

Heard on the 30th day of April, 2021 and supplemental written submissions on the 14th day of May 2021.
Dated at Calgary, Alberta this 15th day of November, 2021.

J.T. Eamon
J.C.Q.B.A.

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