APPLICANT'S MEMORANDUM OF ARGUMENT

PART I – STATEMENT OF FACTS

THE FACTS:

1. The Appellant (Plaintiff) filed an original Statement of Claim on July 25, 2005.

2. The original Statement of Claim was amended as per the Appellant (Plaintiff)'s draft presented to Justice F. Kovach on December 01, 2005 to support her application 'to take leave to amend her pleadings; Saskatchewan Court of Queen's Bench Rule 165.

3. On December 01, 2005, the Appellant (Plaintiff) also put forward an application per Rule 167 to add 3 parties to her amended claim (fresh copy): one, to act as a litigation guardian for her 4 grandchildren and secondly, to add 2 defendants: the Attorney General, Government of Canada and Joyce LaPrise, and Justice Kovach granted her both.

4. The Appellant (Plaintiff) further requested Justice Kovach to allow her to add another pleading of gross negligence leading to the wrongful death of her infant granddaughter which had occurred on October 28, 2005 while in the care of the Minister of Social Services; and he granted her this.

5. Justice Kovach instructed the Appellant (Plaintiff) that when listing her 4 grandchildren on the Style of Cause, she should write 'infant children plaintiffs' instead of just plaintiffs.

6. Further he instructed her to add the words Amended Fresh Copy after the title Statement of Claim to separate it from the original claim; and he instructed her to underline the entire original Statement of Claim so as to set it aside in favor of the amended claim.

7. Justice Kovach told the Respondents (Defendants) that upon receipt of her amended claim that they would need to file new (that is a new application under Rule 173) to strike her amended claim along with any materials in support of this new application.

8. The Appellant (Plaintiff) was to file her amended claim by January 17, 2006 and her response to the defendants' substantive materials by February 28, 2006.

9. The matter was to return to Chambers on March 07, 2006, whereby all matters would be argued at that time.

10. Upon the fiat being written, counsel objected to the adding of the parties to the Appellant (Plaintiff)'s amended claim (with the exception of Joyce LaPrise).

11. At this juncture, Justice Kovach instructed the court reporter to make a note at the end of the fiat, stating that the Respondents would argue the validity of adding the parties to the amended claim, with the exception of Joyce LaPrise.

12. The Appellant (Plaintiff) filed an Order from the Fiat of December 01, 2005, on the 23rd of December, 2005, providing counsel with copies.

13. She added the word ExParte in error on the Style of Cause but otherwise the Order was written according to the instructions of the original fiat.

14. The week of January 08, 2006, Mr. Brown filed his version of the Order and served it.

15. The Appellant (Plaintiff) objected to the wording of Mr. Brown's Order.

16. On January 16, 2006, the day before she was to file her Statement of Claim (Amended Fresh Copy), she was uncertain how the Style of Cause should be, as Mr. Brown was not recognizing the fiat of Justice Kovach whereby he gave the order that the Appellant (Plaintiff) could add all the parties she had requested to be added.

17. The Respondents (Defendants) if they filed new, (as per Rule 173) would argue both the adding of the parties and the striking of her claim.

18. If her amended claim was not defeated they still could argue why she should not have the 4 infant children as plaintiffs added. See Affidavit for details.

19. Mr. Brown indicated that counsel now objected to Joyce LaPrise being added when on December 01, 2005, no one objected to her being added.

20. On the Events Report the December 01, 2005, Chambers meeting is not documented and when she asked him to do that he refused.

21. Further, he replaced the fiat written December 01, 2005 with his version of what he deemed was said in the Teleconference he arranged between counsel and Justice Kovach and herself.

22. The registrar does not list in the EVENTS REPORT the Order that the Appellant (Plaintiff) filed on December 23, 2005.

23. After the teleconference on January 16, 2006 he and Mr. Brown, counsel for the Saskatchewan Government drew-up an Order and filed it the day before the follow-up Chambers meeting which Justice Kovach had ordered.

24. This January 17th, 2006 Chambers meeting is also not documented in the Events Report.

25. These irregularities were deemed by the Appellant (Plaintiff) as manipulations of the court process to benefit counsel and their clients and were fraudulent.

26. In the Chambers meeting, Justice Kovach gave the same directives: Ms. Lowery, on your Style of Cause you are to add the word proposed in brackets, behind the infant children plaintiffs names, as well as the Defendants the Government of Canada and Joyce LaPrise. Further you have until January 18th (2006) to file your Statement of Claim (Amended Fresh Copy).

27. He directed the Respondents (Defendants) in the same way as he did December 01, 2005 and Mr. Brown and herself the day before in the teleconference, telling them that once they had received the amended claim, they had until February 07th, (2006) to file new (that is 'to strike' her Statement of Claim (Amended Fresh Copy) and to file any substantive materials (i.e. their Statements of Defence and sworn Affidavits with Exhibits).

28. He directed her to file any materials she wished to support her amended claim by February 28, 2006. The filing was a few days late due to a clerical error but all parties were notified.

29. There are difficulties in the way Mr. Brown (with the assistance of the Registrar) wrote the new Order to match a new fiat and filed it a day early before it returned to Chambers.

30. On page 958 of the Appeal Book, Mr. Brown, with input from the registrar, writes:

A.) The Plaintiff's Motion to amend the pleadings pursuant to 165 is allowed in the form set out in the document filed herein and entitled "PROPOSED AMENDMENTS TO ADDRESS THE MOTION TO AMEND (R 165)" **other than with respect to the addition of parties therein**;

B.) Line 2 of this paragraph states: "The style of cause in the Plaintiff's **Amended Claim or proposed Amended Claim** is to describe such proposed additional parties as "proposed Plaintiff" or "Proposed Defendant" as the case may be;

C.) The **final version of the proposed amended Claim** the Plaintiff wishes to advance is to be provided by January 18, 2006, --------- .

31. At point A.) the Order states that she is not to add to her claim the parties on the Style of Cause and in B.) indicates that she is to refer to them on the Style of Cause as proposed. The later is correct and not the former.

32. Likewise the Order in B.) refers to her Statement of Claim (Fresh Copy) as **Amended Claim or proposed Amended Claim** and in C.) refers to it as "The **final version of the proposed amended Claim".**

33. In the same way they should not in A.) states that *the parties to be added should not be added therein* and then in C.) describe how they are to be related to on the Style of Cause.

34. This deception created confusion which carried on in their written Briefs of Law, and their oral arguments heard on March 07, 2006, using terms interchangeably, proposed amended claim, amended claim and fresh copy and so on.

35. February 07, 2006 passed and counsel never filed a new application to strike her Statement of Claim (Amended Fresh Copy) as per Rule 173.

36. They never filed a Statement of Defence.

37. They never filed substantive materials in support of removing the additional parties from the Statement of Claim (Amended Fresh Copy).

38. The only material that was filed new were Chamber Briefs or Briefs of Law.

39. March 07, 2006 the Chamber judge was changed to Justice Chicoine. See her Affidavit concerning this change of a judge at this juncture.

40. On March 06, 2008, [2 years less a day] from when arguments were heard, the written judgment was received by her in the mail on March 12, 2008.

41. She telephoned the registrar leaving him a message to send me a copy of the Style of Cause as when it was received into their office and filed.

42. This was important to her, since she had to file her Appeal within 30 days.

43. The registrar faxed this to me and she noted that he wrote the number 6 over the number 12 which was recorded on the official court stamp. See Appeal Book .

44. When she went to file her Notice to Appeal to his decision, she used March 12, 2008 as the filing date stamped by the court clerk was the 12th.

45. Counsel deemed it was too late for her to appeal the decision as the 30 days were over.

46. Fortunately, the Court of Appeal registrar allowed her to file it using the stamped filing date and not the date the decision was dictated on as per Rule 338.

47. Still the registrar from the lower court, insisted the judgment had been faxed to him March 06th and it was faxed to her and counsel right away.

48. Various happenings occurred before the Appellant (Plaintiff) perfected her appeal which are described in substantive affidavit materials filed here with the Appendix.

49. On September 21, 2009 arguments were heard for this appeal and September 09, 2010 the appellate justices' decision was rendered (2010SKCA109 CanLII).

PART II – STATEMENT OF THE QUESTIONS IN ISSUE:

50. The Questions in Issue:
    - *which were not answered by the Chambers judge or the 3 appellate justices*:
    i. Did illegalities occur to prejudice the Appellant (Plaintiff) and cause her undue stress as described and should that have been a consideration by the appellate justices, as to whether she had equal access to justice?
    ii. Should the appellant justices provided her answers as to whether the Statement of Claim (Fresh Copy) disclosed a reasonable cause(s) of action?

iii. Did the brevity of the appellate judges decision prejudiced the Appellant (Plaintiff) in being able to respond specifically in her appeal of it?
iv. Should the appellate justices determined if she had pleadings which were *prima facie* and 'do they speak for themselves' (res ipsa loquitur)?
v. Did an irregularity in law occur when Mr. Justice Chicoine appointed himself to take over lawsuit QBG. 1005 of A.D. 2002, when seized with this matter?
vi. Did illegalities occur when the Order of January 16, 2006, filed by Mr. Brown when the directives provided by Justice Kovach were misconstrued?
vii. Are members of an interdisciplinary sexual abuse team who rely on one another's findings and expertise, collectively culpable if negligence and failure to protect occurs?
viii. Is it reasonable to conclude that counsel knew who would be on the bench March 07, 2008, and that they did what they did, because they knew they could?
ix. Should the Statute of Limitation Period be waived, for pleading continuous injury and discovering the impact of these injuries at a point in time when the accumulative effect became overwhelming?
x. Should there be consideration for self-litigants who do not have the emotional resources, finances and who are apprehending and protecting their own grandchildren 'from harm' have a Limitation Period waived?

PART III: STATEMENT OF ARGUMENT:

PREAMBE:

51. The Chamber's judge 'struck out' the amended claim under Rule 173:

Pleadings disclosing no cause of action or defence, or unnecessary, scandalous or embarrassing may be struck out (Rule 173).

> **173** The Court may at any stage of an action order any pleading or any part thereof to
> be struck out, with or without leave to amend, on the ground that:
> (a) it discloses no reasonable cause of action or defence, as the case may be;
> (b) it is immaterial, redundant or unnecessarily prolix;
> (c) it is scandalous, frivolous or vexatious;
> (d) it may prejudice, embarrass or delay the fair trial of the action;
> (e) it is otherwise an abuse of the process of the Court;

52. The Appellant (Plaintiff) claims that none of these points apply to her amended claim since Rule 173 (a) does not apply as she did demonstrate reasonable causes of action that could not be deemed done 'in good faith'; for 173(b) she claims that her pleadings were material (*prima facie*) as defined below:

> "Most legal proceedings require a *prima facie* case to exist, following which proceedings may then commence to test it, and create a ruling. This may be called *facile princeps*, first principles.or *at first sight*. The literal translation would be "at first face", *prima* first, *facie* face, both in the ablative case."
>
> From Wikipedia, the free encyclopedia

53. The pleadings are factual and when read, speak for themselves (res ipsa loquitur).

54. Thirdly, 173 (c) does not apply as the pleadings are factual and true and stated with no intent to be scandalous, frivolous or vexatious.

55. Fourthly, she argues that the pleadings were not intended to cause embarrassment, but were necessary to plead as the allegations are true.

56. The Appellant (Plaintiff) noted that Chamber judge's decision 2008skqb115CanLII was posted on this public website, and proved an embarrassment to her since the Statement of claim (Amended Fresh Copy) was not posted to provide the facts.

57. The last point in Rule 173 is (e) there would be an 'abuse of the court process' if her claim was allowed, is to the contrary, being that striking it was punitive and unjust.

PLEADINGS ARE SUBSTANTIAL: *PRIMA FACIE & RES IPSA LOQUITUR***:**

58. The pleadings are stated as true and factual and have not been denied by counsel.

59. The pleadings / allegations made by the Appellant (Plaintiff) are true as admitted; and needed to be documented to provide full particulars as per the Saskatchewan Court of Queen's Bench Rules 139, 149 and 150 as follows:

> **Where particulars necessary**
>
> **139** (2) Where necessary full particulars of any claim, or defence shall be stated in the pleading. R. 139.
>
> **Reference, if particulars necessary.**
>
> **149** In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, full particulars shall be stated. R. 149**.**
>
> **150 Where particulars of debt, expenses or damages-** refer to Appendix IIii.

> **True allegations to be admitted**
> **152** Each party shall admit such of the allegations contained in the pleadings of the other party that he knows to be true. R. 152.

60. The Appellant (Plaintiff) did plead specifically as per Rule 153.

> **Pleading specifically**
> **153** A party shall plead specifically any matter, fact or point of law which:
> (a) makes a claim or defence of the other party not maintainable; or
> (b) if not specifically pleaded, might take the other party by surprise or;
> (c) raises issues not arising out of the preceding pleadings. R. 153.

61. The Chambers judge fatally prejudiced the Appellant (Plaintiff) in not being prepared to hear arguments and was confused (or acted confused) as to what was before him. See Affidavit filed for this application.

62. The Chambers judge did not even recognize that he should not be trying 'to strike' her original Statement of Claim as it was already underlined and set aside.

63. The appellate justices concurred in their judgment from her appeal that his doing this, was in error but dismissed this as not affecting his final decision.

64. The appellate judges failed to recognize that her pleadings had not been denied by these Respondents (Defendants) and if any denials they were evasive:

> **Denial shall not be evasive**
> **154** Where a party in a pleading denies an allegation of fact in a previous pleading of the other party, he shall not do so evasively but shall answer the point of substance. R. 154.
> **Different version to be pleaded**
> **155** Where it is intended to prove a different version of the facts than that pleaded by the other party, a mere denial of the version so pleaded is not sufficient, but a party shall plead his own version of the facts. R. 155.

65. Counsel for the Respondents (Defendants), having no new application to strike her claim, no defence and no new materials to deny her allegations, had no legal right 'to strike' her amended claim.

66. The allegations in the pleadings made by the Appellant (Plaintiff) have to be considered as facts and deemed admitted (that is allowed) as per rule 156:

> **Deemed admitted**
> **156** All allegations of fact which are not denied or stated in the pleadings not to be admitted shall be deemed to be admitted. R. 156.

PROCEDURAL IRREGULARITIES & ILLEGALITIES:

FAILURE TO FILE A NEW APPLICATION:

67. When the Appellant (Plaintiff) became aware of the Respondents (Defendants) not having filed a new application or having failed to file their substantive materials in which to strike her claim, was just before March 07, 2006.

68. Recognizing that 5 counsel members had not done this was 'mind-boggling' and she brought that up to the Chambers judge, who either ignored what she had to say or scolded her or acted confused.

69. The rules of the court that counsel did not comply with are the following:

> **Irregularities and Non-Compliance**
> **Procedural defect**
> **Consequences**
> (2) Where there has been a failure to comply with these rules, the court may, at any time and on such terms and conditions as it thinks just,
> (a) set aside a proceeding, either wholly or in part;
> (b) set aside any step taken in a proceeding, or a document, or order made therein; R. 5

70. The chambers judge and the appellate judges erred in law by not determining that the Respondents (Defendants) had been provided clear directions, not once but 6 times, as to what was expected of them (verbally and in writing) and still did not do it.

71. The Appellant (Plaintiff) deems counsels' actions must not be considered as a 'procedural misstep' but as non-compliance, whereby their actions were purposeful and intended to prejudice the Appellant (Plaintiff) and her 4 grandchildren.

ERROR TO NOT CONSOLIDATE:

72. What unfolded in that courtroom on March 07, 2006, for 2.75 hours has been described in her Affidavit for this application.

73. The Chambers judge ignored the Appellant (Plaintiff)'s wishes that she verbalized during arguments, that he consolidate this lawsuit with QBG. 1005 of A.D. 2002 under Rule 41 Consolidation. See full text at Appendix II ii.

74. The chambers judge does not even mention in his judgment that he took over the other lawsuit without consolidating it.

75. His doing this was an abuse of the 'court process' for the Appellant (Plaintiff) and her husband who was later added to QBG. 1005 of A.D. 2002.

76. The argument here is this: If the Chambers Judge had consolidated the 2 claims he would not have been able to strike her amend claim for this action, which was his sole purpose for being on the bench.

77. Further, if a favorable ruling or the truth of the facts in common came forward, then this would compromise his decision 'to strike' and cause embarrassment.

78. In counseling, embarrassment is not a negative if well-deserved as it is necessary emotion to experience in the short-term, which can have long-term benefits.

79. The benefit is for us 'to see the error of our ways' and make appropriate changes to our lives (i.e. learn from our errors).

80. In the case of this lawsuit and the other, no one has to be held accountable because it appears that the internal controls as to whom receives justice and who does not; are determined based on what is 'politically correct' even the administration of justice for children like the 4 infant children as plaintiffs.

81. The Appellant (Plaintiff) was also vulnerable the night of April 09, 2002, and Ms. LaPrise had made special note in her 'day-timer', that on that day, she would still be on 48 hours bed-rest from having had an cardio-angiogram.

82. As pleaded, having to deal with this hostile takeover of her property and being on bed-rest and being told by her lawyer to secure everything she possibly could, in particular files, as that is what they were after, she risked her life in doing so.

THE MATTERS PERTAINING TO JOYCE LAPRISE:

83. Instead, in his judgment he deems that adding her to this lawsuit is not where she should be added but rather add her to lawsuit QBG. 1005 of A.D. 2002.

84. The chambers judge failed to recognize (as it appears that the appellate justices did) that not consolidating it brought more time and costs to her and should be considered inappropriate under the circumstances.

85. Yet, Justice Chicoine has great difficulty figuring out who did what, when or if it matters, when it was all abundantly clear in the pleadings-and it sure did matter or she would not have walked into the court house on july 25, 2005 and filed this claim.

86. If he wanted Joyce LaPrise on that lawsuit then perhaps the Appellant (Plaintiff)'s lawyer at that time advised her to not add her to this lawsuit.

87. The Chambers judge should not be providing such legal advice as a means of dealing with Ms. LaPrise, who should be on this lawsuit since she and the other public servants named colluded to bring her harm, separate and apart from the Directors.

88. The registrar and counsel do not refer to her amended claim as Justice Kovach directed her and counsel to refer to it: Statement of Claim (Amended Fresh Copy).

89. Counsel absolutely knew that the amended claim as proposed on December 01, 2005, was no longer proposed.

90. Further, counsel absolutely knew that if they wanted ‘to strike’ her amended claim then they had to file a new application under rule 173 to strike it and needed to file a Statement of Defence ‘to strike’ her claim, by February 07, 2006.

91. Lastly, they needed to file a new application to ‘seal any portions’ of her Statement of Claim (Amended Fresh Copy).

92. They needed to file new or file again, their affidavits and exhibits for their new application(s).

93. On March 07, 2006, counsel, if they filed new, were in a position to argue in favor of ‘striking’ her Statement of Claim (Amended Fresh Copy), hereby referred to as the amended claim, and were to argue if the additional parties (Defendants) should remain on the Style of Cause or should be removed.

94. No defence or arguments to not have the additional parties added means that they remain added as was the order given on December 01, 2005.

95. This Order was revised by Mr. Brown and Mr. Dauncey after the registrar arranged for a teleconference which Mr. Justice Kovach noted as being irregular.

96. The Respondents (Defendants) failed to submit a defence and substantive materials to be able to strike her claim and their joint confusion as to what claim was before them carried over to the way the revised order was written, to their Briefs of Law and can not be sustainable as a defence.

97. Mr. Brown’s letter of August 06, 2006 (page 1.) he refers to her having already filed 4 different claims to that point.

98. Counsel would never have been able to sustain such confusion and deception if Justice Kovach had been sitting on the bench, on March 07, 2006 – but he wasn’t.

99. The Chambers judge erred in relegating responsibility to the Directors ‘for the actions’ of Joyce LaPrise, the Regina Police Service, the Attorney Generals of the Saskatchewan Government and the Government of Canada and further erred in not ensuring justice.

100. The Affidavit for Part Three and Exhibits of these Respondents (Defendants) planning the demise and takeover of her and this property are filed at Appendix I (Excerpts for the APPEAL BOOK-Appendix I).

101. For Part One of her amended claim she had filed the case notes as an Exhibit.

102. She had received them from the Social Worker (as she had a legal right to them) and they now became the focus of Part One, as she noted that once again fraud had occurred in which the same Social Worker was having his 'entries' edited as to what to leave in, what to leave out and assessing if this sounded 'Good'. See Appeal Book: Part. One.

103. These Respondents (Defendants) had fabricated the pre-adoption report, indicating that the child they were interested in had reached all the milestones of normal growth and development, which she and her late husband had made their decision to adopt her on.

104. These case notes now supercede the pre-adoption report which was never provided.

105. The pleadings in the amended claim clearly name each party responsible, their culpable actions {criminal acts and breaches of trust, breaches of their fiduciary (statutory) duties, the breaches of their professional standards towards the Appellant (Plaintiff) and her 4 grandchildren} and the confusion in this area which the Chambers judge refers to in his judgment is not credible.

106. The Directors did not come up with this plan to evict her, or write the Eviction Notice nor was the Aboriginal Healing Foundation (AHF) did not want to withhold their funds or be a part of this conspiracy, but were drawn into it by Normen Ducharme and Denis Racine of Canadian Heritage.

107. These public servants such as Rose Hill, Marg Parr of HRDC had nothing better to do but exchange emails which were gossipy and inflammatory to the Appellant (Plaintiff)-See Part Three Affidavit and Exhibits).

108. You will note in those email exchanges on April 10, 2006, Normen Ducharme Joyce LaPrise speaks with Mr. Ducharme telling him that this time we got rid of her (them) in reference to the earlier eviction on March 06, 2002 from the Program Center.

109. Mr. Ducharme emails Tony Coughlin, Minister of Social Services that Arlene Lowery is finally gone.

110. On April 09, 2002, the Appellant (Plaintiff) directed the RPS constables to telephone her lawyer, Perry Erhardt of Olive Waller Zinkhan and Waller to verify 'her rights' to this property, but instead of doing that they came back a second time, to force her removal from these premises indicating that (Ms. LaPrise) had reported a theft was in progress.

111. The theft that was to take place, did so after the Appellant (Plaintiff) was forced out.

112. Once she walked off of the property, early in the morning of April 10, 2002, she knew she had lost her investment, her chattels and would need to rebuild her life.

113. The Directors did not interfere with her 'exercising her right' to sell the property, as per the Mortgage Agreement (see the Appeal Book) nor did the AHF.

114. She pleads the Personal Property Security Act,(1993,c.P-6.2,s.14.), (1993,c.P-6.2,s.15.), (1993,c.P-6.2,s.16.), (1993,c.P-6.2,s.17(1) to (4) inclusive.), and requests this court to apply any other statutes from this Act or any other Act which they deem appropriate.

PREJUDICE:

115. The Appellant (Plaintiff) filed a generous amount of exhibits with her Affidavits for this amended claim so that there would be no doubt, as to who did what and why it mattered.

116. For the Chambers judge to decide that these public servants were acting in 'good faith' is not the case, when you consider their actions.

117. Over the 5 years that this lawsuit slowly *'wound its way through the courts*' the Appellant (Plaintiff) experienced unsettling treatment which caused undue stress.

118. The Chambers judge was ignorant and disrespectful to her for no known reason other than to intimidate her.

119. In his fiat of October 03, 2006 he construes the facts 'to make her look bad'.

120. On October 03, 2006, he repeatedly told her that he had not read the autopsy report and the substantive materials she had to support that pleading.

121. Being so distressed at the outcome of that hearing and still grieving she wrote a 2 page letter to Chief Justice Laing of the Saskatchewan Court of Queen's Bench, providing it to the Registrar to pass on to him.

122. At the time, she was thinking she should appeal this decision until she received a 2 page letter in the mail from Chief Justice Laing sympathizing with her over the loss of her infant granddaughter and assuring her that everything was according to the rules of the court and that she had not been unfairly treated.

123. One judge can do and say whatever and then another judge can undo what the other did, with no regard for the outcome and so the court can be in control of its' processes.

124. Yet, this lack of structure and consistency in the lower court can, as it did here, lead to a miscarriage of justice.

125. Attached at Appendix I. are 3 Tables that provide overviews each part of the amended claim: Part One: Table 1.1., Part Two: Table 1.2., Part Three: Table 1.3., in which she highlights who was responsible for what, the relevant causes of action, the pleadings, applicable legislation (laws) and the damages being sought.

POINTS OF LAW:

* Conclusions of law were pleaded in the materials as facts and supported the conclusions pleaded. She relies on Rule 141

Point of Law:

> **141** A party may raise any point of law in his pleading. Conclusions of law may be pleaded provided that the material facts supporting such conclusions are pleaded. R. 141.

126. The Appellant (Plaintiff) relies on this rule, whereby the 'burden of proof" lies with the Respondents (Defendants) to plead a different version, Rule 143:

> **Presumptions of law**
> **143** A party need not plead any fact which is presumed by law to be true or in his favour or as to which the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading. R. 143.

127. Counsel failed to plead for their clients' version of the facts or admit true allegations, or answer point of substance as per Rule 174 (a) to (c) inclusive.

128. Where the Appellant (Plaintiff) has stated precise words of a conversation(s) in her materials, she relies on Rule 145.claiming those words are they themselves material.

> **Effect of document or conversation**
> **145** The effect of any document or the purport of any conversation, if material, shall be stated briefly, and the precise words of the document or conversation need not be stated unless those words are themselves material. R. 145.

129. Appellant (Plaintiff) and the 4 Infant Children Plaintiffs' Charter of Rights and Freedoms Breached and the United Nations Rights of the Child Breached as attached in Part VII:

130. To learn the true facts a trial or an independent judicial review would be necessary.

131. This would be additional financial duress, pain and suffering to the Appellant (Plaintiff) and for her 4 grandchildren named in this action.

132. The Appellant (Plaintiff) can not speak for the effects of this lawsuit on the Respondents (Defendants) named, but she does recognize that any lawsuit in which one is named is not without its' stresses.

133. That said, she has no regrets for commencing this lawsuit.

134. She does regret what has happened to her 4 grandchildren named here and their infant sisters; and she regrets the toll of these actions and her pursuit for justice has

taken on her husband [who had a major heart attack November 2007 and surgery February 2008] and the ongoing pain and suffering she has ad to face.

135. For all the reasons summarized in paragraphs 129 to 136, above, she requests that a trial and an independent judicial review be waived, in favor of the Chamber judge's decision being 'set aside' in favor and the entire matter going to judgment as per Rule 174 (a) to (c) judgment against them.

136. This request is supported by the Appellant (Plaintiff)'s claims that any denial was evasive (Rules 154 and 155) and having failed to file a new application and a Statement of Defence and substantive materials to support such a defence that Rule 174 applies here in her request to have the matter go to judgment:

> Where failure to plead own version, admit true allegations, or answer point of substance, court may -------, etc. R. 174
> Note full text at Part VII:

137. The Appellant (Plaintiff) requests that that this Honourable Court note the Respondents (Defendants) individually and jointly in default for having failed to deliver their Statement(s) of Defence within the time for doing so, and the time being expired, Rule 114 (1)(2)(3) applies and the Appellant (Plaintiff) can enter judgment R114(4). She relies on Rule 17 Variation of time for defence and Rules 114 to 123 inclusive: (Part VII)

> Rule 114 (1): Default of defence
> Rule 114(2): Noting for default
> Rule 114(3): No defence after default
> Rule 114(4) Effect of noting for default
> (4) On default being noted as provided in this rule, the plaintiff may enter judgment or take such other proceedings as he may be entitled to take on default of defence. R. 114.
> * Full text of Rules 17, 114 (1) to (4), 115 to 123 inclusive are attached at VII of the Application to take Leave.

SHOULD COUNSEL BE FOUND IN DEFAULT:

138. The TEST for setting aside a 'judgment by default' you need to consider the following: "FACTORS SUCH AS (1) Intention to defend, (2) behaviour of parties (3) length of defendant's delay (4) reasons for delay (4) complexity/value of claim".

139. With point (1) they certainly intended to defend because they filed their Briefs of Law on time and all 5 of counsel showed-up on March 07, 2006 to argue that her Statement of Claim (Amended Fresh Copy) should be stricken, even if they failed to file a new application as per Rule 173.

140. That is only a 2 page document to file so they had plenty of time to do that, but not one out of the 5 of them thought to do that.

141. It was not up to the Appellant (Plaintiff) to remind them prior to March 07, 2006.

142. By this time, the Appellant (Plaintiff) was grieving the death of her infant granddaughter and feeling so grieved for her daughter and the grandchildren that it was difficult to even do what she was requested to do.

143. Mr. Brown and Mr. Watson wanted to strike this lawsuit so quickly that they would not recess for a month while she grieved.

144. On November 17, 2005, Madam Justice Gunn told her husband who was there on her behalf, that she had to be present in Chambers on December 01, 2005 or have a lawyer there or she would find her in default.

140. Counsel's Briefs of Law reflected the same confusion that was evident in the revised Order. Refer to page 3 [29] to [30] inclusive, page 4. [31] to [33].

145. As was mentioned before on page The length of their delay was from January 18th to February 07, 2006. about 3 weeks.

146. They knew from December 01, 2005 that they needed to file new and their substantive materials, and realized she was basically reorganizing the material, with the exception of adding a new pleading of a wrongful death and adding the parties and could have refilled their substantive materials or portions of them and no alibi can be made.

147. They never were concerned about this when they objected to new evidence being filed on her part or thought about it October 03, 2005 in a special hearing.

148. Not once were they concerned about having not filed anything but their Briefs of Law, that were often disjointed and the reader had to wonder what they were trying to strike.

149. Just like Justice Chicoine using in error the original claim and the amended claim interchangeably in his decision, they did the very same thing in their Briefs of Law.

150. The only plausible point to this TEST is on page 17 [138] is (2) behaviour of parties.

151. That is the most disconcerting of all and the point that outweighs the others: refer to the case made in her AFFIDAVIT for this APPLICATION found on pages 5 [33] to [34], page 8 [40] to [43], page 10 [58] [59], page 11 [60] page 14 [89] to [97], page 15 [98] to [105].

152. She concludes that the only just thing to do is to set aside this judgment, providing no recourse for these Respondents (defendants) and submit a judgment in favor of the Appellant (Plaintiff) and as litigation guardian, to the 4 infant children plaintiffs.

PART IV – SUBMISSIONS IN SUPPORT OF ORDER SOUGHT CONCERNING COSTS: – *Rule 25(1)(f)(iv) of the Rules of the Supreme Court of Canada)*

i. Appellant (Plaintiff) as litigation guardian to the 4 infant children named as plaintiffs (proposed) to her Statement of Claim (Amended Fresh Copy) on January 16th, 2006 *{ from the revised Fiat and Order of December 01, 2005}*, are to be added, no longer proposed, for the reasons provided in her argument and affidavit materials, and that they shall have judgment on their behalf in the Court of Queen's Bench that gave rise to the judgment (order) appealed from, as per the amounts claimed for damages in the Statement of Claim (Amended Fresh Copy).

ii. Respondents (Defendants) who were parties added as proposed are to be added as parties to this claim, and the appellant (plaintiff) and the infant children plaintiffs, shall have judgment in the Court of Queen's Bench that gave rise to the judgment (order) appealed from.

iii. Damages for the death of Autumn Starr, infant sibling to the 4 infant children as plaintiffs pleaded as a wrongful death due to negligence in her Statement of Claim (Amended Fresh Copy) against the Respondent (Defendant) the Saskatchewan Government, be paid $250,000.00 to each, with interest from the date of her death (October 28, 2005 to the date this judgment).

iv. That Chuck Lowery, plaintiff to lawsuit QBG. 1005 of A.D. 2002, be compensated for Justice Chicoine compromising and breaching his 'right to speak' as a 'self-litigant', by allowing the filing of materials

into court without the benefit of having been served them in advance, and for a Conflict in Interest in 'taking over lawsuit QBG. 1005 of A.D. 2002' while seized with a decision on this lawsuit, and breaching his rights and freedoms as per the Charter of Rights and Freedoms for a sum of $250,000.00 with interest.

v. That the Court directs that Appellant (Plaintiff) Arlene Lowery, be awarded damages as claimed for in the Statement of Claim (Amended Fresh Copy) with interest.

vi. Overview of Causes of Actions, Pleadings, and Criminal Code which applies, Acts, Statutes, Professional Codes of Conduct, Canadian Family Services Act, other Acts, charters which relate. are at PART VI. of the MEMORANDUM.
Damages sought are as stated in v. in THE 3 parts of the Statement of Claim (Amended Fresh Copy).

PART V – ORDER OR ORDERS SOUGHT

Rule 25(1)(f)(v) of the Rules of the Supreme Court of Canada) (The order or orders sought, including the order or orders sought with respect to costs -

I Orders sought to allow the appeal and to 'set-aside' the judgment of the Chambers judge and enter JUDGMENT OF THE COURT as per the SASKATCHEWAN COURT OF APPEAL (Form 10b. Judgment Allowing Appeal and Granting Appellant Judgment) under rule 174 (c) (i)(ii) and as follows:

i. Court refuses the respondents (defendants) any further opportunity to call evidence as to a different version of the facts from those pleaded by the appellant (plaintiff).

ii. That the appeal be allowed and the judgment [order] appealed from be set aside.

iii. That the appellant (plaintiff) shall have judgment in the proceedings in the Court of Queen's Bench that gave rise to the judgment (order) appealed from.

iv. That the respondent (defendant) forthwith pay the appellant's taxed costs in relation to the proceedings in the Court of queen's Bench that gave rise to the judgment [order]appealed from, such costs to be determined in the court of Queen's Bench in accordance with the rules of that Court and its Tariff of costs.

v. That the respondent forthwith pay the appellant's taxed costs on appeal as determined under column IV of the Court of Appeal Tariff of Costs.

In the Alternative one or the other:

II. The Appellant (Plaintiff) seeks an Order that the appeal be allowed and goes to judgment or go forward for an independent judicial inquiry *or* , it goes to trial

SUPPORTING DOCUMENTS:
Notice of Motion to Strike – Rule 173 filed October 1 , 2005 ----------
Notice of Motion to Have the matter go to judgment (Rule 174) Arlene Lowery ---------
Notice of Motion to Take Leave to Amend –Rule 165 ----------
Child Welfare in Canada

APPENDIX: Bound Separately:

I. EXCERPTS FROM APPEAL BOOK
II. APPEAL ARGUMENT

PART VI – TABLE OF AUTHORITIES
Legislative enactments, case law, articles, texts and treaties

PART VII – LEGISLATION
LEGISLATION, STATUTES, ACTS AND CODES OF PROFESSIONAL STANDARDS.

Paragraph

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TABLE OF AUTHORITIES: Attached

Letter from Charlene Dobson with Affidavit and Exhibits (attached separately).