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The appellant appealed his conviction of criminal harassment contrary to s. 264 of the Criminal Code and his sentence, a jail term of 17 months. The appellant was unsuccessful on his s. 679 application for release pending the outcome of his appeal. The appellant then filed a motion to review the chambers decision pursuant to s. 680 of the Criminal Code. The chambers judge found that the appellant had not established that he would surrender himself into custody nor did he establish that his detention pending appeal was not necessary in the public interest. The appellant argued that there was no need to protect the victim, a judge, because he was not a violent person, had no convictions involving violence, and was not a danger to the victim or anyone else. There was no evidence that the appellant approached or otherwise harassed the victim while out on bail.
HELD: A s. 680 application is a two-stage process: 1) the chief justice must decide whether the decision made pursuant to s. 679 should be placed before a panel of the court of appeal for review; and 2) the panel considers the merits of the matter. The court considered the factors in a

s. 679 application: the appeal was not frivolous; the appellant had an arguable position in relation to the question of whether he could establish that he would surrender himself into custody; and the appellant had an arguable position that his ongoing detention was not necessary in the public interest. The appeal court directed a review of the denial of his application for interim release.

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The respondent was sentenced to 23 months in jail followed by 12 months probation for convictions of one count of assault, one count of robbery, and three counts of breaching conditions. The respondent attacked his partner on two separate occasions leading to the charges. The Crown appealed, arguing that an unfit sentence was imposed. They asserted that the respondent should be sentenced to a jail term of five years. Further, the Crown argued that the first incident involving the partner should have resulted in a robbery conviction rather than an assault. The respondent did not contest the change of conviction. The respondent and his partner had an on-and-off relationship for five years and they had two children. The respondent had a no contact clause regarding his partner. The first incident occurred when the respondent forced his partner inside from a balcony by pulling her by the hair and having a belt around her neck. Once inside, he beat her. The partner went to a shelter for homeless women. The respondent walked by the shelter and the two went for a walk that resulted in the respondent pulling the partner's dress over her head and dragging her by her hair into an apartment building. The respondent took his partner's cell phone on both occasions. The respondent was 33 years old, a First Nations member, and was raised in circumstances involving alcohol, emotional, and physical abuse. He was in foster care from seven to ten years old when he was placed in a boarding school. He ran away from the school when he was 11 and had been on his own since then. He started using drugs and alcohol at 11 and had never been employed. He had a significant criminal record with over 50 convictions, including two assault convictions, two convictions for weapons-related offences, and a conviction for being an accessory after the fact to murder. The sentencing judge noted several aggravating

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factors and found the only mitigating factors to be the respondent's guilty pleas to the charges from the second incident and his apology to his partner during the sentencing hearing. The sentencing judge held that, based on Gladue, the respondent's moral blameworthiness was moderated. The Crown argued that the sentencing judge made the following errors: 1) she failed to identify the proper sentencing objectives by emphasizing rehabilitation and individual deterrence over denunciation and general deterrence; 2) she did not properly appreciate the gravity of the crimes; 3) she did not correctly assess the mitigating factors; and 4) she erred in her assessment of the respondent's moral culpability.
HELD: The court dealt with the Crown's arguments as follows: 1) the appeal court found that the trial judge did not lose track of denunciation or general deterrence and whether or not they were emphasized does not determine the question of whether a sentence is unfit; 2) the trial judge identified the relevant aggravating features of the offences and therefore it was not readily apparent to the appeal court how it could be said that she failed to appreciate the gravity of the offences; 3) the Crown was correct that the guilty pleas after the partner had to testify on the first incident did not relieve her of the testimony and that the apology only came when the respondent was faced with sentences. Nonetheless, the court gave deference to the sentencing judge noting that she had the opportunity to hear the respondent speak; and 4) the appeal court found that the Gladue case did not require an offender to establish a causal link between background factors and an offence for the Gladue factors to become relevant in the sentencing process; and 5) the robberies in these incidents were the taking of the victim's cell phone, and therefore were very incidental to the attacks. The circumstances in the robbery cases referred to by the Crown were very different. The Court of Appeal held that the sentence was not demonstrably unfit because: Gladue and other cases direct courts to consider restorative-type sentencing; the nature of the offences committed as compared to other robbery cases; and the respondent's rehabilitative needs.

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Beaton, December 23, 2015 (PC15163)

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The accused pled guilty to aggravated assault contrary to s. 268 of the Criminal Code. An order pursuant to s. 752.1 of the Criminal Code was granted. The accused took no position on whether he should be found a dangerous offender but argued that he should not receive an indeterminate sentence. The accused was 51 and was subject to physical abuse from his father. His parents separated when he was young. He started drinking at 15 and had a severe problem by the time he was 16. He was sexually assaulted by his stepfather. He left home as an adolescent and lived on the streets with alcohol, drugs, and criminal activity. The accused had 33 prior convictions with four convictions leading to penitentiary terms. He also had convictions, though not receiving penitentiary terms, for violent or weapons offences in 2002, 2006, 2007, and 2011. The predicate offence occurred when the accused stabbed the victim a total of four times over an argument the victim and the accused's girlfriend were having over cigarettes. Two of the stab wounds would have been fatal if untreated. The penitentiary records indicated that most of the time the accused was in federal prisons he did not participate in programming and on occasion did not accept responsibility for his actions. The psychiatrist that did the assessment on the accused was concerned that the accused's capacity to learn new material may be limited by his specific memory deficits. The accused was diagnosed as having chronic substance abuse disorder and a mixed personality disorder with antisocial personality disorder being the component of greatest relevance to risk. The accused did indicate a willingness to participate in programming this time. The psychiatrist concluded that the accused remained a high risk for acts of violence unless he made substantial changes. Further, the psychiatrist concluded that the possibility of the accused's risk being managed in the community was realistic if he engaged in an intense violence prevention program.

HELD: The court concluded that the predicate offence was a serious personal injury offence as defined by s. 752 of the Criminal Code. Further, a pattern of behaviour pursuant to ss. 753(1)(a)(i) and 753(1)(a)(ii) was established. The Crown proved that in the past the accused demonstrated a pattern of aggressive behaviour that showed a substantial degree of indifference respecting the reasonably foreseeable consequences to other persons of his behaviour. The Crown proved beyond a reasonable doubt the statutory requirements, and the court found the accused a dangerous offender. The court found that there was a reasonable expectation that something less than an indeterminate sentence would adequately protect the public against the accused committing murder or a serious personal injury offence. The accused was sentenced to eight years with five years and nine months remaining to be served once remand credit was given. He was also ordered to be supervised in the community for ten years following his release. Ancillary orders were also made.

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Winter v. Canada (Attorney General)

R. v. Poisson, 2015 SKPC 180

Harradence, December 22, 2015 (PC15165)

Criminal Law – Breathalyzer – Refusal to Provide Sample
Criminal Law – Impaired Driving – Refusal
Criminal Law – Motor Vehicle Offences – Impaired Driving – Breathalyzer Test – Refusal or Failure to Blow
Criminal Law – Refusal to Provide Breath Sample – Defences – Medical Issue

The accused was charged with impaired driving and with refusing to provide a breath sample. The accused had bloodshot droopy eyes and was slow to respond to officers when the vehicle she was driving was stopped. The officer also noted the smell of alcohol and arrested the accused for impaired driving. The accused attempted to provide breath samples six times but was unable to provide a sample the instrument could analyze. The intoxometer operator was able to provide a sufficient sample. The accused testified and indicated that she did not believe she was impaired, although she did admit to drinking. The issues were whether: 1) the Crown proved that the accused was impaired while driving; and 2) the accused wilfully failed or refused to provide a breath sample. The accused argued that the mens rea of the refusal charge had not been proved by the Crown. She said that she was unable to provide a breath sample because she was having a panic attack. She had previously sought and received medication for panic attacks.
HELD: The court determined the issues as follows: 1) the speed of the vehicle and the driving observations of the officer were not unusual or necessarily indicative of impairment when considered in light of the video from the police car and detachment. The court was not satisfied beyond a reasonable doubt that the accused's ability to operate a motor vehicle was impaired when she was stopped; and 2) there is a distinction between the defence of a lack of intent and the defence of reasonable excuse. There was no evidence of the accused deliberately trying not to provide a sample, but that she was experiencing some difficulty with her breathing. The court found the accused's evidence to be credible. The court concluded that the Crown did not prove beyond a reasonable doubt that the accused intended to fail or refuse to provide a sample of her breath. She was found not guilty.

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R. v. Johnston, 2015 SKPC 181

Jackson, December 30, 2015 (PC15166)

Criminal Law – Sentencing – Breach of Undertaking
Criminal Law – Sentencing – Fraud
Criminal Law – Sentencing Principles

The accused pled guilty to four Criminal Code charges relating to investment fraud: 1) fraud over $5,000 involving 13 investors, contrary to s. 380(1)(a); 2) fraud under $5,000 relating to two investors, contrary to s. 380(1)(b); 3) money laundering contrary to s. 462.31(1); and 4) possession of proceeds of crime contrary to s. 354(1)(a) and 355(a). The amount owing to victims was $1,228,450. The accused's application to expunge his guilty pleas was denied and the Crown added two new counts: 1) fraud relating to a cottage; and 2) breach of undertaking for failing to keep the peace because of the cottage allegation. The accused was remanded into custody and denied bail. The accused pled guilty to the two new charges. The accused got people to invest with him to flip properties with promises of quick profit. No returns were ever paid to investors. There was no evidence of any investing or property acquisition on behalf of the investors. The investor's money was paid to the accused himself and others, including Hell's Angels in Calgary. The accused attempted to purchase a cottage but was unable to do so. The owner, however, let him use the cottage. The fraud related to the cottage occurred when the accused advised a neighbor that the cottage was for sale and let the neighbor believe he was the owner. The buyers agreed to pay the accused $110,000 cash for the cottage, and the accused presented the buyers with sale documents that he created. After the deception was discovered, the accused did not return the money to them. The accused was 36 years old and married with three young children and no previous criminal record.
HELD: The court found very little to be considered as a mitigating circumstances. The accused did not have a criminal record and he pled guilty, though he did attempt to expunge the plea. The court found a lengthy list of aggravating factors, including: the large amount of the fraud; the scope and complexity of the fraud; the length of time of the fraud was over two and one-half years; the number of victims; etc. The court also noted that the cottage fraud was committed during an adjournment period after his initial guilty pleas to allow him to raise funds for restitution. The court found that the proposed sentence of three years total for the first four guilty pleas was within the range of sentence disposition as set out by the Saskatchewan Court of Appeal. The cottage fraud was much smaller in monetary terms, but the timing was very callous. The accused was sentenced to a total of five years, as follows: 1) three years for the four initial counts, to be served concurrently; and 2) two years each on the cottage fraud counts, to be served concurrently to one another and consecutively to the first three years in custody. The accused was given remand credit of 10.5 months for the seven months served on remand.

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R. v. Briltz, 2016 SKCA 2

Richards Caldwell Whitmore, January 14, 2016 (CA16002)

Criminal Law – Motor Vehicle Offences – Driving While Disqualified – Sentencing – Appeal
Criminal Law – Evading Police – Sentencing – Appeal

The Crown sought leave to appeal against the global sentence of five years' imprisonment imposed upon the respondent following his conviction of eight indictable offences under the Criminal Code. The Crown submitted that the sentence was not proportionate to the gravity of the offences and the respondent's moral culpability, and therefore was demonstrably unfit. The convictions related to three incidents that occurred between July and August 2013 and involved the respondent driving while disqualified, pursuant to s. 259(4) of the Code, and evading the police, pursuant to s. 249.1(1) of the Code. The last of these also gave rise to convictions for resisting arrest, pursuant to s. 129(a) of the Code, and refusal to comply with a valid breath demand, pursuant to s. 254(3)(a) of the Code (see: 2014 SKPC 54). The respondent appealed against seven of his convictions, his sentence and his lifetime driving prohibition on the grounds that the verdicts were unreasonable or not supported by the evidence, and that the trial judge made wrong decisions on questions of law. Regarding his sentence appeal, the respondent argued that the trial judge erred by imposing consecutive sentences in the circumstances in her consideration of the totality principle. The respondent had a 40-year criminal record involving 25 criminal driving offences. At the time he committed these offences, he was on parole, having served less than his two-year sentence imposed for committing almost identical offences in 2011. HELD: The Crown's leave to appeal application was granted and the appeal allowed. The respondent's appeals of his convictions and sentence were dismissed. The court varied the sentence to eight years' imprisonment. With respect to the respondent's appeal of his convictions, the court found that they were based upon the evidence before the trial judge and did not result from a wrong decision on a question of law. Regarding the sentencing appeal by the Crown, the court held that the trial judge had properly considered the gravity of the offences and the culpability of the respondent and acknowledged that the major goal of sentencing in this case was the protection of the public. The court supported her finding that a total combined sentence of 108 months was appropriate. However, when the judge applied the totality principle, she erred in failing to explain her reasoning as to why her decision that nine years' imprisonment was not a just sanction or was unduly long or harsh.

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Granitewest Developments Ltd. v. Saskatchewan (Highways and Infrastructure), 2016 SKCA 3

Richards, January 13, 2016 (CA16003)

Civil Procedure – Amendment – Statement of Defence
Civil Procedure – Appeal – Leave to Appeal

The appellant, the plaintiff in two Queen's Bench actions, appealed a chambers decision allowing the respondent government to amend its statement of defence on the basis that the decision was founded on a misconception of the law and a failure to properly understand the prejudice the amendments would create for the appellant. The claims related to the expropriation of land by the respondent. The first claim alleged that the respondent unlawfully expropriated the appellant's land. The second claim alleged that the respondent and appraisers conspired to exclude a sale from the valuations and included claims grounded in misfeasance in public office and negligence. The respondent applied to amend its statement of defence to include that the principal shareholder of the appellant owed a fiduciary duty to the respondent because he was a director of the Regina Regional Economic Development Authority (RREDA).
HELD: A decision to grant or deny an amendment is discretionary. The application for leave was denied: 1) the appellant argued that the amendments should not be allowed because the public policy-type defence that the defendants wanted to add could not be raised in statutorily based claims. The court noted that the conspiracy claim was not statutorily based. Also, although the defence may have weaknesses, it was not plain and obvious that it would fail; and 2) the chambers judge also considered the appellant's arguments regarding prejudice and ultimately rejected them. The appeal court also found that the importance of the appeal was not as argued by the appellant. The appeal court agreed with the appellant that the question of whether common law doctrines have a place in the expropriation context was of genuine importance but found that the more appropriate time to deal with the issues would be in the context of appeals from the trial decision.

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R. v. Skarlatowski, 2016 SKCA 5

Ottenbreit Caldwell Ryan-Froslie, January 15, 2016 (CA16005)

Criminal Law – Appeal – Acquittal

Criminal Law – Blood Alcohol Level Exceeding .08 – Impaired Driving
Criminal Law – Expert Evidence – Admissibility

The appellant Crown appealed the acquittal of the respondent on charges of driving while impaired and driving while over .08 contrary to ss. 153(1)(a) and 153(1)(b) of the Criminal Code, respectively. The respondent was driving on a divided highway, and when he attempted to pass another vehicle, he drove into the back of a semi and then into the ditch. An officer had been dispatched to the area looking for a truck that had been reported as being driven erratically. The respondent's impairment was not investigated at the scene by the officer given the number of people in the ditch. The respondent was seriously injured and was pinned behind the steering wheel, so the officer did not demand a sample of breath roadside. The respondent did admit to having consumed a couple of drinks when questioned by the officer. A blood sample was taken from the respondent at the hospital at 1:05 am. The results indicated a blood concentration over .08. The collision occurred at 11:00 pm so the judge ruled that the blood sample was not conclusive proof of the respondent's blood-alcohol concentration at the time of the collision. The judge also ruled the Crown's expert evidence of the respondent's blood-alcohol concentration as inadmissible because the Crown failed to prove beyond a reasonable doubt the assumptions that underpinned the opinion. The judge also had reasonable doubt on the impaired charge because there was no evidence that the respondent smelled of alcohol or exhibited outward signs of impairment. The judge concluded that the officer did not subjectively believe he had reasonable grounds to arrest the respondent for impaired driving. The Crown argued that the judge erred when he ruled the Crown's expert evidence was inadmissible. HELD: The acquittals were set aside and a new trial was ordered. The trial judge made mistakes of law when he concluded that the Crown had not proven the assumptions underpinning the expert's opinion beyond a reasonable doubt. The judge excluded the evidence on the basis of the wrong legal test. The admissibility of the opinion itself is not affected by the strength of the proof of the facts that underpin it. The judge should have assessed the weight to be given to the opinion on the basis of any shortcomings in the proof of the facts that underpin it. The appeal court noted that the Crown had also made out additional grounds for the acquittals to be set aside and for a new trial to be ordered.

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R. v. Clarke, 2016 SKCA 13

Lane Whitmore Ryan-Froslie, January 11, 2016 (CA16013)

Criminal Law – Appeal – Conviction
Criminal Law – Appeal – Sentence
Criminal Law – Sentencing – Dangerous Offender – Indeterminate Sentence
Criminal Law – Sexual Assault
Criminal Law – Unlawfully Being in a Dwelling House

The appellant appealed his conviction and sentence. He was convicted of sexual assault and unlawfully being in a dwelling house. He was found to be a dangerous offender and was given an indeterminate sentence. The appellant claimed his counsel was ineffective and applied to adduce fresh evidence, the transcript from the preliminary inquiry. He also argued that the trial judge should have cautioned the jury as to inconsistent statements made by the complainant. The appellant said that the trial judge should have given a Vetrovec warning to the jury because of the inconsistencies. The only testimony at trial was from the 17-year-old complainant. The appellant entered her home and stood at her bed naked from the waist down. He argued it was an honest mistake because he was intoxicated and went into the wrong home, but that he was not naked. The appellant conceded that there was no error in his designation as a dangerous offender, but he said that the sentence was unfit because it was disproportionate to the gravity of the offence and the degree of responsibility of the offender. He said the offence was at best an attempted sexual assault.
HELD: The appeals were dismissed and the application to admit fresh evidence was denied. The appeal court agreed with the Crown that the only issue was the credibility of the complainant. Any inconsistencies in the complainant's testimony were clearly before the jury. The complainant was not an unsavoury witness. There was no evidence that trial counsel was incompetent or that the appellant was prejudiced by trial counsel. The fresh evidence application was denied because that evidence was readily available at trial. It was clearly open to the jury to conclude that the assault was of a sexual nature and that the sexual integrity of the complainant was violated. The level of risk to the safety of the public was also correctly assessed as high by the trial judge. The appellant had severe mental disabilities leading to a finding that his offending behaviour could not be controlled in the community. The appellant's and Crown's experts both testified that the appellant will need constant supervision. The trial judge fully recognized the appellant's mental health issues and was sympathetic to his situation. The appeal court concluded that the trial judge could not have come to any other conclusion.

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Investor's Group Trust Co. Ltd. v. Deroo, 2016 SKCA 23

Lane Jackson Ottenbreit, December 15, 2015 (CA16023)

Mortgage – Foreclosure – Leave to Commence Action – Costs

The appellant appealed the decision of a Queen's Bench judge in chambers who denied its application for pre-leave costs without written reasons but granted it its application for leave to commence foreclosure under The Land Contracts (Actions) Act. The mortgage executed by the respondents provided that the appellant could recover solicitor-client costs for all aspects of enforcement. At the application for leave, the appellant provided evidence to the chambers judge that pre-leave costs of $2,941.25 had been incurred, as well as occupancy check costs of $346.50, and that further pre-leave costs would be incurred. It also provided evidence of the status of the mortgage and the circumstances of the respondents' defaults and payments as described above.
HELD: The appeal was allowed. The court returned the matter to the chambers judge to exercise his discretion pursuant to s. 3(11) of the Act in light of this decision.

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R. v. Cameron, 2016 SKPC 3

Singer, January 8, 2016 (PC16002)

Criminal Law – Controlled Drugs and Substances Act – Possession for the Purposes of Trafficking – Marijuana
Constitutional Law – Charter of Rights, Section 8, Section 9, Section 10(b)

The accused was charged with possessing marijuana in an amount exceeding three kilograms for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, and possession of a weapon, a BB gun, for a purpose dangerous to the public, contrary to s. 88 of the Criminal Code. The defence brought a Charter application alleging that the accused's ss. 8 , 9 and 10(b) Charter rights had been breached and the evidence be excluded pursuant to s. 24(2), and a voir dire was held before trial. The accused, an 18-year-old male, was a passenger in a vehicle operated by a 16-year-old male driver. The vehicle was stopped by a police officer because, after checking and finding that the licence plate was registered to a young woman, the officer suspected that the driver might be unlicensed based upon his experience in the past that unlicensed drivers registered their vehicles to licensed operators. The officer noticed an unopened beer in a purse in the backseat and that the accused had a backpack between his legs. Without further investigation, the officer arrested both men as minors for the offence of possession of alcohol under The Alcohol and Gaming

Regulations Act (AGRA). He did not inform them of their right to counsel. Suspecting that there was more beer in the vehicle, the officer told the men to get out of it and he searched it without their permission. He also searched the backpack and found 64 grams of marijuana and the BB gun with ammunition. The officer also seized $595 in cash from the pants pocket of the accused. The officer testified that he searched the vehicle incident to the arrest of the accused.
HELD: The application was granted and the evidence, the drugs and weapon, was excluded. The court found that: 1) the arrest was arbitrary and contrary to s. 8 of the Charter. The officer did not have reasonable grounds, either on a subjective or an objective basis, to conclude that the accused was committing an offence because he had seen a beer in the backseat; 2) the warrantless search of the vehicle and the backpack was unreasonable because it was pursuant to an arbitrary arrest and thus violated the accused's s. 9 Charter right. As there were no exigent circumstances, the search was not authorized by AGRA; 3) the accused's s. 10(b) right to counsel was breached but it was not a serious violation because the offence was punishable only by fine. The court applied the Grant test and determined that excluding the evidence would not bring the administration into disrepute.

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Ritz v. Wawanesa Mutual Insurance Co., 2016 SKPC 5

Monar Enweani, January 13, 2016 (PC16010)

Insurance – Actions on Policy – Homeowner Policy
Insurance – Contract – Interpretation
Insurance – Policy Limits
Insurance – Principles of Interpretation and Construction

The insured plaintiff claimed $10,000 from the defendant insurer for the stolen jewelry of her mother. The plaintiff's mother was dependent on her and living in a nursing home. The jewelry was stolen from the plaintiff's home. The defendant denied the claim, indicating that there was a special limit of insurance for jewelry and the plaintiff had already been paid for her own jewelry in the amount of $10,000. The policy indicated that the personal property of a parent was covered up to $10,000. There were also special limits of insurance that did not apply to a claim caused by a "specified peril". Loss or damage by theft was not a specified peril. The plaintiff testified that her mother's jewelry was worth approximately $48,000. The plaintiff had not purchased any enhanced coverage with respect to jewelry.
HELD: The plaintiff's claim was dismissed. The court did not find any ambiguity in the language of the insurance policy because the special limits of insurance clause clearly limited the amount of coverage

available for specific types of property, including jewelry. The special limits of insurance was found to apply regardless of who owned the property. There was $10,000 coverage for one occurrence.

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Ntahondakirira v. Shaver, 2016 SKPC 6

Monar Enweani, January 13, 2016 (PC16011)

Small Claims – Liability in Automobile Accident
Small Claims – Traffic Safety Act

The plaintiff and defendant were each attempting a right turn at the same intersection. The plaintiff argued that the defendant caused the accident when the back of his semi-truck hit the plaintiff's car and pushed it into the sidewalk. The defendant argued that the plaintiff drove his truck into the skirt of the trailer being pulled by the defendant's semi-truck. The plaintiff's vehicle had over $3,000 damage to its left fender, front and left door, and left quarter panel. The plaintiff estimated that the defendant was speeding, but the defendant indicated he would not speed through the intersection because to do so could be deadly. The defendant did not stop until directed to do so by police.
HELD: The court accepted the evidence of the plaintiff. The plaintiff testified in a straightforward manner and his evidence was clear and well recollected. The plaintiff's vehicle was found to have reached the intersection first and was stopped in the right hand lane waiting to turn. The defendant was found to have failed to drive with reasonable consideration for other persons using the road, contrary to s. 213 of The Traffic Safety Act. The defendant's driving fell below the standard of care of a reasonable and prudent driver and the defendant's negligence was the proximate cause of the damage to the plaintiff's vehicle. The defendant was 100 percent at fault for the collision.

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R. v. Wood, 2016 SKQB 1

Rothery, January 4, 2016 (QB16001)

Criminal Law – Appeal – Conviction
Criminal Law – Impaired Driving – Sufficient Reasons

The appellant appealed his conviction of driving while impaired by alcohol, contrary to s. 253(1)(a) of the Criminal Code, on the basis that

the trial judge did not give sufficient reasons and that he did not analyze the evidence in accordance with the principles in R. v. W.(D.). He also argued that the trial judge erred in law by speculating how much alcohol the appellant had actually consumed. The appellant was cutting wood with a friend and had drinks at 11:30 am and 5:00 pm and was tired from lack of sleep the night before. The appellant was driving on a highway when his vehicle went across the centre line and clipped the side of another vehicle, causing a scratch and dislodging a tail light. The driver of the other vehicle called the RCMP and followed the vehicle. The other driver did not notice anything unusual about the appellant's driving while he followed it for four or five kilometres, but when they stopped, the appellant did not seem to realize that he had hit the vehicle. The appellant testified that he crossed the centre line because he was tired and overexerted. The trial judge did not believe the appellant's testimony regarding the amount of alcohol he consumed, and he believed the other driver's evidence that the appellant did not seem to know he clipped his vehicle.
HELD: The trial judge explained why he concluded that the Crown had proved its case beyond a reasonable doubt. Also, even though the trial judge did not state he was applying the principles in R. v. W.(D.), the appeal court found that it was clear he did. The appeal court also concluded that the trial judge correctly applied the law of impairment as required. Further, the court agreed with the Crown that the trial judge's conclusion that the appellant was impaired because he consumed more alcohol than the appellant testified he did was obiter. The trial judge had already made all the necessary conclusions.

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R. v. Keller, 2016 SKQB 2

Rothery, January 4, 2016 (QB16002)

Criminal Law – Motor Vehicle Offences – Impaired Driving – Refusal to Provide Breath Sample

The appellant appealed his conviction for refusal to provide a breath sample contrary to ss. 254(4) and 255(1) of the Criminal Code. The charges arose after an RCMP officer observed the appellant's vehicle speeding in an apparent street race with another vehicle. After pulling over the vehicle, the officer noticed the smell of alcohol coming from it. There was an intoxicated passenger in it. The officer asked the appellant if he had been drinking and the appellant said no. The officer put the appellant in the back of the police cruiser and detected a faint smell of alcohol on the appellant's breath. The officer read the ASD demand from the police card and then asked the appellant if he understood and he said yes. The officer advised the appellant he was

waiting for another officer to bring an ASD to the cruiser. That machine was delivered within 30 seconds of the demand. The officer turned it on and the appellant said that he would not blow. The officer explained the instrument to him and the appellant responded that he understood but that he didn't want to blow. The officer asked the appellant if he understood that if he refused he would receive the same consequences as an impaired charge. The appellant then said: "I guess, after you tell me." The grounds of appeal were that the Provincial Court trial judge had erred in finding that: 1) the police officer had the requisite reasonable suspicion to demand the appellant's sample; 2) the appellant had refused to provide a sample. The defence argued that the appellant was only 19 years old and had been confused; and 3) the officer had an ASD with him when he made the demand.
HELD: The appeal was dismissed. The court found with respect to each ground that the trial judge had not erred: 1) in deciding that the evidence of the smell of alcohol on the appellant's breath coupled with the fact that he had been speeding supplied the reasonable grounds to support the officer's subjective suspicion that the appellant had alcohol in his body; 2) in finding that the appellant had refused. The appellant was trained in autobody repair, operating heavy equipment and flying planes. The trial judge was correct in concluding because the appellant was well-educated that he understood the consequences of refusal; and 3) the arrival of the ASD within 30 seconds of making the demand satisfied the "forthwith" requirement of s. 254(2) of the Code.

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Winter v. Canada (Attorney General), 2016 SKQB 3

Megaw, January 4, 2016 (QB16003)

Criminal Law – Detention of Proceeds of Crime – Restraint and Management Order – Application for Release

The applicant applied pursuant to s. 462.34(4) of the Criminal Code to have seized funds released from a management order to pay his legal and living expenses. The applicant had been involved in growing marijuana under license. Regarding the portion of the application for release of funds to pay his legal fees, the applicant provided the following information: the applicant had been charged with 42 offences under the Criminal Code and the Controlled Drugs and Substances Act and nine trial dates had been set. Some of the charges were serious and if they resulted in convictions, the applicant would be imprisoned in a penitentiary. As a result of the charges, the police had seized $58,300 from the applicant's house and a management order was made regarding the funds. The applicant's counsel at this application had represented him until November 2015 when she withdrew because he

was unable to pay the necessary retainer. The applicant indicated that he wished to be represented by that particular lawyer, who resided in Regina but would attend trials on his behalf in Yorkton. At the hearing, she advised the court of the nature of the issues to be argued at the trials, which included argument of various Charter violations. The retainer she required was $40,000, and she proposed to charge fees at the rate of $250 per hour and would require 160 to 200 hours of preparation and trial time. Travel time would also be included in the fees. The Crown indicated that these fees were unreasonable and stated that the applicant had Legal Aid counsel assisting him who were prepared to assist him at the trial. The Legal Aid tariff set the hourly rate at $88 per hour with a total preparation time of 30 hours. A restraint and management order had been made against the applicant's house in which he had approximately $150,000 equity. In his application for funds for living expenses, he requested that the mortgage and utilities payments be paid. The applicant was in arrears of the mortgage payments and foreclosure proceedings had commenced. The applicant had child support obligations that were also in arrears in the amount of $40,000.
HELD: The application was granted with respect to legal expenses but denied regarding living expenses. The court found that there were novel and complex points of law to be argued relating to the medical marijuana license as well as Charter arguments involving searches. The court found that the applicant was entitled to retain the defence counsel of his choice subject to a financial limitation on the entitlement. The court determined that a reasonable amount for legal fees in this matter would be $200 per hour for 160 hours. Travel expenses were excluded because the applicant could have selected counsel in the area. The court ordered that $40,000 be released from detention and used exclusively for the legal fees. The court held that the payment from seized funds for "reasonable living expense" did not include the applicant's ongoing mortgage payment.

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R. v. Standingready, 2016 SKQB 4

Megaw, January 5, 2016 (QB16004)

Criminal Law – Sentencing – Aboriginal Offender
Criminal Law – Sentencing – Sentencing Principles
Criminal Law – Sentencing – Sexual Assault

The accused was convicted of sexual assault. The accused was a distant relative of the victim, and was also the victim's hockey coach, and the grandfather of the victim's best friend. The victim was at the accused's home with the accused's grandson and his girlfriend. The accused

came into the bed the victim was sleeping in and sexually assaulted her. The assault only stopped because the victim was able to get away. The trial judge did not accept the accused's testimony as the truth of the version of what happened. There was DNA of the accused on the complainant's underwear. The accused was 73 years old and had been married for 45 years. He was employed throughout his marriage and provided for four children. He had a dated criminal record that the court did not consider impactful on the sentence. The accused was of First Nation decent and the assault occurred on a First Nation reserve. The accused raised several Gladue factors, including that he was placed in a residential school early in his life. He overcame an issue with alcohol in his young adult life and had done very well for himself and his family. The assault had a serious and significant impact on the victim.
HELD: The court rejected the suggestion that this assault was not the most serious of sexual assaults because there was no penile penetration. The assault was found to be one at the high end of seriousness. The court found the victim's fear to fight back to be completely understandable. The accused pled not guilty and continued to deny that he did anything wrong and suggested it was the victim's fault. The court found denunciation and deterrence to be the primary sentencing factors to consider. The court did not distinguish the case from one where there was penile penetration; there was digital penetration. The court also concluded that notwithstanding the hardship the accused experienced due to his Aboriginal heritage, it did not warrant any different sentence than in any other circumstance. A custodial sentence was found to be appropriate due to the nature of the sexual assault and the age of the victim. The court found the appropriate range of sentence was 30 to 36 months and sentenced the accused to 33 months in custody and made the necessary ancillary orders.

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Jarvis v. Lind, 2016 SKQB 7

Barrington-Foote, January 6, 2016 (QB16007)

Family Law – Child Support – Interim
Family Law – Child Support – Retroactive
Family Law – Child Support – Section 7 Expenses
Family Law – Division of Family Property – Interim Distribution
Family Law – Spousal Support – Interim

The petitioner applied for an order for child support and s. 7 expenses to be paid retroactively from September 2014. The respondent applied for an interim distribution of property pursuant to s. 26(3) of The

Family Property Act, for spousal support and, in the alternative, for an undue hardship order pursuant to s. 10 of the Guidelines. The parties were married for 21 years and had two children. The youngest child was still a child of the marriage and lived with the petitioner in British Columbia. The funds remaining from the sale of the family home were held in trust; the respondent sought interim distribution of the funds to pay the balance owing on a joint debt incurred by the parties prior to separation. The balance of the debt was $16,344.65 and had an interest rate of 26.99. The petitioner made payments until January 2015 when she stopped because the respondent was not contributing. The respondent had made payments of $4,312 to the debt. He argued that any adjustments that needed to be made to the family property at the time of the final order could be made when dividing the petitioner's substantial pension. The respondent had not paid any child support since September 2014 and did not deny that the petitioner had repeatedly requested payment. He indicated that he had not made payment because he had to deal with family debt and the travel costs to go visit his son in BC. The petitioner claimed special and extraordinary expenses for the child's elite hockey in the amount of $23,278.75 from September 1, 2014, to August 23, 2015. She also indicated she would incur $20,970 in expenses from September 1, 2015, to August 31, 2016. The respondent indicated that he had only preliminarily agreed to help pay for the hockey expenses before he knew what they were and when the plan was for the whole family to move to BC. He suggested that the s. 7 expenses for the child's hockey should be limited to $3,700 per year, which is what it cost in Saskatchewan.

HELD: The court ordered an interim distribution of property to pay the high-interest debt as requested by the respondent. The evidence was not clear whether the respondent had paid any s. 3 child support since separation. The respondent was required to pay s. 3 child support regardless of whether he had debts to pay. The court did not make a retroactive s. 3 order because: 1) it was not clear why the petitioner did not apply for s. 3 child support until October 2015; and 2) the outcome of the respondent's claim and the s. 7 expense claim might be relevant for the retroactive determination. The respondent's income was found to be $78,350.82 so he was ordered to pay s. 3 child support based on that income. There was conflicting evidence regarding s. 7 expenses so the court decided that it was inappropriate to deal with those. The respondent agreed to pay his proportionate share of reasonable expenses. The court was satisfied that $3,700 was not sufficient to cover reasonable hockey expenses for a player at the level of the child. The court fixed s. 7 hockey expenses at $4,800 for the period September 2015 to August 2016. The petitioner's income was found to be $111,398.52 and therefore the respondent was ordered to pay 41 percent of the s. 7 hockey expenses on a monthly basis. With respect to spousal support the court concluded that it appeared that the petitioner had the means to pay some spousal support but that the

respondent had not demonstrated a need on an interim basis. The spousal support issue was left for pre-trial.

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R. v. W. (R.), 2016 SKQB 11

Schwann, January 8, 2016 (QB16011)

Criminal Law – Assault – Sexual Assault – Sentencing
Criminal Law – Assault – Assault with a Weapon – Sentencing

The accused pled guilty after the preliminary inquiry to one count of committing a sexual assault, contrary to s. 271 of the Criminal Code, and one count of assault with a weapon, contrary to s. 276(a) of the Code. For the purposes of his sentencing, a Gladue Report was prepared. The Crown submitted that the accused should receive consecutive sentences of five years on the first count and six to seven years on the second count, but on the basis of the totality principle, the Gladue factors and the guilty plea, it recommended a ten-year sentence in total. The defence argued that a global sentence of 3.5 years would be appropriate. At the time of the offences, the accused was on parole for an attempted murder conviction and was living with his friends, the victims, and their two young children in their house. After a party in the house, the accused sexually assaulted the complainant who was intoxicated and asleep. He used violence in his attempt to have intercourse with her. When her spouse heard her yelling, he tried to pull the accused away from the victim. The accused then hit him approximately 30 times with a baseball bat. Other people intervened and the accused escaped. The victim of the sexual assault had suffered many psychological problems as a result of the offence. Her spouse had suffered nerve damage and mobility problems caused by the injuries inflicted by the accused. The Gladue Report identified that the accused, a 39-year-old Aboriginal man, had been raised by his mother in Winnipeg. She and her parents had attended residential school. He was neglected by his mother because she had substance abuse problems. He witnessed violence in his home and was sexually abused at the age of seven. The accused began using drugs and alcohol when he was 10 and had been placed in youth facilities between the ages of 12 and 17 because of his criminal behaviour. He was in federal custody from 1995 to 2010 on a conviction for attempted murder. The accused's formal schooling ended at grade seven but he had successfully completed adult basic education while institutionalized. Following his parole in 2010 he had tried to stay out of trouble and maintain a sober lifestyle. He had sought counselling from Elders, and they provided letters of support on his behalf. At the time of the offences the accused admitted that drugs and alcohol played a role in his conduct. He

expressed regret for his choices. The defence did not advise the court whether there were any restorative measures that could be used in place of or in addition to the suggested incarceral sentences. The aggravating factors were: the accused's lengthy criminal record; that he had been on parole when he committed the offences; that he harmed his friends in their own home with children present; the sexual assault was made upon a sleeping, intoxicated woman; and the serious nature of the assault on his friend. The mitigating factors were that the accused had pled guilty, had a dysfunctional and harsh childhood, and had the support of the Elders and others in his community.
HELD: The accused was sentenced to a total of five years in prison. The sentences for each of the offences were three and a half years for the sexual assault and two years for the assault with the weapon. The court found that the sentences should be served consecutively because although the offences were part of a chronological sequence, they involved distinct offences and different victims. The Gladue factors were acknowledged by the court but found that they modestly detracted from the accused's moral culpability.

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Reiter v. Powell, 2016 SKQB 15

Dawson, January 12, 2016 (QB16025)

Civil Procedure – Applications – Requirements
Wills and Estates – Executors

The applicant sought an order that the respondents renounce their right to probate the will of the deceased testator, Michael Reiter, or in the alternative, that the respondents be terminated as executors of the estate. The applicant failed to serve notice of the application on the alternate executor and the beneficiaries named in the will.
HELD: The application was adjourned. The applicant was instructed to serve notice of the application and the adjournment on the alternate executor and the named beneficiaries. As the applicant had not understood that evidence from another action could not be considered by the court on this application, the applicant was also required to file further affidavit evidence. She was instructed to serve the material on the respondents, the alternate executor and the beneficiaries.

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Reiter v. Powell, 2016 SKQB 16

Dawson, January 12, 2016 (QB16026)

Wills and Estates – Executors – Removal
Civil Procedure – Wills and Estates – Applications – Requirements

The applicant applied for an order that the respondents renounce their right to probate the last will of the deceased testator, Anne Reiter, or in the alternative, for an order that they be terminated as executors of her estate. The testator died in January 2015 and application for probate had not yet been made. The deceased's will had bequeathed all her property to her husband, Michael Reiter, who died in October 2015. The respondents were named executors of his estate. A simultaneous application had been brought by the same applicant to remove the respondents as executors of his estate (see: 2016 SKQB 15). The applicant had failed to serve the respondents with notice of this application or the alternate executor and beneficiaries named in the will. In addition, the applicant had misunderstood that she could rely upon evidence filed in another action that was also before the court in this application.
HELD: The application was adjourned. The applicant was instructed to serve notice of the application and the adjournment on the alternate executor and the named beneficiaries. As the applicant had not understood that evidence from another action could not be considered by the court on this application, the applicant was also required to file further affidavit evidence. She was instructed to serve the material on the respondents, the alternate executor and the beneficiaries.

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Brown v. Coleman, 2016 SKQB 17

Schwann, January 13, 2016 (QB16014)

Civil Procedure – Disclosure of Documents – Privilege – Litigation Privilege
Civil Procedure – Disclosure of Documents – Privilege – Solicitor-Client Privilege
Civil Procedure – Disclosure of Documents – Privilege – Statutory Privilege
Civil Procedure – Queen's Bench Rules, Part 5 – Disclosure and Production of Documents

The plaintiffs applied, pursuant to Queen's Bench rule 5-12(1)(c), for the production of 19 documents in the affidavit of documents prepared by the police defendants. The defendants resisted the production on the grounds of: 1) statutory privilege; 2) solicitor-client privilege; and/or 3) litigation privilege. The action arose from one of the plaintiffs' suicide attempts while in police custody. During questioning by the plaintiffs, the officers agreed to make inquiries with the City of Moose Jaw, the

Police Board and Moose Jaw Police Service (all non-parties) to see if they would facilitate access to the sought-after documents. Some documents were provided and 19 were listed, but their production was opposed on the basis of privilege. The court ordered that the application be served on the city and board and that the documents be provided to the court in a sealed envelope.

HELD: The court discussed the three privilege arguments advanced by the defendants: 1) the defendants argued that some of the documents were privileged pursuant to s. 39 of The Police Act, 1990 because they were part of a "public complaint". The statutory protection of the Act arises when: a) there was a public complaint; b) the public complaints commission (PCC) is in possession of files or material relating to the public complaint; and c) the files or material were received by the PCC from a police service pursuant to a request made under s. 39(2)(c). The court concluded that none of the documents fell under the privilege in the Act. The public complaint was initiated after the police chief had already commenced an internal investigation on the matter and there was no evidence that the complaints investigator had deemed the investigation to be a public complaint. Also, the court concluded that even if the public complaints process had been initiated, the documents were not subject to the statutory privilege because: a) the confidentiality obligation did not extend to the originator of the records, it only applied to the PCC; b) there was no evidence that the documents were received by the PCC; c) based on statements and a letter, a large portion of the internal investigation had already been made public through the coroner's inquest so that if there was privilege it had been waived; and d) any police member's privacy interest was ended with the coroner's inquest; 2) the police defendants acknowledged that they were acting as agent for the city in advancing the argument of litigation and solicitor-client privilege in relation to the 19 documents. The city, however, was not a party to the litigation and thus had no duty to disclose or produce documents. There was no application for the third party to disclose documents pursuant to Queen's Bench rule 5-15. The police defendants were provided with copies of the documents from the city. Case law made it clear that ownership of documents was an irrelevant consideration to a party's obligation to produce under the Rules as long as the documents were in their possession. Further, a prior confidentiality agreement between a third party and the party in the action had no bearing on the defendant's obligation under the Rules. The court, therefore, concluded the trust conditions upon which the city provided the documents to the defendants was not binding as far as it related to their duty to produce under rule 5-12. Solicitor-client privilege can be waived by the city, but there was no evidence that it had been waived. The court held that three documents were clearly irrelevant and that six were subject to solicitor-client privilege, and therefore the application for their production was dismissed; and 3) the court noted that litigation privilege cannot extend to non-parties. Also, because the matter that

was the subject of some of the documents had been settled, they could no longer be protected by litigation privilege. The defendants were ordered to produce ten of the documents.

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Kalinocha v. Suwannasri, 2016 SKQB 18

Labach, January 13, 2016 (QB16015)

Family Law – Custody and Access – Jurisdiction
Statutes – Interpretation – Children's Law Act, Section 15(1)

The petitioner husband applied for an order stating that the Court of Queen's Bench had jurisdiction over the issues of divorce between himself and the respondent and the custody of their only child. The parties had moved to Saskatoon in July 2013, where their son was born in March 2014. In October 2015 the parties moved to Vancouver and obtained employment there. In November 2015, the petitioner moved back to Saskatoon with the child without informing the respondent. The respondent immediately obtained an order under the British Columbia Family Law Act appointing her sole guardian of the child with sole parenting responsibility for him and that the petitioner return the child to Vancouver. On November 12, 2015, she then filed a notice in the BC Supreme Court requesting a divorce and sole custody of the child. The respondent was also granted an interim order on that day that ordered the police to apprehend the child and return him to the respondent. The order was forwarded to the Court of Queen's Bench and it was registered on November 24, 2015, so as to be enforceable. The petitioner filed his petition in Saskatoon for divorce and sole custody on November 19, 2015.
HELD: The application was denied. The court found that neither of the parties could rely upon s. 3 of the Divorce Act to establish the jurisdiction issue as neither had been ordinarily resident in either Saskatchewan or British Columbia for one year prior to filing their documents. As the British Columbia order was registered, the child must be considered to be habitually resident in Vancouver pursuant to s. 15(2)(b) of The Children's Law Act, 1997. Under s. 15(1)(b) of that Act, the court found that it did not have jurisdiction in this case because the requirements of s. 15(1)(b)(iii) or (v) had been met.

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R. v. G. (L.J.R.), 2016 SKQB 20

Maher, January 15, 2016 (QB16019)

Criminal Law – Sentencing – Aboriginal Offender
Criminal Law – Sentencing – Pre-sentence Report
Criminal Law – Sentencing – Sentencing Principles
Criminal Law – Sentencing – Sexual Assault

The accused was found guilty, by jury, of sexual assault contrary to s. 271 of the Criminal Code. The accused argued that he did not have full intercourse with the complainant, whereas the complainant testified otherwise. Section 724(3) of the Criminal Code applied because there was a dispute regarding the facts on sentencing. The complainant, 17 at the time, was at her aunt's house. The accused was her aunt's boyfriend. There was significant drinking and the complainant started blacking out. She said that when she awoke her pants were being pulled down by the accused, who did not have any clothes on. The assault occurred, and when she could she ran upstairs and locked herself in the bathroom. The accused was 34 and of First Nation decent. The pre-sentence report indicated that the accused started using drugs and alcohol at 18 and he had a significant addiction issue. He had been offered numerous programs to assist with his addictions, but had limited success in completing them. The accused was a victim of sexual abuse by a babysitter and residential school staff. He indicated that he had not used alcohol or drugs since August 2015 and that he was participating in traditional sweats. The accused was one class short of completing grade 12 and he had a spotty employment history. He had a significant criminal history, which included assaults, but no sexual assaults. The accused accepted responsibility for the offence, but appeared to minimize the harm done to the complainant. The accused's risk to reoffend was determined to be 80 percent over a three-year period. He was of a moderate to high risk to reoffend sexually.
HELD: The court reviewed the testimony of the complainant and the accused and concluded that the jury did not accept the evidence of the accused because it found him guilty of sexual assault. The court was satisfied that the accused committed a major sexual assault with penal penetration. The aggravating factors were: the age difference between the accused and the complainant; the accused was the uncle; the excessive alcohol and drug consumption by the accused; and the accused's criminal record. The mitigating factors were: the offender accepted responsibility and was remorseful; and the accused's upbringing mandated the application of Gladue factors, resulting in a reduction of sentence from the three-year minimum. The court was satisfied that the principles of denunciation and deterrence were to be focused on. The accused was sentenced to three years and four months incarceration. He was given remand credit of ninety-five days and the court made the ancillary orders.

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R. v. Reynolds, 2016 SKQB 21

Acton, January 15, 2016 (QB16027)

Criminal Law – Motor Vehicle Offences – Dangerous Driving Causing Death – Sentencing

The accused was found guilty on two counts of dangerous operation of a motor vehicle causing death contrary to s. 249(4) of the Criminal Code (see: 2015 SKQB 332). The offence occurred when two people were killed instantly in a head-on collision with the accused's vehicle. Because of fog, there was reduced visibility. The accused was passing a truck on a solid line section of the highway when the collision occurred. Alcohol was not involved and the accused had not been speeding except to attempt to pass. The pre-sentence report described the accused at very low risk to re-offend. The accused was on medication for a long-term physical condition that was life-threatening and terminal. He suffered from severe depression and anxiety and was seeing a counsellor. He expressed his great remorse to the family of the victims. The accused had no criminal record but had been convicted of minor speeding violations and failure to report an accident between 2000 and 2008. The accused had worked throughout his career as a respiratory therapist but he was unable to work in this field because his criminal record made him unable to be bonded. The report recommended that the accused serve at least a portion of his sentence in the Men's Community Training Residence, a reduced custody facility in Saskatoon, where offenders were expected to find full-time employment while living in the residence and be involved in any identified counseling and programming. The residence director was prepared to admit the accused. The Crown recommended that the accused be sentenced to incarceration to two years less a day followed by a three-year driving prohibition and a lengthy period of probation as an appropriate sentence under s. 249(4) of the Criminal Code. The defence submitted that the accused be sentenced to 90 days' incarceration served intermittently with three years of probation of which 24 months would require residency at the men's residence. HELD: The accused was sentenced to 18 months' incarceration to be served in the residence. The accused would be allowed to leave the residence only for the purposes of employment, community service or counselling. This period would be followed by 18 months of probation, resulting in a total sentence of three years. The court acknowledged the aggravating factors were the deaths of the married couple in the other vehicle and the impact of their deaths on their family. The deaths were caused by the accused passing on a solid line in dangerous conditions, which he chose to ignore. The mitigating factors were that the accused was extremely remorseful. He had cooperated with the police investigation and had no criminal record. He had not had even a minor traffic violation in the last seven years. He had not exceeded the speed

limit except to pass.

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R. v. Higginbotham, 2016 SKQB 22

Acton, January 15, 2016 (QB16028)

Criminal Law – Motor Vehicle Offences – Dangerous Driving Causing Death

The accused was charged with dangerous driving causing death under ss. 249(1)(a) and (4) of the Criminal Code. The accused had been following a large grain truck on a highway that was being widened and upgraded. The highway had been widened sufficiently to allow for two-lane traffic with a shoulder. The surface was packed clay with gravel but with silt along the edges of the road close to the shoulder. The grain truck occasionally created dust blooms that severely reduced visibility. The accused pulled out to pass the grain truck and accelerated rapidly during one of these blooms and collided head-on with the victim's vehicle. The accused testified that there had been no bloom when he began passing the grain truck. The truck driver and another motorist who was driving behind the accused testified that there had been zero visibility when the accused pulled out and it had not been safe to pass.
HELD: The accused was found guilty. The court did not accept the accused's version of events prior to the collision.

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Canada (Attorney General) v. Merchant Law Group, 2016 SKQB 25

Barrington-Foote, January 20, 2016 February 17, 2016 (corrigendum) (QB16018)

Civil Procedure – Issue Estoppel
Civil Procedure – Queen's Bench Rule 7-9(2)(a), Rule 7-9(2)(b), Rule 7-9(2)(e)
Torts – Deceit
Torts – Fraud
Torts – Fraudulent Misrepresentation

The defendant was paid over $25 million by the plaintiff for legal fees pursuant to the Indian Residential Schools Settlement Agreement (IRSSA). The plaintiff claimed that amount plus more from the defendant, arguing that the defendant committed the torts of fraud, fraudulent misrepresentation, and deceit during the negotiation and

approval of IRSSA. The defendant applied to strike the plaintiff's claim. The defendant represented many Aboriginal people in their claims regarding the residential school system, and the fees paid to the defendant were a result of that work. A verification agreement between the parties stipulated that if legal fees could not be agreed upon the matter should be resolved by arbitration with the fees being no less than $25 million and no more than $40 million. The plaintiff claimed that the defendant had a large proportion of illegitimate time entries and excessive disbursement entries. The defendant argued that the plaintiff's claim was frivolous and vexatious and an abuse of process because it had already been decided in the 2006 SKQB decision, the SKCA decision, and the 2008 SKQB decision. The defendant therefore argued that the doctrine of issue estoppel applied. In the 2006 SKQB decision the court determined that the agreement to pay no less than $25 million was fair and reasonable. The plaintiff appealed that decision, resulting in the SKCA decision, which decided that the judge in the 2006 SKQB decision had not misinterpreted the verification agreement. The appeal court rejected the plaintiff's argument that the judge erred in holding that the defendant was entitled to $25 million in fees without providing verification for that amount. The 2008 SKQB decision dealt with the defendant's application for summary judgment for $25 million in fees. The plaintiff argued that no legal fees were payable until the verification process was complete. The court directed that $25 million be paid to the defendant forthwith, but did not grant summary judgment. The court addressed the merits of each of the following: 1) the Queen's Bench rule 7-9(2)(a) application; 2) the rule 7-9(2)(b) application; and 3) the rule 7-9(2)(e) application.

HELD: The court held that the defendant's application was well-founded and the plaintiff's claim was struck in its entirety. The court determined that: 1) a rule 7-9(2)(a) application turns solely on the pleadings, particulars, and the documents referred to in the pleadings. The plaintiff pled the court's previous findings, including the findings regarding the meaning of the defendant's fee provisions, and that the $25 million fee was fair and reasonable. The court agreed with the plaintiff that in some cases the element of the torts pled need not be proved by direct evidence and can instead be inferred from all the circumstances. The court found that in this case the necessary inference could not be drawn because the misrepresentation did not cause or induce the plaintiff to agree to the defendant fee provisions. The court also found that the plaintiff failed to plead material facts that supported its claim that it suffered damages. An amendment to the pleadings would not cure the defects of the statement of claim. The court concluded that the statement of claim disclosed no reasonable cause of action, and therefore, must be struck; 2) the plaintiff's claim could also be struck as being frivolous or vexatious because the doctrine of estoppel applied. The plaintiff argued that estoppel did not apply because no court had yet decided whether the defendant

committed the torts of fraud, fraudulent misrepresentation or deceit by misrepresenting the amount of time spent, or by intentionally inflating its billing records and using those records to justify a claim for $40 million. The prior decisions determined that the payment of the $25 million fee to the defendant was not subject to the verification process at all. Therefore, the defendant was entitled to the $25 million even if the verification process disclosed that the defendant had made false misrepresentations. The court did not exercise its discretion to not apply the doctrine of issue estoppel; and 3) the court concluded that the plaintiff's claim could also be struck as an abuse of process because: a) the claim was caught by issue estoppel and was therefore an abuse of process; and b) the plaintiff had concerns about whether the defendant had misrepresented the work done before the court decisions. The plaintiff agreed to pay the defendant $25 million notwithstanding the inconsistent and patently unreliable representations. The plaintiff chose to make that bargain.
CORRIGENDUM dated February 17, 2016: [1] Counsel for the plaintiff, the Attorney General, shall be amended to read: Mitchell R. Taylor, Q.C. and Sean Hern

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Christopher v. 101162744 Saskatchewan Ltd., 2016 SKQB 26

Barrington-Foote, January 21, 2016 (QB16021)

Civil Procedure – Queen's Bench Rule 4-11

The plaintiff brought an action against the defendants for wrongful dismissal. As there was little progress in the proceedings the plaintiff applied for summary judgment. The defendants then applied to the Chief Justice for the appointment of a case management judge. He ordered instead that a case conference be held pursuant to Queen's Bench rule 4-4. At the conference the parties agreed that the matter should proceed in accordance with Part 8 of the Rules and that they wished to attempt to resolve the dispute through mediation. The plaintiff agreed that he would not pursue his summary judgment application. The parties requested that the judge holding the case conference act as mediator.
HELD: The case conference judge granted the request and ordered that this was an appropriate case for a settlement pre-trial to all matters at issue pursuant to Queen's Bench rule 4-11(8). The application for summary judgment was adjourned.

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Mutual Equity, Trade and Investment Services Inc. v. Archerwill Metis Local #58 Inc., 2016 SKQB 27

Smith, January 22, 2016 (QB16029)

Civil Procedure – Queen's Bench Rule 10-13
Statutes – Interpretation – Enforcement of Money Judgments Act, Section 93

The defendant applied for an order setting aside a judgment in default obtained against her by the plaintiffs and permitting her to file a statement of defence. She also sought an order paying out $12,000 held by the court on the grounds that the funds represented her half-share in the family home on the ground that her interest was protected by s. 93 of The Enforcement of Money Judgments Act (EMJA). The defendant had worked for the plaintiff as a bookkeeper. The plaintiffs alleged that she forged signatures of authorized directors of the plaintiffs and wrote cheques to herself. Fearing that the defendant would dissipate her assets, they commenced a claim against her and obtained an ex parte preservation order with respect to her property. The defendant was self-represented and appeared at the proceedings but she did not file a statement of defence. The plaintiffs obtained judgment against her. The defendant was also involved in family law litigation at this time. Her estranged husband obtained an order evicting her from the family home to permit him to sell it. After the sale, the plaintiffs took steps under the EMJA to have the defendant's share of the sale proceeds paid into court pending argument as to entitlement.
HELD: The court dismissed the application. Pursuant to Queen's Bench rule 10-13, it would not open up the default judgment. The applicant's proposed statement of defence consisted merely of denials of the allegations. With respect to the proceeds of the sale of the house, the court found that as the applicant was no longer residing in it, the proceeds of the house sale were not exempt from seizure under ss. 93(1)(l) and (2) of the EMJA.

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Knapp v. Renkas, 2016 SKQB 28

Barrington-Foote, January 22, 2016 (QB16022)

Small Claims – Appeal – Standard of Review
Statutes – Interpretation – Small Claims Act, 1997, Section 39

The appellant appealed the decision of a Provincial Court judge after a trial of a small claims action in which the judge found that both the appellant and the respondent were negligent and apportioned

responsibility of 70 percent to the appellant and 30 percent to the respondent. The appellant had admitted that he was 50 percent at fault and one of his grounds of appeal was that the trial judge should have apportioned fault equally between the parties. The appellant had been driving a vehicle that had struck the respondent's vehicle when she turned left in front of him. The appellant believed that the respondent was turning right but she veered in that direction. The vehicles were proceeding in the same direction and there was room on the road for two lanes. The trial judge found that the respondent veered to the right before turning left across the appellant's lane to cross the centre line so that she could park her vehicle on the opposite side of the street. As the appellant's vehicle was behind the respondent's though, he had failed to meet the obligation to make sure that he could stop his vehicle in time to avoid collision with the vehicle in front of him.
HELD: The appeal was dismissed. The court reviewed the appellate standard of review in an appeal brought pursuant to s. 39 of The Small Claims Act, 1997. The trial judge was entitled to make the decision regarding the allocation of responsibility and the decision was not patently unreasonable.

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Britton v. Simon Estate, 2016 SKQB 30

Kalmakoff, January 25, 2016 (QB16024)

Judgments and Orders – Foreign Judgments – Registration
Statutes – Interpretation – Enforcement of Foreign Judgments Act, Section 3, Section 4, Section 6

The respondent estate and the parents of the deceased obtained judgment against the applicant in Wisconsin and registered the judgment in Saskatchewan in 2013 pursuant to The Enforcement of Foreign Judgments Act (EFJA). The applicant applied to quash the registration. Although acquitted of murder after trial, the applicant had been found to be liable in a civil trial by judge and jury in Wisconsin for damages in the estate's action against him for wrongful death. The jury had awarded $191,300 to the estate for medical expenses; $25,000 to the estate for the pain and suffering of the deceased prior to death; $250,000 to the deceased's parents for the loss of companionship of their son; and $7,400 to the estate in costs. The jury also awarded punitive damages to the estate in the amount of $100,000 against the applicant personally. The applicant argued that the registration should be set aside on the grounds that: 1) the trial judgment was rendered in a proceeding that was conducted to the principles of natural justice, alleging actual bias. The applicant argued the bias existed because the trial took place in the community where the deceased lived and his

parents still reside. Unfairness was created by the media coverage of the event before trial; 2) the trial judgment was contrary to public policy in Saskatchewan. The trial was unfair and the judgment awarded damages for medical expenses when the expenses were actually incurred by the plaintiffs' insurer, resulting in unjust enrichment; 3) if the registration was not set aside entirely, the portion of the award for punitive damages should be severed as it was a monetary fine or penalty as defined in s. 3(e) of the EFJA; and 4) the judgment was limited by s. 6 of the EFJA. For example, the damages awarded to the plaintiffs exceeded what they would have been able to recover in Saskatchewan for loss of companionship. The applicant took issue with the amount of each award.

HELD: The application was dismissed. The court found with respect to each issue that: 1) the applicant had not requested a change of venue before the trial and had not appealed the verdict. There was no evidence adduced by the applicant to rebut the presumption of the judicial integrity of the trial judge or evidence that the jury was biased. The court held that the judgment could not be set aside on that basis under s. 4(f) of s. 4(g) of the EFJA; 2) the trial occurred in a jurisdiction that does not have the same healthcare system and therefore the applicant's wrongful actions led to expenses for the deceased and his estate that would not have been incurred in Saskatchewan. However, to recover the actual expenses was not contrary to provincial public policy. There was no evidence that an insurer had paid the expenses and there was no dispute at trial that the expenses were properly incurred and thus no basis to find unjust enrichment and therefore the court would not set aside registration under s. 4(g) of the EFJA: 3) an award of punitive damages is not the type of "penalty" to which s. 3(e) of the EFJA is applicable. Judgment for punitive damages becomes a private debt at the enforcement stage; and 4) although a court in Saskatchewan might not have made a punitive damages award of $100,000 against the applicant, there was no basis to conclude that a jury could not have made such an award. Section 6(1) of the EFJA did not require the court to limit enforcement of this portion of the judgment.

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Milan Consulting and Construction Ltd. v. Regina (City), 2016 SKQB 31

Schwann, January 26, 2016 (QB16030)

Municipal Law – Bylaw Enforcement – Appeal
Statutes – Interpretation – Cities Act, Section 329

The applicant company appealed from a decision made by the local appeal board of the City of Regina pursuant to s. 329 of The Cities Act.

The applicant had purchased a run-down property in 2004 as an investment and intended to restore it as a single family residence. Although some improvements were undertaken by the applicant, the City of Regina initiated enforcement measures designed to ensure compliance with its maintenance bylaws. The applicant ceased all work in 2006 because of the lengthy list of repairs. In 2015 a city bylaw standards officer issued an order to comply, directing the applicant to execute a list of repairs within 15 days. The applicant appealed the order to the board and it confirmed it without reasons. The applicant appealed the decision to the Court of Queen's Bench pursuant to s. 329(4) of the Act. The applicant argued that the cty's maintenance bylaw did not apply to the property because it was under construction. Therefore it was not a maintenance issue and should be regulated under construction-related bylaws.
HELD: The appeal was dismissed. The court confirmed the decision of the board and found it was, on either standard of review, reasonable and correct. It held that the nature of the right of appeal provided under s. 329(4) of the Act would ordinarily be confined to the written record of the board. In this case, the board had failed to provide reasons, so the court treated the matter as an appeal de novo. The court then considered the affidavit evidence filed by the applicant. The court interpreted the Act and the bylaw to include buildings under construction. Regardless, the applicant's property could not be classified as a building under construction as no work had been done on it since 2006. The court found that because the bylaw was clear and unambiguous, the presumption against interference with property rights was not applicable.

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R. v. Miller, 2016 SKQB 35

Schwann, January 28, 2016 (QB16033)

Statutes – Interpretation – Traffic Safety Act, Section 235(5)
Regulatory Offences – Motor Vehicle Offences – Sentencing – Appeal

The appellant appealed his conviction in Provincial Court of failing to stop at a stoplight when it had turned red under s. 235(5) of The Traffic Safety Act. He was fined $230. The appellant had argued that his brakes had failed and he had to take evasive action to avoid a collision. The trial judge did not believe the appellant and found that he had failed to act in a reasonable manner and in driving a vehicle that he knew had defective brakes. The Crown asked for a fine equivalent to the amount established for the voluntary payment penalty for the offence, and the trial judge imposed the amount of $230. The appellant argued on his appeal that his sentence should be reduced to having

regard to the evasive action he took to avoid an accident and filed letters of reference with the court.
HELD: The appeal was dismissed. The trial judge had not believed the appellant's version of events so she could not take his explanation as a mitigating factor. Although the judge might have been able to consider the absence of a collision or personal injury as a mitigating factor in imposing a sentence, the appellant declined to make submissions to that effect when asked by the judge. If the trial judge should have taken the absence of an accident into account as a mitigating factor, it would not lead to appellate intervention unless the sentence was demonstrably unfit. As the maximum fine is $1,000, this sentence was not. The letters of reference might have been considered at the time of sentencing, but they were not put before the trial judge.

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Robin v. Saskatchewan Police Commission, 2016 SKQB 36

McMurtry, January 28, 2016 (QB16034)

Administrative Law – Appeal
Administrative Law – Certiorari
Administrative Law – Natural Justice/Procedural Fairness
Professions and Occupations – Police – Serious Misconduct – Penalty
Statutes – Interpretation – Police Act, 1990

The applicant sought judicial review of a decision of the Saskatchewan Police Commission (SPC) that overturned the earlier decision of a hearing officer appointed under The Police Act, 1990. The hearing officer allowed the applicant's appeal from a decision by the Chief of Police to dismiss him from the police service (PS). The hearing officer found that the applicant had committed serious misconducts warranting discipline, but she found that dismissal was not warranted. The hearing officer suspended the applicant without pay for nine months and placed him on probation for one year. The applicant appealed the hearing officer's decision, arguing that no misconduct should have been found, while the respondents appealed, arguing the hearing officer made errors by not considering prior misconduct of the applicant and by concluding that the applicant remained suitable for the PS. The SPC reinstated the dismissal on the basis that it was unreasonable for the hearing officer to conclude that the applicant remained suitable for the PS. The applicant tried to convince witnesses to a careless driving to attend upon the prosecutor to convince him to prosecute an accused on the charge. The applicant gave one of the witnesses a copy of the prosecutor's memorandum, an internal police document. When the prosecutor would not change his mind, the applicant decided to prosecute the case himself, without obtaining

permission to do so. He added himself to the witness list, issued a subpoena for himself, and submitted a claim for overtime pay. When the applicant's supervisor found out, the applicant was put on administrative leave. Three witnesses to the charge received anonymous calls requesting that they intervene on the applicant's behalf. The anonymous calls came from a retired member of the PS. The retired member was advising the applicant throughout. The applicant also shared police file information with the retired member. The Order of Dismissal of the applicant indicated that there was no remedial action short of dismissal that was reasonable in the circumstances. The issues raised by the applicant were: 1) what was the appropriate standard of review to apply to the SPC decision; 2) did the SPC apply the appropriate standard of review to the hearing officer's decision; and 3) should the SPC decision be quashed for inordinate delay.

HELD: The issues were determined as follows: 1) a review of the SPC decision should determine whether it was reasonable, not whether it was correct. Further, deference was due to the SPC because its decision was grounded in the facts as found by the hearing officer. The Act was the "home statute" of the SPC, the statute it had specific knowledge regarding; 2) the SPC expressly noted that it was required to apply a standard of reasonableness to the issue of the applicant's suitability. The court found that SPC's discussion about s. 60 of the Act was consistent with their clear message that the applicant's conduct rendered him unsuitable for police service and his dismissal was the only reasonable response. The court found it very clear that the SPC decided that the penalty imposed by the hearing officer, for the misconduct she found, was unreasonable. They found the penalty unreasonable in view of the facts found by the hearing officer. The SPC also found that the hearing officer erred by failing to recognize the impact of the applicant's conduct on the reputation of the PS. The court found that the SPC's reasoning was transparent and intelligible and fell within a range of possible, acceptable outcomes. The court also indicated that the decisions of the SPC are protected by a strong privative clause in the Act; and 3) the question of inordinate delay raised questions of procedural fairness and natural justice, which were assessed on a standard of correctness. The applicant was 41 and, though he was receiving a salary throughout, he did not look for other work or re-train before resolution of the matter. The court did not find the delay to be an abuse of process though he had to live with uncertainty and stress. The delay would not have offended the community's sense of fairness, nor would it bring the discipline process into disrepute.

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Financial and Consumer Affairs Authority v. Saskatchewan (Minister of Justice), 2016 SKQB 37

Megaw, January 28, 2016 (QB16035)

Administrative Law – Judicial Review – Certiorari
Criminal Law – Evidence – Subpoena
Criminal Law – Private Prosecution

The applicant applied for an order setting aside a subpoena duces tecum issued by the Provincial Court. The respondent sought to pursue a private prosecution against an individual for the offences of perjury and obstruction of justice under the Criminal Code. The applicant was the solicitor for a government authority and he indicated that he could not testify in the matter of the private prosecution due to solicitor-client privilege. The applicant had been successful in obtaining findings that a Ms. P. had breached provisions of The Securities Act, 1988. The respondent had been Ms. P.'s agent and advisor but was not a lawyer. The subpoena duces tecum required the applicant to provide documents relating to Ms. P. The respondent was trying to establish that the evidence of the authority investigators and the applicant with respect to reference to certain documentation was false and did not exist. The issues were: 1) the nature of the proceedings; 2) was the proceeding to be "in-camera"; and 3) should the subpoena be quashed. The applicant sought an order setting aside the subpoena on the inherent jurisdiction of the court.

HELD: The issues were analyzed as follows: 1) the action was commenced as a private prosecution pursuant to s. 504 of the Criminal Code. The pre-enquete procedure in s. 507.1 gives the court a supervisory role to ensure a reasoned and objective review is applied before proceedings are commenced; 2) the application before the court was found to be part of the pre-enquete hearing and was considered an in-camera proceeding; and 3) the court considered the application to be one seeking writ in the nature of certiorari to quash the subpoena that was issued. Until the respondent asks his questions, the court found it would be impossible to tell whether the area of privilege was being infringed. The court held, however, that the subpoena should nevertheless be set aside on the basis that it did not set out, with sufficient particularity, what the applicant was required to produce as part of the his testimony. It failed to set forth, with precision, the document that the applicant was to bring to his testimony. The applicant could therefore not determine whether he was capable of complying with the direction of the court.

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