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The appellant applied for an order pursuant to s. 57(3) of The Enforcement of Maintenance Orders Act to stay a notice of continuing seizure and notice of arrears pending the determination of his appeal against the dismissal of his application to set aside those notices by a Queen's Bench judge. The appellant had been successful in an application to terminate his ongoing child support obligations under a 1992 judgment, but issues regarding quantum and cancellation of arrears in the amount of $345,000 were set over for trial by the chambers judge. The respondent then served notice of continuing seizure on the appellant's employer and the appellant made his unsuccessful application to suspend the maintenance enforcement measures. HELD: The application was dismissed as s. 57(3) of the Act required a panel of the court to exercise the power to stay. The provision arguably supplanted Court of Appeal rule 15(1). However, a Court of Appeal chambers judge has the power to grant injunctive relief to preserve the status quo and prevent the frustration of an appeal. In the circumstances of this application though, the appellant had not established that he would suffer

irreparable loss if the notices of continuing seizure and arrears remained in effect pending the hearing of his appeal.

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Criminal Law – Appeal – Conviction
Criminal Law – Appeal – Extension of Time

The appellant was convicted of several offences, including arson, and was sentenced to 49 months in prison. The Crown appealed the sentence. The appellant sought an extension of the time for appeal of the arson conviction.
HELD The appellant formed a bona fide intention to appeal within the prescribed time period, albeit conditional on whether the Crown appealed the sentence. The appellant moved diligently, the extent of the delay was not significant and there was no suggestion that the extension would prejudice the Crown. Although it was unclear whether there was a proper explanation for the delay and the merits of the appeal appeared to be weak, the grounds of appeal identified in the argument went beyond those laid out in the notice of appeal. In order to accommodate this situation, it was in the interests of justice to grant leave to appeal conviction.

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Criminal Law – Appeal – Sentence

The appellant was convicted of assault with a weapon. He appealed his conviction and sentence. He alleged that his representation at trial was ineffective because trial counsel did not call certain witnesses. He also argued that his sentence was excessive.
HELD There was no reversible error in respect of the conviction. Nothing on the court record suggested that trial counsel acted incompetently. Trial counsel was not notified that ineffective representation was alleged and the appellant did not waive

solicitor-client privilege. Therefore, trial counsel could not defend against the allegations, and the appeal court was not privy to the details of discussions between the appellant and trial counsel. The appellant adduced no evidence of miscarriage of justice. The appellant's sentence was varied to give credit for the time that he spent in custody prior to trial. His sentence was not otherwise demonstrably unfit and did not meet the threshold for appellate interference.

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Nadler v College of Medicine, University of Saskatchewan, 2017 SKCA 89

Jackson Whitmore Ryan-Froslie, October 20, 2017 (CA17089)

Administrative Law – Judicial Review – Appeal

The appellant was a postgraduate student in the College of Medicine. In 2015, his supervisor filed a complaint against him and an Investigation Committee was struck to investigate. The committee decided that the appellant should be put on probation. Dissatisfied with this decision, the appellant appealed it to the Appeal Adjudication Board and the appeal process was ongoing. However, after the board made an interlocutory decision, the appellant became concerned about the remedies that would be available to him under the bylaws passed by the Council of the University of Saskatchewan and, thus, brought an originating application to the Court of Queen's Bench for an order quashing the committee's decision. He argued that the court should assume jurisdiction on the grounds that the decision of the committee was null and void as it had proceeded with six rather than the seven members required by the bylaws. The respondent College of Medicine applied to strike the application under Queen's Bench rule 7-9 on the basis that the appellant had to exhaust all rights of appeal available to him under the bylaws before seeking judicial review. The chambers judge dismissed the appellant's originating application because it was premature but granted him permission to pursue it at an appropriate time. The judge found it unnecessary to consider the respondent's application.
HELD: The appeal was dismissed. The court affirmed the decision of the chambers judge that the appellant was required to exhaust his remedies under the bylaws and obtain a final decision within that process before seeking intervention by the court.

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Wieler v Saskatoon Convalescent Home, 2017 SKCA 90

Jackson Ryan-Froslie Wilkinson, October 20, 2017 (CA17090)

Statutes – Interpretation – Occupational Health and Safety Act

The appellant appealed from the decision of the Saskatchewan Labour Relations Board. It dismissed her appeal from the decision of a special adjudicator appointed under The Occupational Health and Safety Act (OHSA) who had heard the appellant's appeal from the original decision of an occupational health and safety officer. The officer said that he did not have jurisdiction to receive the appellant's complaint. The appellant had been hired by the respondent for a six-month probationary term. Before the period expired, the respondent terminated the appellant on the basis that she was not suitable for the position. The appellant was asked to sign a release in exchange for one month's severance pay. She then consulted a lawyer, who advised her that she had no claim against the respondent. The appellant signed the release but then filed a complaint with the Occupational Health and Safety Division of the Saskatchewan Ministry of Labour, alleging that she had been the subject of discriminatory actions, contrary to s. 27 of the OHSA. She specifically alleged that prior to her termination she had raised occupational health and safety concerns regarding intimidation and bullying of her by the management team and risk for staff injury due to unsafe staffing levels in the nursing home. The adjudicator found that the issue was not one of whether the officer lacked jurisdiction to hear the appellant's complaint but rather whether the complaint was barred by the release. She concluded that because the release was clear, unequivocal and valid, the complaint was barred. At the time the decision was rendered, the OHSA was being repealed and replaced by The Saskatchewan Employment Act (SEA). Under s. 4-8(2) of the SEA, the appellant appealed to the board on the question of the correctness of the officer's finding that he lacked jurisdiction. The board stated that although the OHSA could not be waived by private contract, if there was an event that triggered the right to make a complaint, the right became personal to the individual and they could choose to negotiate a resolution without a hearing. If a release was given in respect of a personal right, the validity of the release must be reviewed. The board noted that there was no evidence before it that the release was not valid and that, as consideration had been given for it, there had been accord and satisfaction. It found that neither the adjudicator nor the officer had erred by finding the release valid and enforceable

and had not erred by declining to proceed with the matter. On this appeal, the appellant argued that the board erred in law by so holding. The issue was whether a complainant under the OHSA could release an employer with respect to a wrongdoing that had occurred in the past and that was personal to the complainant.
HELD: The appeal was dismissed. The court found with respect to the issue that the board had not erred. The court noted that the officer had erred in his conclusion that he did not have jurisdiction, but that did not mean that an officer could not take into account a release such as the one in this case or that this release was not relevant to either the adjudicator's, the board's or the court's analysis.

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Haug v Haug Estate, 2017 SKCA 92

Ottenbreit Caldwell Ryan-Froslie, October 23, 2017 (CA17092)

Wills and Estates – Appeal
Trusts – Resulting Trust

The appellant appealed the passing of accounts of his parents' estates. At her death, his mother had one or more joint accounts with each of his siblings. He raised the issue of resulting trust concerning those accounts. His brother was the administrator and executor of the respective estates. His two sisters approved and consented to the administration of the estates.
HELD: The appeal was allowed insofar as it concerned the mother's estate and monies received by the siblings as a result of the right of survivorship on joint accounts. There was a rebuttable presumption that the money held in joint accounts belonged to the mother's estate on her death. The trial judge erred in requiring the appellant to sue his siblings for a determination of the issue of resulting trust. The executor was obligated to identify the assets of the estate, including any constructive or resulting trusts, and to pass accounts. The order passing accounts had the effect of discharging the executor with regard to his decisions made about those accounts. To require the appellant to sue another beneficiary who holds putative estate assets to recover those assets is fraught with difficulty and possible prejudice. There could be issues of limitations, res judicata or issue estoppel. As the appellant is bound by the order passing accounts, he might be forced to allege fraud or mistake to address the issue, which may require a higher degree of proof. The examination of whether such a trust exists is best done in the

context of an application to pass accounts.

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Anderson v Braun, 2017 SKCA 93

Richards Jackson Ottenbreit, October 26, 2017 (CA17093)

Negligence – Causation – Damages
Contributory Negligence
Civil Procedure – Parties – Third Party
Civil Procedure – Cross-claim

A vendor sued his solicitor, alleging negligence in representation on a property sale. The solicitor added as third parties the vendor's real estate agent, the purchaser's real estate agent (the appellant) and another individual who worked with the purchaser's agent ("Thompson"). The solicitor claimed the appellant owed a duty of care to the vendor in the drafting and completion of the contract for sale. The vendor's agent cross-claimed against the appellant and Thompson for any damages recovered by the solicitor against him. The trial judge allowed the third party claim and the cross-claim and found that each of the parties caused the loss. He apportioned fault pursuant to The Contributory Negligence Act. The Appellant appealed. Thompson did not himself appeal, cross-appeal or apply to vary the decision of the trial judge, but filed a factum supporting the appeal. Thompson argued that if the appellant was successful, the court had jurisdiction to grant him the same relief.
HELD: The court dismissed the appeal. The court did not address issues argued by Thompson but not appealed. The court granted Thompson leave to appeal to the trial judge to determine if an error existed in the formal judgment. The court narrowed the grounds for appeal to whether the trial judge erred in the following ways: 1) determining causation for the vendor's loss; 2) determining the third-party claim; 3) determining the cross-claim; and 4) applying the Act and apportioning fault. The court determined the issues as follows: 1) It was open to the trial judge, applying the "but for" test, to find that the solicitor's negligence in not reviewing the statement of adjustments with the vendor was not the sole cause of the loss. Thompson, by not reviewing the final contract prior to it being signed, also caused the loss. The appellant caused the loss by not reading the contract and breaching his obligation not to undertake anything in the process that was not transparent and not contemplated in the contract. The solicitor's negligence was a separate negligent act. The finding of ambiguity in contract was unassailable on the

palpable and overriding error standard of review. It was open to the trial judge to find that the parties who created this ambiguity contributed to the loss; 2) the trial judge did not err in giving effect to the third party claim where the appellant was found to be one of the parties who negligently caused the loss. An independent cause of action between a defendant and third party is not necessary to advance a third party claim in cases of negligence. A defendant tortfeasor is allowed to recover contribution from a third party joint tortfeasor in cases of negligence; 3) the cross-claim was made out because there was sufficient proximity between the Appellant and Thompson to find that the Appellant owed a duty of care to Thompson; 4) the trial judge appropriately applied the Act and determined fault. The application of s. 6 of the Act could not reduce the share of fault of a concurrent tortfeasor to zero. This would negate the determination of causation. Even if the solicitor's acts or omissions were clearly subsequent to and severable from the appellant's, the degree to which the appellant's fault would be ameliorated by virtue of s. 6 was a factual matter for the trial judge to determine and entitled to deference. Further, the trial judge did not fail to properly apply the comparative fault test.

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R v Laliberte, 2017 SKPC 82

Martinez, October 6, 2017 (PC17073)

Criminal Law – Attempted Robbery – Sentencing

The accused was convicted of attempting to rob a victim and breaching his undertaking to refrain from drinking alcohol. The victim and his friend were talking with the complainants while they were working at the local community centre. Because they were preparing food for sale, both complainants had paring knives in their hands. The accused's friend suddenly produced a machete and declared that he had a knife. The complainants dropped their knives, and the accused demanded that one of them give him his money. One complainant punched the accused, and the police were called. The accused admitted to having drunk three beer. The officer did neither see nor find the machete. The Crown submitted that the accused should receive a two- to three-year sentence because the robbery was premeditated and involved a weapon. The accused's lengthy criminal record included convictions for violent and theft-related offences. The defence argued that the robbery was spontaneous and although the accused had a lengthy criminal record, his last

conviction for a property or violent offence was in 2009. Thus, he should receive enhanced remand credit for six months calculated at 1.5 times and his sentence should be time served followed by a lengthy probation. The accused was a 33-year-old man of Aboriginal descent. His parents had both attended residential school. He was raised by various family members, in foster homes and, eventually, by his mother who drank heavily. The accused himself started drinking at 13. His criminal record included 27 convictions, eight of which involved violence or theft. The accused had expressed remorse and, since the offence, had quit drinking, had applied to attend school to complete his elementary and high school education, and had strong support from his family.
HELD: The accused was sentenced to a nine-month custodial sentence for the attempted robbery and a three-month concurrent sentence for breach of his undertaking. The court granted him enhanced credit for remand time and deducted six months from his custodial sentence, so he had three months left to serve in his sentence. After release, the accused would be on probation for a year, subject to conditions that included assessment and counselling for addictions and attending school. The court found that the robbery was unplanned and that it was possible that the accused did not know that the co-accused was carrying a machete. The court regarded the Gladue factors as important to its determination of a fit sentence.

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R v Deng, 2017 SKPC 84

Martinez, October 6, 2017 (PC17074)

Criminal Law – Controlled Drugs and Substances Act – Possession for the Purpose of Trafficking – Cocaine

The three co-accused were jointly charged with possession of crack cocaine for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act. The accused G.C. lived in Buffalo Narrows, and at the time of the offence, the two other accused were his house guests. There was a third guest, K.K. The RCMP suspected that all the co-accused were involved in trafficking cocaine from the house and kept it under surveillance. Prior to the day that the RCMP decided to raid it, they arrested K.K., who was therefore not present during the search of G.C.'s house. In the search, the police seized 15 grams of cocaine that was packaged for sale. It was stuffed in a sock hidden in the attic. A scale and a box of plastic baggies were

found between the mattresses of a bed. When the police arrested K.D. and A.Y., they found $1,800 and $1,200 in their possession. K.K. pled guilty to possession for the purpose of trafficking before the trial.
HELD: The three accused were found not guilty. The Crown had not proven beyond a reasonable doubt that the co-accused had the requisite knowledge required to find them in possession for the purpose of trafficking. The court found that all evidence of cocaine trafficking was hidden from view and there was no evidence that any of the co-accused knew of it or where it was. The only reasonable inference was that K.K. had been trafficking and had hidden the evidence.

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Q.W., Re, 2017 SKPC 85

Agnew, October 5, 2017 (PC17075)

Criminal Law – Criminal Code, Section 490
Charter of Rights – Search and Seizure

The applicant applied pursuant to s. 490(15) of the Criminal Code for an order that Canada Revenue Agency officials be allowed to view and copy documents seized by the Canada Border Security Agency.
HELD The application was dismissed. The application met two preconditions for issuance of the order: the subject matter was detained under s. 490(2) of the Code, and CRA had an interest in the subject matter within the meaning of s. 490(15). However, there was no evidence that notice had been given to the provincial Attorney General. Therefore, the court could not issue the order. Even if all preconditions had been met, the court was not inclined to grant the order. The scope of the proposed search engaged the privacy concerns discussed in R v Vu. The fact that there were electronic documents pertaining to subject persons in CBSA possession was not sufficient to authorize CRA to look in every electronic device. CRA must more specifically identify what devices are to be searched and demonstrate reason to believe that specific devices will have the data sought. Alternatively, CRA can attempt to persuade the court why a search for all documents or a particular type or format is reasonable and how it appropriately balances the state's interest in detecting and prosecuting crime with the privacy rights of the subject persons. Restrictions that apply to examination must also apply to copying. While the court has power to order the copying of documents, it does not have the power to compel

CBSA to make copies of documents for CRA.

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R v Whitehead, 2017 SKQB 263

Krogan, September 29, 2017 (QB17279)

Criminal Law – Firearms Offences – Discharging with Intent to Wound

The accused pled guilty to numerous offences, including: discharging a shotgun, contrary to s. 244(2)(b) of the Criminal Code; having a firearm in his possession for the purpose of committing an offence, contrary to s. 88 of the Code, and while he was prohibited from possessing a firearm under s. 110 and 117.01(1) of the Code; committing an assault on his spouse, contrary to s. 266; and two counts of wilfully damaging property, contrary to s. 430(4). The charges were laid after the accused had damaged the door of a relative's house on the Red Earth Reserve where his wife had sought shelter. He argued with her and struck her in the face and then left the house. The RCMP were called, and two officers drove their truck to another house where they could see the accused. When one of the officers approached the house, the accused fired a 12-gauge shotgun containing birdshot at her. The pellets struck the truck, but the officer was not injured. The Crown sought a global sentence of 12 years in prison while the defence argued for a seven-year global sentence. Both the Crown and the defence agreed that the accused should receive credit at the rate of 1.5 for the 712 days that he had been in custody. The pre-sentence report described the background of the accused. The accused, a 26-year-old Aboriginal man, was born on the reserve. His parents struggled with alcohol addiction, which caused the accused to suffer neglect and witness domestic violence. He was sexually abused by a relative. At seven, the accused was placed in foster care because of his home environment. The accused began drinking when he was 13 and abused drugs. His education stopped after grade nine. He and his wife had three young children. The accused had assaulted his wife in the past because he was unable to control his anger. He had never sought nor been given any counselling or support. His criminal record of 27 convictions included 11 related to violence and criminal behavior involving police. His risk to reoffend was assessed as high.
HELD: The accused was sentenced to 10 years in prison. When pre-sentence credit was given, the final sentence was seven years and one month. The court found the most serious offence,

discharging a firearm with intent to endanger life, attracted a nine-year sentence, and for the offence of having a firearm in his possession, the accused received a four-year concurrent sentence. The sentence for each of the s. 117.01(1) offences was three years concurrent. The damage to the RCMP truck attracted a three-month concurrent sentence. The accused received a 15-month sentence for assaulting his wife, to be served consecutively with any other sentences. The court noted the Gladue factors that were present and how they reduced the accused's culpability for the offences. This was not a case in which restorative sanctions were appropriate.

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Baraniski v Youzwa, 2017 SKQB 300

Turcotte, October 2, 2017 (QB17297)

Statutes – Interpretation – Controverted Municipal Elections Costs

In an earlier ruling, the court decided an application under The Controverted Municipal Elections Act in relation to elections held at a resort village. The applicant had challenged the election of the respondents. The court now heard from the parties on the issue of costs.
HELD: The court awarded costs on a party and party basis in favor of the respondents. The case was not appropriate for solicitor-client costs. Costs were payable in part by the applicant and in part by the village. The village was not an uninterested party in proceedings identifying constituents who were eligible to vote and be candidates in local government. It is for this reason that s. 32(3) of the Act permits the court to add a municipality to a proceeding. The applicant, who was a ratepayer and an incumbent council member seeking re-election, also had an interest in the outcome of the proceedings and costs could be awarded against him. His interest was not merely as a person who commenced public interest litigation.

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C.L.F. v B.D.C., 2017 SKQB 301

Smith, October 2, 2017 (QB17298)

Civil Procedure – Minutes of Settlement – Enforcement

Family Law – Family Property – Interspousal Agreement

The respondent applied under s. 29(1) of The Queen's Bench Act, 1998 for judgment in the terms of a settlement agreement. He submitted that he entered into it with the petitioner regarding the division of their family property. The petitioner opposed the application, arguing that there had been no consensus ad idem and the matter should be set down for trial. The agreement had provided that the petitioner would receive an equalization payment of $1,600,000 in installments. The majority of the value of the family property was in a closely held corporation. The petitioner's shares in it would be held in escrow until full payment was made by the respondent. The respondent requested an adjustment to the escrow provisions so as to allow him to raise the necessary financing for the large second installment prescribed in the agreement. The petitioner then requested many changes and additions to the respondent's obligations under the agreement, and the respondent then brought the application for judgment.
HELD: The application was granted. The court found that the agreement represented a complete consensus ad idem as to the outstanding matters between the parties.

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R v Babich, 2017 SKQB 304

Chow, October 4, 2017 (QB17288)

Criminal Law – Motor Vehicle Offences – Impaired Driving – Refusal to Provide Breath Sample – Acquittal – Appeal
Constitutional Law – Charter of Rights, Section 24(2) – Appeal

The Crown appealed the acquittal of the respondent on the charge that she refused to provide a breath sample without reasonable excuse pursuant to s. 254(2) of the Criminal Code. The decision to acquit came after the accused had successfully argued in a voir dire before trial that the police had violated her s. 8 Charter rights. The trial judge found that there had been a breach and excluded the evidence (see: 2016 SKPC 123). The Crown's grounds of appeal were that the trial judge had erred: 1) by finding that the respondent's s. 8 Charter rights had been breached; and 2) by excluding the evidence of the refusal or failure to comply with the breath demand pursuant to s. 24(2) of the Charter.
HELD: The appeal was dismissed. The court found with respect to each ground that the trial judge had not erred: 1) in finding a breach. The Crown's position that the Court of Appeal had

misinterpreted the Supreme Court's decision in R v Evans in its decision in R v Rogers was no longer viable after the Supreme Court had denied it leave to appeal Rogers. The Crown correctly conceded that on the law and the evidence in this case, the police officer went to the respondent's door for the purpose of gaining evidence; and 2) by excluding the evidence of the refusal to provide a breath sample. The judge correctly identified and applied the factors set out in R v Grant to her analysis under s. 24(2) of the Charter.

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C.G. v A.K., 2017 SKQB 306

Brown, October 5, 2017 (QB17290)

Family Law – Custody and Access

The petitioner and the respondent had a five-year-old son. Although they had never cohabited, they agreed in 2013 to joint custody. Until May 2015, the respondent had primary care and the petitioner was exercising generous access. Due to the respondent's alcohol and drug abuse, the petitioner obtained an order that the child's primary residence be with him. The respondent was given supervised access and the order was subject to review should the respondent regain sobriety and acquire a stable residence. However, the respondent continued to display problems with substance abuse. The petitioner applied for sole custody of the child with the respondent having supervised access only. He also requested child support. Due to being recently laid-off from his employment, the petitioner also informed the court that if he could not find work in Saskatchewan, he planned to relocate to British Columbia. The respondent sought greater and unsupervised access. At the time of trial the respondent had completed a detox program and was living at a residence that supported her rehabilitation. She had been sober for seven months.
HELD: The court decided that it was in the best interests of the child under ss. 6 and 8 of The Children's Law Act for the parties to continue to have joint custody but for the child to have his primary residence with the petitioner and the respondent's access continue to be supervised. The petitioner would have authority to make all decisions for the child until further review by the court, and he was to keep the respondent informed of such decisions. The matter would be reviewed in eight months. The respondent was ordered to have weekly drug and alcohol screens and to provide the results to the petitioner. The

respondent would be given expanded access if her supervised visits with the child continued without incident. In February 2018, the respondent would have unsupervised access on every second weekend, which could progress to overnight access. The court was unwilling to provide an order relating to the petitioner's relocation until his plan was certain and then it would be assessed whether approving it would be in the child's best interests. Although the respondent was not working it was conceded that she had the capacity to earn at a minimum-wage position. Her annual income at such a wage would be $23,000, and therefore, she should pay child support in the amount of $175 per month.

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C.T., Re, 2017 SKQB 308

Elson, October 12, 2017 (QB17312)

Family Law – Child in Need of Protection – Child and Family Services Act – Indefinite Order

The Minister of Social Services applied for an order committing a two-year-old child to the care of his maternal grandparents for an indefinite period of time. The grandparents were previously designated as persons of sufficient interest. The child had lived with them since birth. The mother and father both suffered from addictions and had stopped living together by the time the child was born. The father had multiple criminal convictions, including drinking and driving offences and weapons offences. The mother's relationship with her parents, family support worker and child protection worker during the course of the child's life had been marked by volatility, argumentative behaviour and threats, one of which resulted in criminal harassment charges. The child was the subject of a protection order, which imposed conditions upon his parents. Neither meaningfully complied with the conditions set out in the protection order. Both parents testified at trial that their present circumstances were not suitable to raise a child. Each expressed intention to take steps necessary to provide a home for the child. Each parent asserted that a temporary order was appropriate. HELD: The child was placed in the custody of his grandparents on an indefinite basis, which, while not temporary, was not as potentially immutable as a permanent order. That the child was in need of protection was not seriously challenged by either his mother or father. The prospect for change at the time of trial was limited to statements of good intentions. On their own, such

statements were insufficient. There were opportunities for the parents to demonstrate a reasonable prospect for change. These opportunities were squandered and, in some cases abusively rejected by the mother.

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JCP Conservations Systems Ltd. v Convenience Group Inc., 2017 SKQB 309

Layh, October 13, 2017 (QB17299)

Statutes – Interpretation – Court Jurisdiction and Proceedings Act, Section 4, Section 10

The plaintiff brought an action for damages it claimed to have suffered after the defendant terminated its business relationship with it. The plaintiff alleged that when the defendant learned that it was trying to sell its business to a third party, the defendant intentionally thwarted the plaintiff's effort to sell. The defendant had not filed a defence but brought this application for an order that the plaintiff's action be tried in Ontario. The matter involved the application of The Court Jurisdiction and Proceedings Transfer Act (CJPTA) to determine the following: 1) whether under s. 4(e) there was a real and substantial connection between Saskatchewan and the facts on which the proceeding against the defendant was based. The plaintiff argued that the Saskatchewan court had territorial competence under s. 4 because the damages were sustained in the province; and 2) if there was a connection, which province was the more appropriate forum. Although the plaintiff had pled that there was a breach of the agreement made between the parties in 2005 and that was the basis of its claim in damages, the defendant adduced a contract between the parties signed in 2001 that contained an arbitration provision that specified that the provisions of the Ontario Arbitration Act, 1991 would apply and a clause that stated that the law of Ontario would govern. HELD: The defendant's application was granted and the action was ordered to be tried in Ontario. The court determined the following: 1) it had territorial competence under s. 4(e) of the CJPTA because the plaintiff alleged contractual damages for the defendant's alleged failure to act fairly and in good faith took place in Saskatchewan, relying upon Sampson v Olsen; and 2) under ss. 10(1), 10(2)(b) and 10(2)(e) of the CJPTA, the more appropriate forum in which to try the proceeding in Ontario because of the presence of the arbitration provision in the 2001 agreement and the fact that the defendant's assets were in

Ontario.

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Harrington v Bashutski, 2017 SKQB 311

McMurtry, October 13, 2017 (QB17294)

Family Law – Division of Family Property – Unequal – Exemptions
Family Law – Spousal Support – Means and needs

The petitioner, age 62, sought unequal division of family property and continued spousal support from her common-law spouse. She sought a transfer of property as equalization in order that she could sell the property, retire debts and divide the proceeds with the respondent. She asked that property be valued at the date of trial, not the date of petition. The respondent, age 63, sought an unequal division of family property in his favor and termination of spousal support. He claimed an exemption for all real and personal farm property, which he asserted that he acquired before the spousal relationship. The parties had lived on the family farm and engaged in minimal farming. The respondent was employed as a truck driver. The petitioner had been a nurse, but was unemployed when the parties met and remained so. At the time of the spousal relationship, the respondent farmed five quarters of land jointly owned with his parents and solely owned a sixth quarter. He inherited the five quarters on the death of his parents. The petitioner provided an appraisal of the land and buildings, which had been conducted from roadside as the respondent did not permit the appraiser onto the land. The respondent asserted a lower value for the land than was reflected in the appraisal. A neighbouring farmer testified that the land was hilly, rocky and prone to flooding. The Canadian Wheat Board (CWB) had writs registered against the land. The respondent requested an adjournment at the start of trial.
HELD: The request for adjournment was denied. The respondent had continually failed to cooperate with the court process and his request for adjournment was for the purpose of further delaying the proceedings. It was appropriate to deem the length of the marriage at 7.5 years. The court addressed the following issues: 1) the date for valuation; 2) the value of the property; 3) exemption from distribution of inherited land; 4) division of property; 5) security for the equalization payment; and 6) spousal support. The court decided the issues as follows: 1) the court valued the property as of the trial date, not the application

date. The value of the assets had increased due to market forces, and not the efforts of the parties; 2) the court accepted evidence of both the appraiser and the neighbouring farmer in determining the aggregate value of the land. It would be unfair and inequitable to divide the family property without taking the CWB liability into account and it was deducted from the land value; 3) the inherited land was not exempt from distribution. There was no evidence that the respondent's parents intended to exclude the petitioner when transferring land to the respondent. The land owned outright by the respondent at the time of the marriage was exempt to the extent of its fair market value at the time of the marriage; 4) the petitioner was not entitled to unequal division on the basis of her work maintaining the farm as there was very little farming activity during the marriage. The remaining property, subject to exemptions, was divided equally. The court ordered an equalization payment payable to the petitioner; 5) the respondent did not address his obligations in the action and the court ordered the respondent give security for the performance of his obligation to pay the judgment under s. 26(3) of The Family Property Act; and 6) the petitioner was entitled to spousal support to relieve the economic hardship she experienced on breakdown of the marriage. Post-marriage she lived a marginal existence and relied on her family to provide her basic needs. Her age was a relevant consideration, but the court was not satisfied that she was unable to become economically self-sufficient. Considering the conditions, means, needs and other circumstances of the spouses, the court accepted that the Spousal Support Advisory Guidelines range of support was appropriate. The court ordered the respondent continue to pay spousal support until the petitioner turned 65. The court further ordered the respondent to pay arrears. A lump sum order was not appropriate.

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Hilmoe v Hilmoe, 2017 SKQB 312

Chow, October 16, 2017 (QB17295)

Wills and Estates – Gifts – Inter Vivos
Wills and Estates – Undue Influence
Trusts – Resulting Trust

The applicant was the sole surviving joint tenant in respect of certain land. The respondents were the adult children of the deceased joint tenant. They registered a miscellaneous interest against the land. The applicant applied for a declaration that she

was the sole legal and beneficial owner of the land and an order discharging the respondents' registered interest. She submitted that the transfer of the land into joint names represented an inter vivos gift. The respondents asserted that their father's transfer of the land into joint tenancy was without consideration and gave rise to a presumption of resulting trust. They argued, alternatively, that if the transfer was an inter vivos gift, it was a product of undue influence.
HELD: The court granted the requested order. The transfer of the land to the applicant, as joint tenant with right of survivorship, constituted a valid inter vivos gift of both the legal and beneficial interest and not a resulting trust. Although the deceased's will and other evidence of the parties indicated that he intended to grant the applicant a life interest in the land, the transfer was in keeping with his previous decision to add the applicant as a joint tenant on the title to the home and was consistent with the manner in which he and the applicant treated their other assets. If it had been his intention to merely grant a life interest, he had already done so in his will, which was executed prior to his initiating the transfer of the land. There would have been no need for him to amend his will as the transfer constituted ademption of the testamentary disposition. The Family Property Act and, in particular, s. 50 had no application. The mere existence of a spousal relationship is not sufficient to raise the presumption of undue influence. The evidence did not suggest that the deceased was dependent on the applicant emotionally, physically or financially, nor that the deceased had been confused or mentally infirm. The absence of independent legal advice is not a ground unto itself to justify overturning a gift.

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CIBC Mortgages Inc. v Greyeyes, 2017 SKQB 313

Mills, October 17, 2017 (QB17300)

Foreclosures – Costs – Solicitor-Client Costs

The court considered an application to tax solicitor-client costs in a foreclosure action. The defendants owed a deficiency on the judgment awarded to the plaintiff after the proceeds of sale had been applied to the mortgage. The amount of the solicitor-client costs would increase the deficiency judgment against the defendants.
HELD: Judges of the Court of Queen's Bench do not automatically apply a standard solicitor-client fee to every foreclosure action, but use the phrase "standard foreclosure

action" or "standard foreclosure costs" as a reference point in the assessment of such costs. The establishment of the reference point is an application of the principles contained in Queen's Bench rule 11-1, which uses the court's significant experience in dealing with standard foreclosure applications. In the face of the variation in lawyers' hourly rates and services performed by various firms, it is important to allow costs for standard foreclosure actions on a consistent basis. In 2012, the court set the reference point at $4,000. An increase to $4,500 was appropriate given the passage of time. No deviation from the reference point was warranted in this case.

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Eichelberg v Eichelberg, 2017 SKQB 315

Tholl, October 19, 2017 (QB17302)

Family Law – Spousal Support

The petitioner separated from the respondent in 2013 and issued her petition for divorce, spousal support and division of property. The parties had resolved a number of issues related to the breakdown of their marriage but were unable to reach agreement regarding the petitioner's claim to ongoing and retroactive spousal support. The petitioner requested ongoing support of $1,000 per month for seven more years or $900 per month for nine more years. She claimed support in the mid-range of the Guidelines for each year commencing July 2013 minus the amount paid by the respondent pursuant to an interim order. It had been made in December 2014 and specified the payment of $875 per month for ten months, but the respondent made only eight payments. He opposed paying the respondent any support. The petitioner had worked full-time during the marriage as a care aide in various nursing homes. She had received on-the-job training and had not taken any formal education since she completed high school in 1987, just prior to her marriage. The petitioner had been the primary caregiver to the four children of the marriage. The petitioner took three to four years off work for maternity leave. Her annual income for 2013 through to 2016 was $45,000, $51,000, $47,000 and $59,000 respectively. After the separation, the petitioner began residing in her mother's home so her costs were low. The respondent had held various positions during the course of their 24 years of marriage. In 2005 he began working for an oilfield company, and after that he steadily obtained more responsible positions and his annual income increased substantially. As a result of this

employment in the oilfields, the respondent was rarely at home after 2005. His income from 2013 through 2016 was $96,000, $83,000, $87,000 and $85,000 respectively.
HELD: The petitioner's application for divorce was granted. The court ordered that the respondent pay ongoing and retroactive spousal support. It found the petitioner was entitled to support on a compensatory basis as she had suffered an economic disadvantage as a result of the marriage: she lost time from the workforce for maternity leaves and changed positions to accommodate the respondent's career. The court also found that spousal support was warranted on a non-compensatory basis. The parties had lived modestly during their marriage, but the petitioner had been unable to return to her prior standard of living after separation and needed further assistance to enable her to do so. The respondent had the ability to pay spousal support. The court determined that, based on the parties' respective 2016 incomes, the petitioner should receive $930 per month for five years. The court agreed that the petitioner was entitled to the retroactive spousal support in the amount of $54,000 for the previous four years and calculated each year's arrears in accordance with the parties' incomes and other relevant factors.

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Total Oilfield Rentals Ltd. Partnership v Saskatchewan (Minister of Finance), 2017 SKQB 317

Layh, October 23, 2017 (QB17303)

Administrative Law – Judicial Review – Board of Revenue Commissioners – Appeal
Administrative Law – Judicial Review – Standard of Review – Reasonableness
Statutes – Interpretation – Revenue and Financial Services Act, Section 60(1)

The appellant oil company appealed pursuant to s. 21 of The Revenue and Financial Services Act (RFSA) the decision of the Board of Revenue Commissioners that had dismissed the appellant's appeal from the decision of the Minister of Financial Services. The board upheld the Minister's order that the appellant had to pay $227,000 in provincial sales taxes (PST) respecting revenue it earned when transporting leased equipment. Under s. 5(7) of the RFSA prior to its amendment, a person who leased tangible personal property or taxable services was liable to pay PST. The appellant charged and collected PST on its taxable rental of equipment to Saskatchewan customers.

The customers could choose to have the appellant transport the equipment from its rental sites, and the appellant entered into a separate transportation contract with the customer and invoiced it separately from the equipment rental and did not charge PST because it had checked with the Ministry. However, the Minister then undertook an assessment of the appellant's business records and estimated the amount of PST payable under s. 60(1). The appellant challenged the original assessment, and it responded by reducing the amount as a result of information provided by the appellant. In the appellant's appeal to the board, it found that the appellant had failed to prove the Ministry's assessment was incorrect. The appellant had argued before the board that the Ministry had not examined each invoice and made assumptions based on general ledger entries. The board stated that s. 60 of the RFSA permitted the Ministry to estimate an assessment using whatever methodology it deemed appropriate. Under s. 67 of the RFSA the Ministry had the authority to carry out an audit, and by doing so, the Ministry found the facts, knowledge and reasonable grounds to make the estimate/assessment of PST owing. Further, the appellant had not adduced a witness to testify as to adequate sampling for audit procedures to prove the methodology wrong. The appellant advanced a number of grounds of appeal from the board's decision, the first of which was if the board had erred in failing to determine that the Minister acted ultra vires in issuing the initial assessment under s. 60 and whether such an error was to be reviewed on the standard of correctness or reasonableness. The appellant argued that the RFSA necessitated a two-stage approach before the Minister could make an estimate. The Minister must first show that he possessed knowledge or reasonable grounds to make it. Only after the Minister satisfied this requirement at the hearing before the board, by calling the auditor or providing the written audit report disclosing the methodologies used, could the second stage take place wherein the appellant's obligation to refute the assessment would arise. In this case, the Minister never completed the first stage, so the appellant had no obligation to refute the assessment. The Minister's error raised a constitutional question over the jurisdiction of the Minister's authority to issue the assessment. Such an error was reviewable on the standard of correctness.

HELD: The court affirmed the decision of the board excepting the matter of reassessment of some of the appellant's invoices. It rejected the appellant's argument that the standard of correctness applied to the board's interpretation of s. 60(1) of the RFSA to determine the manner in which the Minister might acquire the requisite knowledge or reasonable grounds to make an assessment and held that the reasonableness was the appropriate standard. The decision in Crescent Point had already

determined that that standard governed the board's interpretation of its home statute, the RFSA. The appeal had not raised a question of true jurisdiction that would allow the court to segment the board's decision into two standards of review. The court found that the board's decision was reasonable in its interpretation of the manner in which the Minister exercised his authority under s. 60(1)(d) of the RFSA to make an assessment of the taxes outstanding based upon the audit as conducted.

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Royal Bank of Canada v Wolff, 2017 SKQB 318

Layh, October 24, 2017 (QB17304)

Mortgages – Judicial Sale – Deficiency Judgment

The applicant, Royal Bank, sought an order for disbursement of the net sale of proceeds from the court-ordered sale of property on which it held a mortgage. The applicant had begun proceedings in 2011. In 2012 it was granted leave to commence an action under The Land Contracts (Actions) Act after reporting that the total amount owing under the mortgage was $155,900, including tax arrears and appraisal costs, the value of the mortgage was approximately $100,000 and that the mortgagors were in possession of the property. The applicant's statement of claim stated that a judgment was available since the mortgage was not purchase money but secured instead the amount outstanding, which was used for re-financing. The mortgagors were noted for default and the bank received an order nisi for judicial sale in August 2012 with an upset price of $92,000. The mortgagors vacated the property in September 2012 and did not oppose the proceedings at any time. In the following five years, the applicant sought and obtained four further orders nisi. In each of the orders, the upset price dropped and in the last one given in July 2016, it was set at $40,000. An order confirming the judicial sale at that price was given in April 2017 with the matter of the amount of the deficiency judgment left to be determined. In October 2017, this application set out the non-purchase money deficiency owing as $126,400. The applicant claimed in addition to it, solicitor-client costs of $24,400 and property management fees of $21,200.
HELD: The applicant was awarded a deficiency judgment, but in light of the circumstances and the delays, the court deemed the value of the mortgaged property upon reasonable sale was $80,000 and reduced the claims for management and legal fees. The court expressed concern that this case, which was

unopposed and where the property had been vacated, took six years. None of the delays were explained by the applicant. The court noted that if the mortgagors had had legal representation, the applicant would probably have had to seek a final order of foreclosure, as happened in similar circumstances in Forsyth because of unexplained delays in the proceedings caused by the mortgagee. The applicant now imposed liability on the mortgagors for the consequences of its delays, such as the interest costs, the fact that applicant had not sold the property earlier when it had received and refused an offer of $80,000, and the management fees. The court found that the management fees were unreasonable in the circumstances, and the amount claimed was reduced by 50 percent. Similarly, the solicitor-client costs were reduced to $5,000. The court limited the amount of real property taxes and accrued interest owing to one year following the original order nisi for judicial sale.

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Houseman v RateMDs Inc., 2017 SKQB 321

Currie, October 25, 2017 (QB17313)

Norwich Order

The applicant applied for a Norwich order, directing the respondent to disclose information before commencement of a court action against a third party. An anonymous individual posted allegedly defamatory Internet reviews on a rating website operated by the respondent. The applicant wished to commence a defamation action against the person who posted the reviews. He sought an order requiring the respondent to release specific information, including IP addresses, to allow him to identify the person who posted the reviews. The respondent's policy was to not release such information absent a court order. The applicant applied in accordance with the court's direction, by serving a notice of application on the respondent. The respondent did not oppose the Norwich order.
HELD: The court directed the respondent to provide the applicant with any and all information in its possession regarding the person or persons who made the impugned posts. There was evidence sufficient to raise a valid, bona fide and reasonable claim in defamation. The interests of justice favored disclosure. The website's statement that "IP addresses used to identify reviewers will not be released without a court order requiring that they be released" suggested that those who posted on the website could not reasonably expect that their identities

would be protected. It was not necessary to give the reviewer notice of the application. Notice was rendered unnecessary by the concern of anonymous defamation and the notice advising of release of IP addresses.

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A.F., Re, 2017 SKQB 323

Brown, October 26, 2017 (QB17307)

Family Law – Child in Need of Protection – Child and Family Services Act – Permanent Order

A tribal council sought a long-term order with respect to two children, aged 13 and 5, who had been in care for over three years. The children's father wished the children to be returned to him. He represented himself. The mother did not appear. Counsel for the children advocated for an order of long-term committal pursuant to s. 37(3) of The Child and Family Services Act. The father was involved in drug use and the mother in drug use and prostitution. The Ministry of Social Services was regularly involved with the family during the previous four years. Between 2013 and 2017, there was a series of voluntary agreements between the Ministry and the parents and of applications for long-term orders. Drug and alcohol abuse, domestic violence, missed visits and non-compliance with conditions were common during this period.
HELD: At present, the children were in need of protection. While the father had made some progress, it was not proven that his anger and alcoholism were under control. He was not an adult person able to care for the children's needs. The tribal council made several attempts to have the parents attend requisite programming and to facilitate visits with the children, but the parents did not follow through. However, the father was an intelligent man who clearly loved his children and had been making recent strides to improve himself and establish his ability to parent his children. One purpose of the Act is to promote the well-being of children in need of protection by offering, wherever appropriate, services that are designed to maintain, support and preserve the family in the least disruptive manner. Enough progress had been made in recent months to merit the father receiving a further opportunity to gain control of his issues. The matter was adjourned for four months to allow for provision of additional information respecting the prospects for adoption of the children and time for the father to establish if he would work with the tribal council to provide the information

needed to consider him as a potential resource for the children. The court further ordered the father to abstain from drugs and alcohol, submit to regular drug screens and counselling, and to report to the tribal council.

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