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CASES DIGESTED IN THIS ISSUE*

*Digests or summaries of the most recent and significant decisions of Canadian courts and tribunals, written with a focus on the legal issues involved in each decision. More than one digest may be written for each decision.

BANKRUPTCY AND INSOLVENCY

3032. Avoidance of transactions prior to bankruptcy — Fraudulent and illegal transactions — Reviewable transactions under Act —— Respondent company made financial transfers to sister company — Applicant trustee in bankruptcy claimed these transfers were undervalue, and therefore invalid — Companies claimed that no transfers had actually taken place, for litigation purposes — Companies claimed alternatively that transfers were at value — Trustee applied for declaratory relief — Application dismissed — Journal entries made by company did not reflect actual transactions — Trustee did not need proof of transaction, to take steps it sought to take — On assumption that assets were transferred, asset reductions were offset by account-payable reductions — Trustee did not offer proof for position that reduction of loan was ineffective, in implementing and recognizing reductions — Sufficient consideration had been received.

Option Industries Inc (Re) (2020), 2020 CarswellAlta 1638, 2020 ABQB 535, M.J. Lema J. (Alta. Q.B.).

3033. Practice and procedure in courts — Costs — Miscellaneous —— Respondent company made financial transfers to sister company — Applicant trustee in bankruptcy claimed these transfers were undervalue, and therefore invalid — Companies claimed that no transfers had actually taken place, for litigation purposes — Companies claimed alternatively that transfers were at value — Trustee applied for declaratory relief — Application dismissed — Companies were successful, but had made unfounded allegations — No award of costs was made as result.

Option Industries Inc (Re) (2020), 2020 CarswellAlta 1638, 2020 ABQB 535, M.J. Lema J. (Alta. Q.B.).

CIVIL PRACTICE AND PROCEDURE

3034. Judgments and orders — Amending or varying — Consent orders —— Subcontractor filed builder's lien in respect of residential condominium project, claiming unpaid amount of $950,000, and filed statement of claim against contractor, and contractor counterclaimed for damages in amount of $3 million — Builder's lien claim was later struck, and due to failure to comply with court order, subcontractor's statement of claim was struck — Parties entered into consent order providing that defence to counterclaim would be struck if subcontractor did not attend for questioning on specified dates — Subcontractor did not attend for questioning, and contractor refused to provide new dates for questioning — Subcontractor unsuccessfully brought application to amend consent order — Subcontractor successfully appealed, and defence to counterclaim was restored — Chambers judge found that consent order was procedural interlocutory order that was governed by R. 9.15 of Alberta Rules of Court — Chambers judge found that prejudice that subcontractor would suffer if its appeal was dismissed was extreme since it would lose its ability to defend counterclaim, while prejudice that contractor would suffer would be compensable in costs — Contractor appealed — Appeal dismissed — Result that chambers judge reached was appropriate and reasonable in circumstances — Rule 9.15 of Rules was discretionary and allowed Court to determine what was just in circumstances once it determined that consent order was interlocutory and procedural in effect.

Custom Metal Installations Ltd v. Winspia Windows (Canada) Inc (2020), 2020 CarswellAlta 1695, 2020 ABCA 333, Elizabeth Hughes J.A., Kevin Feehan J.A., Michelle Crighton J.A. (Alta. C.A.); affirming *Custom Metal Installations Ltd. v. Winspia Windows (Canada) Inc.* (2019), 50 C.P.C. (8th) 391, 2019 CarswellAlta 2187, 2019 ABQB 732, Bryan E. Mahoney J. (Alta. Q.B.); reversing *Custom Metal Installation Ltd v. Winspia Windows (Canada) Inc* (2019), 34 C.P.C. (8th) 103, 2019 CarswellAlta 896, 2019 ABQB 345, A.R. Robertson, In Chambers Master (Alta. Q.B.).

3035. Parties — Vexatious proceedings / Abuse of process—— Leave — Strict court access restrictions were imposed against applicant that, among other things, required that he may only file new proceedings and applications if he received permission or "leave" of court — Applicant applied for leave to file application for "direction for correction" pursuant to R. 9.12 of Alberta Rules of Court for various mistakes, errors and omissions in decisions — Application dismissed — Applicant had not submitted leave application with supporting affidavit pursuant to procedure set in prior decision, and he was well aware of procedure — Applicant's request was misleading at best, as he listed vague and open-ended collection of alleged errors that purportedly meant previous decisions were not coherent and justifiable in relation to facts and law — Applicant had not identified any errors — Applicant's complaints provided no basis to conclude that prior decisions were not coherent and justifiable in relation to facts and law, and application had no merit — "Direction for correction" was another attempt to re-litigate settled issues, and application for leave was rejected as attempt to further abuse court processes.

Ubah v. Canadian Natural Resources Limited (2020), 2020 CarswellAlta 1593, 2020 ABQB 516, J.D. Rooke A.C.J. (Alta. Q.B.).

CONFLICT OF LAWS

3036. Limitation of actions —— Refusing transfer request — Plaintiff was former employee of defendant employer in Alberta — After moving to Saskatchewan, plaintiff brought action against defendant in Saskatchewan — Defendant obtained order requiring plaintiff to re-file proceeding in Alberta on basis of forum non conveniens — Action was filed in Saskatchewan just two days before limitation period expired, so limitation period had expired by time action was re-filed in Alberta — Defendant brought application to strike statement of claim on basis it was statute-barred — Application dismissed — In decision requiring plaintiff to re-file action, court found Saskatchewan had territorial competence so transfer was based on forum non conveniens and made pursuant to Court Jurisdiction and Proceedings Transfer Act ("CJPTA") — Section 22 of CJPTA provided that claims transferred to Saskatchewan would not be statute-barred if, at time of transfer, transferring court had territorial and subject matter competence — Alberta did not have legislative equivalent and nothing in its Limitations Act saved action once defendant raised limitation issue — While s. 14(2) of CJPTA specifically authorized court to impose condition precedent on transfer, such as undertaking that defendant not raise limitation defence in Alberta, no such condition was imposed, likely because defendant did not allude to possibility before Saskatchewan court — Granting application to strike would be manifestly unjust and in direct contradiction with what judge intended and legislation allowed — If s. 8 of Judicature Act gave court authority to request that Saskatchewan accept transfer from Alberta court, it surely gave Alberta court authority to refuse to accept transfer from Saskatchewan and, in this unique case, it was appropriate to refuse to accept transfer.

McCooeye v. Hankook Tire Canada Corp. (2020), 2020 ABQB 496, 2020 CarswellAlta 1551, Brian W. Summers, In Chambers Master (Alta. Q.B.).

CONSTRUCTION LAW

3037. Construction and builders' liens — Holdback — Recovery of amounts owing in excess of holdback —— Contractor and daycare entered into stipulated price contract with some customization, for construction of building to use as daycare facility — Parties did not fully follow provisions of contract, particularly those concerning payment and work oversight — Total contract price was $1,124,976.58 — Contractor brought application for summary judgment seeking $588,082.62 less $7,250.00 as arguable deficiency claim — Application granted in part — Contract provided for progress payments to be made through consultant, but this was not done by contractor and not insisted upon by daycare — Consultant's role was to review invoices and raise deficiencies as they came up, however first mention of deficiencies was after daycare took possession of building — Many deficiencies were alleged but few were supported by evidence — Since there were no subcontractor liens, partial summary judgment was granted in amount of $588,082.62 less 10 percent builders lien holdback for total of $475,584.96.

C & V Smart Structures Inc v. Just for You Daycare (Killarney) Ltd (2020), 2020 CarswellAlta 1532, 2020 ABQB 488, J.R. Farrington, In Chambers Master (Alta. Q.B.).

CRIMINAL LAW

3038. Charter of Rights and Freedoms — Unreasonable search and seizure [s. 8] — Warrant requirements —— Accused was facing trial on charges of being in possession of cocaine for purpose of trafficking and for being in possession of crime proceeds — Accused was charged after search warrant was executed at his residence — Accused brought application pursuant to Canadian Charter of Rights and Freedoms seeking exclusion of evidence obtained during search — Accused submitted that information to obtain ("ITO") was incomplete and misleading — Once errors were removed and certain necessary contextual information was taken into account, grounds were insufficient to support issuance of warrant — Application dismissed — Subject to one deletion from ITO there was ample basis for issuing justice to issue search warrant — There was no breach of s. 8 of Charter in this case.

R v. Khatib (2020), 2020 NWTSC 20, 2020 CarswellNWT 45, L.A. Charbonneau J. (N.W.T. S.C.).

3039. Offences against the person and reputation — Assault — Assault with weapon or causing bodily harm —— Female complainant was married to male accused but they were separated — Accused moved into complainant's home to live with her in quarantine due to Covid-19 pandemic — Accused started argument with her over allegations of infidelity and, in course of dispute she alleged that he struck her with metal pipe on right rear side of ribcage and broke some of her ribs — Accused was also alleged to be on top of complainant on her bed and to have choked her — Several days later complainant claimed that she woke up from her sleep to find accused inserting sex toy into her vagina — Accused subsequently sexually assaulted complainant despite her objections — Complainant fled to neighbour's house and police were called and accused was arrested — Accused was charged with sexual assault, assault with weapon, assault and threatening to cause death or bodily harm — Accused convicted of all offences except assault with weapon and threatening — Court had concerns about reliability of complainant's evidence in connection with assault with weapon — Court accepted that accused committed offences of sexual assault and assault — Accused was acquitted of threatening offence because it was unclear if complainant believed that accused was threatening her.

R. v. Saddleback (2020), 2020 ABPC 168, 2020 CarswellAlta 1731, K.Z. Jivraj Prov. J. (Alta. Prov. Ct.).

3040. Offences against the person and reputation — Assault — Assaulting peace officer —— Accused was seated in rear of police vehicle which was driven by male police officer and in which female police officer, who was complainant, occupied front passenger seat — Rear seat was separated from front by barrier and accused sat behind complainant — Accused was alleged to have taken advantage of flaw in barrier to assault and sexually assault complainant — Complainant felt something pressing against and probing into her buttocks and vaginal area — Complainant was alone in vehicle with accused when incident occurred — Accused was charged with sexual assault and assaulting police officer — Accused convicted — Human effort caused touch sensation experienced by complainant — Accused had exclusive opportunity to create sensation — Accused's responsibility for contact was only rational inference possible on these set of facts — Accordingly, Crown proved all essential elements of offences for which he was charged.

R v. McGilvery (2020), 2020 CarswellAlta 1744, 2020 ABPC 152, L.W. Robertson Prov. J. (Alta. Prov. Ct.).

3041. Offences against the person and reputation — Assault — Common assault — Evidence —— Female complainant was married to male accused but they were separated — Accused moved into complainant's home to live with her in quarantine due to Covid-19 pandemic — Accused started argument with her over al-

legations of infidelity and, in course of dispute she alleged that he struck her with metal pipe on right rear side of ribcage and broke some of her ribs — Accused was also alleged to be on top of complainant on her bed and to have choked her — Several days later complainant claimed that she woke up from her sleep to find accused inserting sex toy into her vagina — Accused subsequently sexually assaulted complainant despite her objections — Complainant fled to neighbour's house and police were called and accused was arrested — Accused was charged with sexual assault, assault with weapon, assault and threatening to cause death or bodily harm — Accused convicted of all offences except assault with weapon and threatening — Court had concerns about reliability of complainant's evidence in connection with assault with weapon — Court accepted that accused committed offences of sexual assault and assault — Accused was acquitted of threatening offence because it was unclear if complainant believed that accused was threatening her.

R. v. Saddleback (2020), 2020 ABPC 168, 2020 CarswellAlta 1731, K.Z. Jivraj Prov. J. (Alta. Prov. Ct.).

3042. Offences against the person and reputation — Sexual assault — General offence — Evidence —— Accused was seated in rear of police vehicle which was driven by male police officer and in which female police officer, who was complainant, occupied front passenger seat — Rear seat was separated from front by barrier and accused sat behind complainant — Accused was alleged to have taken advantage of flaw in barrier to assault and sexually assault complainant — Complainant felt something pressing against and probing into her buttocks and vaginal area — Complainant was alone in vehicle with accused when incident occurred — Accused was charged with sexual assault and assaulting police officer — Accused convicted — Human effort caused touch sensation experienced by complainant — Accused had exclusive opportunity to create sensation — Accused's responsibility for contact was only rational inference possible on these set of facts — Accordingly, Crown proved all essential elements of offences for which he was charged.

R v. McGilvery (2020), 2020 CarswellAlta 1744, 2020 ABPC 152, L.W. Robertson Prov. J. (Alta. Prov. Ct.).

3043. Offences against the person and reputation — Sexual assault — General offence — Evidence —— Female complainant was married to male accused but they were separated — Accused moved into complainant's home to live with her in quarantine due to Covid-19 pandemic — Accused started argument with her over allegations of infidelity and, in course of dispute she alleged that he struck her with metal pipe on right rear side of ribcage and broke some of her ribs — Accused was also alleged to be on top of complainant on her bed and to have choked her — Several days later complainant claimed that she woke up from her sleep to find accused inserting sex toy into her vagina — Accused subsequently sexually assaulted complainant despite her objections — Complainant fled to neighbour's house and police were called and accused was arrested — Accused was charged with sexual assault, assault with weapon, assault and threatening to cause death or bodily harm — Accused convicted of all offences except assault with weapon and threatening — Court had concerns about reliability of complainant's evidence in connection with assault with weapon — Court accepted that accused committed offences of sexual assault and assault — Accused was acquitted of threatening offence because it was unclear if complainant believed that accused was threatening her.

R. v. Saddleback (2020), 2020 ABPC 168, 2020 CarswellAlta 1731, K.Z. Jivraj Prov. J. (Alta. Prov. Ct.).

3044. Offences against the person and reputation — Uttering threats to cause death or bodily harm —— Female complainant was married to male accused but they were separated — Accused moved into complainant's home to live with her in quarantine due to Covid-19 pandemic — Accused started argument with her over allegations of infidelity and, in course of dispute she alleged that he struck her with metal pipe on right rear side of ribcage and broke some of her ribs — Accused was also alleged to be on top of complainant on her bed and to have choked her — Several days later complainant claimed that she woke up from her sleep to find accused inserting sex toy into her vagina — Accused subsequently sexually assaulted complainant despite her objections — Complainant fled to neighbour's house and police were called and accused was arrested — Accused was charged with sexual assault, assault with weapon, assault and threatening to cause death or bodily harm — Accused convicted of all offences except assault with weapon and threatening — Court had concerns about reliability of complainant's evidence in connection with assault with weapon — Court accepted that accused committed offences of sexual assault and assault — Accused was acquitted of threatening offence because it was unclear if complainant believed that accused was threatening her.

R. v. Saddleback (2020), 2020 ABPC 168, 2020 CarswellAlta 1731, K.Z. Jivraj Prov. J. (Alta. Prov. Ct.).

3045. Search and seizure — Search with warrant — Validity —— Accused was facing trial on charges of being in possession of cocaine for purpose of trafficking and for being in possession of crime proceeds — Accused was charged after search warrant was executed at his residence — Accused brought application pursuant to Canadian Charter of Rights and Freedoms seeking exclusion of evidence obtained during search — Accused submitted that information to obtain ("ITO") was incomplete and misleading — Once errors were removed and certain necessary contextual information was taken into account, grounds were insufficient to support issuance of warrant — Application dismissed — Subject to one deletion from ITO there was ample basis for issuing justice to issue search warrant — There was no breach of s. 8 of Charter in this case.

R v. Khatib (2020), 2020 NWTSC 20, 2020 CarswellNWT 45, L.A. Charbonneau J. (N.W.T. S.C.).

3046. Sentencing by offence — Offences against the person and reputation — Dangerous driving causing death — Adult offenders —— Accused was driving his daughter and her friend to police station so they could get criminal record checks — Accused's vehicle was observed driving at excessive speed and swerving between other cars on road when it lost control and flipped several times — Accused's' blood alcohol level was between 226 and 264 milligrams of alcohol in 100 millilitres of blood — Accused's daughter was killed and daughter's friend was seriously injured — Accused convicted of impaired driving causing bodily harm and death and dangerous operation of motor vehicle causing bodily harm and death — Accused sentenced to term of imprisonment of 5.5 years on global basis — Driving prohibition of 8 years also imposed, less 3 years and 2 days for time accused had already been prohibited from driving — It was aggravating that accused was driving persons who should have been able to trust him to take care of their well-being — Excessive level of impairment, reckless driving and excessive speed were also aggravating — Accused was previously

convicted of impaired driving, even though it was older offence — Accused's efforts at rehabilitation were mitigating factor — Accused had suffered serious injuries and would be affected by them for rest of his life — Accused was terribly remorseful for loss of his daughter and loss of presence of daughter's friend in his life — Crown cases for similar circumstances in province ranged from four to six years — Defence cases ranged between 2 and 3.5 years, although in all but one there were guilty pleas.

R. v. Bomford (2020), 2020 ABQB 527, 2020 CarswellAlta 1627, K.M. Eidsvik J. (Alta. Q.B.).

3047. Sentencing by offence — Offences against the person and reputation — Impaired driving causing death —— Accused was driving his daughter and her friend to police station so they could get criminal record checks — Accused's vehicle was observed driving at excessive speed and swerving between other cars on road when it lost control and flipped several times — Accused's' blood alcohol level was between 226 and 264 milligrams of alcohol in 100 millilitres of blood — Accused's daughter was killed and daughter's friend was seriously injured — Accused convicted of impaired driving causing bodily harm and death and dangerous operation of motor vehicle causing bodily harm and death — Accused sentenced to term of imprisonment of 5.5 years on global basis — Driving prohibition of 8 years also imposed, less 3 years and 2 days for time accused had already been prohibited from driving — It was aggravating that accused was driving persons who should have been able to trust him to take care of their well-being — Excessive level of impairment, reckless driving and excessive speed were also aggravating — Accused was previously convicted of impaired driving, even though it was older offence — Accused's efforts at rehabilitation were mitigating factor — Accused had suffered serious injuries and would be affected by them for rest of his life — Accused was terribly remorseful for loss of his daughter and loss of presence of daughter's friend in his life — Crown cases for similar circumstances in province ranged from four to six years — Defence cases ranged between 2 and 3.5 years, although in all but one there were guilty pleas.

R. v. Bomford (2020), 2020 ABQB 527, 2020 CarswellAlta 1627, K.M. Eidsvik J. (Alta. Q.B.).

3048. Sentencing by offence — Sexual offences, public morals and disorderly conduct — Sexual interference — Adult offenders —— Accused pleaded guilty to two counts of sexual interference — One count pertained to his step-daughter and other count pertained to his daughter — Accused admitted that he interfered sexually with his step-daughter when she was between 5 and 11 years old and when he was between 33 and 39 — Accused also admitted that he interfered sexually with his daughter when she was 5 years old and he was 39 or 40 — Accused's sexual interference came to light when step-daughter revealed to her mother that accused had touched her sexually — Accused was currently 43 years old and he was 40 when he was charged — Accused did not have criminal record — Accused sentenced to 6 years' imprisonment, less 18 days' credit for time served — Sentence consisted of 4 years' imprisonment for offences against step-daughter and 2 years' consecutive imprisonment for offences against his daughter.

R v. RAJ (2020), 2020 CarswellAlta 1697, 2020 ABQB 555, B.R. Burrows J. (Alta. Q.B.).

FAMILY LAW

3049. Custody and access — Terms of custody order — School and extra-curricular activities —— Parties were separated parents of one child — Parenting order made following separation provided that child have primary residence with father and that mother have specified parenting time — Mother applied in May 2020 to vary parenting order — Each parent made allegation that other parent was not complying with existing order and COVID-19 protocols — Order was granted for parenting on week on/week off basis — Order was predicated on child doing school work remotely — Province intended to re-open schools in September 2020 — Mother brought motion for order that child continue school online; father brought cross-motion for order that child return to in-person classes — Motion dismissed; cross-motion granted — Province saw fit to open schools for in-person schooling, and developed protocol and put significant resources in place for children to return — Risk of infection and protocols must be balanced against impact of social isolation caused by remote learning — Child expressed wish to return to in-person schooling — There was no medical evidence establishing increased risk to child, mother or mother's family — Best interests of the child supported return to in-person schooling.

Lima v. Holloway (2020), 2020 CarswellAlta 1596, 2020 ABPC 157, J.A. Glass Prov. J. (Alta. Prov. Ct.).

3050. Divorce — Miscellaneous —— Severance — Parties were married for four years and they had no children — Wife sought spousal support and division of property — Parties had entered into post-nuptial agreement, which was found to be enforceable — Wife had taken issue with adequacy of husband's disclosure, and claimed he was in arrears on various undertakings provided at questioning — Wife's position was that bulk of outstanding undertakings went to husband's income and were tied to spousal support, which was not addressed in post-nuptial agreement, and others went to matrimonial home expense issues which remained live issues — Husband applied to sever divorce action from corollary relief for property and spousal support — Application dismissed — Test for severance was ultimately what was fair in circumstances — Most significant factors were outstanding undertakings and husband's response to direction on undertakings — Husband's position that he had completely or sufficient complied with undertakings and disclosure was not accepted — Proceeding on basis that wife's counsel's list of undertakings was accurate, it would have been simple for husband to explain what he had already provided on given undertaking or why there was shortfall — Material undertaking and disclosure shortfalls in family litigation bore on severance analysis — There was material information shortfall here, husband did not adequately explain or justify shortfalls, shortfalls had disadvantaged wife in pursue of spousal support and in dealing with issues respecting matrimonial home, granting severance would only heighten that disadvantage, and granting severance would be unfair to wife — Any perceived unfairness or prejudice to husband was self-imposed.

Hicks v. Gazley (2020), 2020 ABQB 525, 2020 CarswellAlta 1634, M.J. Lema J. (Alta. Q.B.).

3051. Practice and procedure — Costs — Scale of costs —— Mother and father of one child separated after brief relationship and cohabitation, with mother forming belief that father was conspiring with paternal grandfather and other family members to conceal his income from various corporate interests — Mother's application for retroactive and ongoing child support and to hold father in contempt of financial disclosure orders was dismissed — Costs submissions received — Father, his wife, his mother-in-law, and grandfather

awarded costs — Father behaved reasonably, satisfied his disclosure obligations, and was always prepared to pay child support on basis of his actual line 150 income — Process took longer than it would have if mother had accepted evidence that emerged from early management meetings — Mother was excessive in her attempts to secure ever greater disclosure, from father and non-parties grandfather, father's new wife and mother-in-law, and refused to admit things that should have been admitted but her conduct did not rise to level of vexatious litigation — Mother's attempts to resile from assertions of fraud rang hollow but purpose of costs awards were mostly indemnity rather than punishment — Punishing costs award might cast chill over those seeking child support so as to result in less effectual efforts in securing child's right to support — Mother's request for imputation of income was reasonable at start, on premise that father might have had more access to resources of corporate group than he let on, but she should have realized much earlier and especially once grandfather became involved that premise was flawed — Pursuit of child support should not be licence to level unsubstantiated allegations of fraud or deceit as mother did, especially at grandfather — Award of full indemnity costs would have effect of making child unintended victim of what might be viewed as poor litigation strategy — Mother's approach was overzealous but not blameworthy as there was merit in engaging grandfather where father could not provide financial explanations and award of solicitor client costs would be inimical to objective of diligent and responsible pursuit of child support for benefit of child — Mother's unfair and improper comments regarding grandfather's character and business practices did not justify award of solicitor client costs — Costs would be awarded on Column 1, in favour of each of father, grandfather, wife, mother-in-law, and multiplied by factor of 2 for grandfather and factor of 1.5 in case of wife and mother-in-law, to reflect inconvenience and emotional distress suffered from mother's aspersions.

SER v. JS (2020), 2020 CarswellAlta 1243, 2020 ABQB 390, C.M. Jones J. (Alta. Q.B.); additional reasons to (2020), 2020 CarswellAlta 736, 2020 ABQB 267, C.M. Jones J. (Alta. Q.B.).

LABOUR AND EMPLOYMENT LAW

3052. Labour law — Collective bargaining — Duty to bargain in good faith — Conduct of negotiations —— Employer and union were engaged in bargaining when, in February 2020, employer gave notice to union that it was considering contracting out remaining in-house laundry services — Union filed unfair labour practice complaint alleging employer violated ss. 60, 147(3) and 148(1)(a)(ii) of Labour Relations Act — Union alleged that: employer tried to intimidate bargaining unit and bargaining committee by tying notice of contracting out to recent wage increase given in arbitration award; consultation process triggered by employer's notice was a charade that subverted collective bargaining; and that employer's contracting out violated bargaining freeze — Complaint dismissed — Employers may alter terms of employment during bargaining freeze if it did so in accordance with the collective agreement — Employer acted in accordance with specific term of agreement negotiated in prior bargaining — Sophisticated parties negotiated contracting out provision require disclosure and discussion on specified timelines — Employer had good faith operational justification for decision to contract out and presented evidence of years of problems concerning laundry capital and need for funding or permission to contract out — No basis on which to assess the efficacy of the consultation process, since it was never utilized.

AUPE and Alberta Health Services, Re (2020), 2020 CarswellAlta 1575, [2020] Alta. L.R.B.R. LD-067, Cunliffe Member, Farkas Member, Jeremy D. Schick, V-Chair (Alta. L.R.B.).

3053. Labour law — Labour arbitrations — Limits to arbitrability — Outside scope of collective agreement.

OEM Remanufacturing and Logistics, Manufacturing and Allied Trades Union, CLAC Local 56 (use of "Performance"), Re (2020), 2020 CarswellAlta 1666, D.P. Jones Member (Alta. Arb.).

3054. Labour law — Unfair labour practices — Employer practices — Miscellaneous —— Employer and union were engaged in bargaining when, in February 2020, employer gave notice to union that it was considering contracting out remaining in-house laundry services — Union filed unfair labour practice complaint alleging employer violated ss. 60, 147(3) and 148(1)(a)(ii) of Labour Relations Act — Union alleged that: employer tried to intimidate bargaining unit and bargaining committee by tying notice of contracting out to recent wage increase given in arbitration award; consultation process triggered by employer's notice was a charade that subverted collective bargaining; and that employer's contracting out violated bargaining freeze — Complaint dismissed — Employers may alter terms of employment during bargaining freeze if it did so in accordance with the collective agreement — Employer acted in accordance with specific term of agreement negotiated in prior bargaining — Sophisticated parties negotiated contracting out provision require disclosure and discussion on specified timelines — Employer had good faith operational justification for decision to contract out and presented evidence of years of problems concerning laundry capital and need for funding or permission to contract out — No basis on which to assess the efficacy of the consultation process, since it was never utilized.

AUPE and Alberta Health Services, Re (2020), 2020 CarswellAlta 1575, [2020] Alta. L.R.B.R. LD-067, Cunliffe Member, Farkas Member, Jeremy D. Schick, V-Chair (Alta. L.R.B.).

3055. Labour law — Unfair labour practices — Practice and procedure — Timeliness of complaint —— Complainant alleged union breached s. 153 of Labour Relations Code by not fairly representing him in relation to a claim for benefits due to illness-related absence — Union requested summary dismissal of complaint as premature — Complaint dismissed — Complainant was confused about difference between benefits claim, appeal to benefits administrator, grievance, and complaint to board — Union was awaiting outcome of internal benefits appeal — Union established that no grievance was filed — In circumstances where no grievance had been filed and no request to file a grievance had been denied while union awaited outcome of benefits appeal, complaint was premature — To await outcome of internal benefits appeal before filing grievance did not constitute a breach of duty.

Complainant and USW, Local 1-207, Re (2020), 2020 CarswellAlta 1669, [2020] Alta. L.R.B.R. LD-071, Brown Member, Cunliffe Member, J. Leslie Wallace V-Chair (Alta. L.R.B.).

3056. Labour law — Unfair labour practices — Union practices — Duty of fair representation — Administration of collective agreement — Representation of grievance —— Complainant sustained injuries when he reversed bulldozer he was operating into truck in March 2019 — While assisting complainant with compensation issues, union discovered that employer had placed "no rehire" status on complainant as result of bulldozer incident — Com-

plainant claimed he did not know about the termination of his employment until October 1, 2019, who contacted union about termination one day later — Complainant requested that union grieve his termination seeking job back pending outcome of medical treatment — Employer agreed to life no-hire status, but reinstatement was impossible because project where complainant was working had ended — Union withdrew grievance after investigation found no evidence that employer did not have just cause — Complainant alleged union violated s. 153 of Labour Relations Code — Complaint summarily dismissed — During union's investigation and internal appeal process, complainant had ample opportunity to provide position — Union reasonably determined there was no reasonable basis on which to proceed to arbitration given that no-rehire decision was lifted, reinstatement was not possible, and there was no reasonable prospect of success.

Complainant and IUOE, Local 955, Re (2020), 2020 CarswellAlta 1720, [2020] Alta. L.R.B.R. LD-075, Flannery Member, Jeremy D. Schick V-Chair, Renke Member (Alta. L.R.B.).

PRIVACY AND FREEDOM OF INFORMATION

3057. Provincial privacy legislation — Collection of personal information — Breach.

IPC Investment Corp., Re (2020), 2020 CarswellAlta 1783, Jill Clayton Commr. (Alta. I.P.C.).

PUBLIC LAW

3058. Public utilities — Establishment of public utility — Miscellaneous.

CS Hays Solar GP Inc., Re (2020), 2020 CarswellAlta 1778, J.P. Mousseau Director (Alta. U.C.).

3059. Public utilities — Establishment of public utility — Miscellaneous.

CS Jenner Solar GP Inc., Re (2020), 2020 CarswellAlta 1779, J.P. Mousseau Director (Alta. U.C.).

3060. Public utilities — Establishment of public utility — Miscellaneous.

East Strathmore Solar Project Inc., Re (2020), 2020 CarswellAlta 1773, Anne Michaud V-Chair (Alta. U.C.).

3061. Public utilities — Operation of utility — Equipment — Construction and alteration of supply lines.

Alberta Electric System Operator, Re (2020), 2020 CarswellAlta 1776, Anne Michaud V-Chair (Alta. U.C.).

3062. Public utilities — Operation of utility — Equipment — Miscellaneous.

EPCOR Distribution & Transmission Inc., Re (2020), 2020 CarswellAlta 1782, J.P. Mousseau Director (Alta. U.C.).

3063. Public utilities — Operation of utility — Miscellaneous.

Alberta Electric System Operator, Re (2020), 2020 CarswellAlta 1776, Anne Michaud V-Chair (Alta. U.C.).

3064. Public utilities — Operation of utility — Miscellaneous.

Milner Power Inc., Re (2020), 2020 CarswellAlta 1786, Kristi Sebalj Member, Neil Jamieson Member (Alta. U.C.).

3065. Public utilities — Operation of utility — Rates — Approval.

AltaGas Utilities Inc., Re (2020), 2020 CarswellAlta 1777, Carolyn Dahl Rees Chair (Alta. U.C.).

3066. Public utilities — Operation of utility — Rates — Approval.

Lethbridge (City), Re (2020), 2020 CarswellAlta 1781, Heather Gnenz Director (Alta. U.C.).

3067. Public utilities — Operation of utility — Rates — Approval.

Red Deer (City), Re (2020), 2020 CarswellAlta 1780, Heather Gnenz Director (Alta. U.C.).

3068. Public utilities — Regulatory boards — Practice and procedure — Miscellaneous.

CS Hays Solar GP Inc., Re (2020), 2020 CarswellAlta 1778, J.P. Mousseau Director (Alta. U.C.).

3069. Public utilities — Regulatory boards — Practice and procedure — Miscellaneous.

CS Jenner Solar GP Inc., Re (2020), 2020 CarswellAlta 1779, J.P. Mousseau Director (Alta. U.C.).

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3070. Defamation — Damages — Types of damages available — Aggravated and punitive damages —— Plaintiff was principal at elementary school — Defendant, mother of four students at school, was found liable for defamatory publications directed at plaintiff — Defendant launched sustained and unjustified attack on plaintiff in her professional capacity — Defendant was represented by counsel at liability summary judgment application but was self-represented at quantum summary trial — Defendant appealed quantum of damages and costs — Appeal allowed in part — General damages award of $150,000 did not reflect any reviewable error, but awards of aggravated and punitive damages were based on errors of principle and were set aside — Costs award confirmed — Quantum reasons recited principle supporting aggravated damages award but did not explain why general damages award of $150,000, aggravated damages award of $100,000 and costs award of $64,199.17 would be insufficient to deter person of limited means such as defendant — Although aggravated damages award must be set aside, remaining general damages award and costs award were sufficient deterrence.

Elkow v. Sana (2020), 2020 ABCA 350, 2020 CarswellAlta 1752, Elizabeth Hughes J.A., Frans Slatter J.A., Ritu Khullar J.A. (Alta. C.A.); reversing in part (2018), 2018 ABQB 1001, 2018 CarswellAlta 3019, D.A. Sulyma J. (Alta. Q.B.).

3071. Defamation — Damages — Types of damages available — General damages.

Elkow v. Sana (2020), 2020 ABCA 350, 2020 CarswellAlta 1752, Elizabeth Hughes J.A., Frans Slatter J.A., Ritu Khullar J.A. (Alta. C.A.); reversing in part (2018), 2018 ABQB 1001, 2018 CarswellAlta 3019, D.A. Sulyma J. (Alta. Q.B.).

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