The Law Society of Saskatchewan Library's online newsletter
highlighting recent case digests from all levels of Saskatchewan Court.
Published on the 1st and 15th of every month.

Volume 19, No. 7 **April 1, 2017**

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Chow, April 10, 2015 (PC15170)

Criminal Law – Motor Vehicle Offences – Driving Without Due Care
Traffic Safety Act – Motor Vehicle Offences – Driving Without Due Care
Constitutional Law – Charter of Rights, Section 7, Section 8

The accused was charged with exceeding the speed limit, contrary to s. 199(1)(b) of The Traffic Safety Act, and driving without due care and attention, contrary to s. 213(1) of the Act. The defence brought a Charter application alleging that the accused's ss. 7 and 8 Charter rights had been breached and sought to have evidence excluded pursuant to s. 24(2) of the Charter. A blended voir dire and trial was held. The accused was driving his truck on a city thoroughfare with a speed limit of 50 km/h. The vehicle struck a bicyclist who was crossing an intersection. The Crown called a number of witnesses who testified that they had been driving at the proper speed and noticed that the accused's vehicle passed them at a higher speed, each estimating 60 to 70 km/h. A gas station adjacent to the road used a video surveillance camera to record activities on its premises and signs had been posted notifying customers of the presence of cameras. Traffic on the road was also recorded by the cameras. The Crown submitted a videotape of the accused's vehicle passing by the station to support its case that the accused was speeding. An employee of the security company who

monitored the security video testified that the video copy that was entered into evidence had been taken from the original recording and could not have been altered. She did not compare the original to the copy and agreed that the accuracy of the recording could be affected by a number of factors. The owner of the gas station also testified regarding the surveillance video, but he had little or no knowledge of it because he had only recently purchased the business and specifically didn't look at the particular recording. The accused argued that the surveillance videotape evidence should not be admitted for two reasons: 1) the surveillance was undertaken without any warning to him and if it was provided to the RCMP without a warrant, it was contrary to ss. 7 and 8 of the Charter; and 2) the Crown had not properly authenticated it.
HELD: The accused was found guilty of exceeding the speed limit and of driving without due care and attention. The court dismissed the Charter application to exclude the videotape evidence, finding that the accused had no reasonable expectation of privacy in the circumstances. The court ruled that the videotape was not admissible, though, because it had not been properly authenticated as there was no testimony that it accurately represented the incident.

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Barrington-Foote, January 26, 2015 (QB15410)

Criminal Law – Murder – Second Degree
Criminal Law – Evidence – Admissibility – Warned Statement

The accused was charged with the second degree murder of his mother. The Crown wanted to introduce evidence of statements made by the accused in the course of two interviews conducted by a police officer, including video and audio recordings. The defence argued that the evidence was inadmissible on the basis of the common law confessions rule. The Crown relied on R. v. Oickle. A voir dire was held. The Crown submitted that there was no evidence of a threat, promise or inducement. Regarding the requirement that a statement must be obtained without oppression, the Crown took the position that the police were entitled to treat the accused as an adult and there was no evidence that he did not understand his rights. As the accused did not have trouble answering any of the questions, the accused gave the statements with an operating mind. The police did not use trickery or attempt to mislead the accused. The defence

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argued that the accused suffered from oppression and may not have had an operating mind. The accused was only 18 years old and showed signs of being intoxicated during the first interview. He did not understand some of the words that the officer used when she explained his legal situation. The accused was handcuffed with his hands behind his back to preserve evidence. Items of his clothing had been seized because of bloodstains. He was left in the interview room for lengthy periods while handcuffed and partially clothed. The first interview took place early in the morning and the accused was tired, hungry and cold. Before the second interview, after being told what charges he might face, the accused said that he did want to speak to a lawyer and contacted Legal Aid. He advised the police interviewer then that he would not say anything more but the interview proceeded.
HELD: The statements were found to be not inadmissible on the basis of the confessions rule. The accused was an adult, and although tired and somewhat impaired, there was no evidence he did not understand from the outset why he was detained and his rights to be silent and to counsel. It was his choice to make the statements he did. Although his circumstances during his detention were uncomfortable, the videotape showed that the accused was not frightened or oppressed.

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Senchuk v. Senchuk, 2016 SKCA 167

Richards Herauf Ryan-Froslie, December 7, 2016 (CA16167)

Family Law – Appeal
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Family Law – Spousal Support – Retroactive

The parties began living together in 2007 and they got married in 2009. The respondent remained in the family home after the parties separated in 2015. The appellant's income in 2015 was $85,783 and the respondent did not work outside the home. After separation, the appellant continued to pay all expenses for the family home. He closed the bank account that paid those expenses in April 2016. The appellant deposited $800 into the respondent's account for child support after he closed the account. That amount was increased to $1,210 for the month of

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July 2016 by consent order. He also continued to pay the mortgage payments on the family home, his home and the respondent's car payments, totaling approximately $1,500 per month. The Queen's Bench Court ordered on an interim basis, among other things, that the parties have joint custody and shared parenting; interim child support of $1,173.19 pursuant to the Guidelines; interim spousal support of $600 per month; retroactive child and spousal support; and the respondent was to continue to pay the mortgage, insurance, and taxes for the family home. The issues on appeal were whether the chambers judge erred in the following ways: 1) in making an order that the appellant must give the respondent the first option to parent the children in the event that he works out of town for the night; 2) in ordering child support in the amount of $1,173 per month; 3) in awarding retroactive child support to the respondent in the amount of $1,082.76; 4) in ordering spousal support in the amount $600 per month and in ordering retroactive spousal support to the respondent in the amount $2,400; and 5) in ordering the appellant to continue to pay the mortgage, taxes, and insurance for the family home and the loan payment for the vehicle in the respondent's possession.
HELD: The appeal was allowed in part. The issues were determined as follows: 1) the appeal court did not give effect to this ground of appeal. The chambers judge had the authority to make the order whether or not it was only raised by the respondent in her reply affidavit; 2) the appellant argued that the full Guideline amount should not have been ordered due to the shared parenting arrangement and because his income was lower in 2016. The appeal court did not give effect to the ground of appeal. The chambers judge used the most reliable evidence of the appellant's income. There was insufficient evidence to engage s. 9 of the Guidelines. The chambers judge did not err in concluding that the respondent had no income; 3) the appeal court stated that retroactive support can be awarded in appropriate interim applications. However, the court concluded that this was not an appropriate situation so the matter was left to pre-trial and trial, if necessary; 4) and 5) the respondent was ordered to pay a total spousal support payment of $2,600 per month. The amount pursuant to the Spousal Support Advisory Guidelines (SSAG) would be between $1,521 and $1,969. The chambers judge erred in not providing reasons for such an excess payment and in not referring to the SSAG even though they were argued before her. Also, since the appellant had most of the debt load and the parties had a shared parenting arrangement the spousal support order should have been at the lower end of the range. The $600 spousal support order was set aside as was the order for spousal support arrears. The appellant indicated that he wanted to pay the mortgage, taxes, and

insurance directly for the family home so the appeal court left that part of the chamber's order, except to amend it to comply with the Income Tax Act, 2000. The appellant also had to continue to pay the car payment, but there was no way to make it tax deductible.

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P. (J.) v. P. (J.), 2016 SKCA 168

Jackson Herauf Wilkinson, December 12, 2016 (CA16168)

Family Law – Custody and Access – Appeal
Family Law – Custody and Access – Evidence – Fresh Evidence
Family Law – Custody and Access – Interim – Primary Residence
Family Law – Custody and Access – Interim – Mobility Rights
Family Law – Custody and Access – Special Medical Needs

An interim order placed an infant with special needs in the interim primary care of the respondent mother. The order allowed the respondent to reside two hours from the former family home and granted the appellant father access to the child two days each week. The chambers judge ordered that the petitioner would have access over Christmas Eve through Boxing Day 2016 if the parties could not agree on access. The respondent argued that this was without either party requesting it. The appellant argued that the chambers judge misconstrued the status quo, misapplied the rebuttable presumption against parental relocation before trial, and failed to give effect to the maximum contact principle under the Divorce Act when determining the petitioner's access schedule. The respondent was a registered nurse and had two children from a previous relationship. Prior to the relationship, the respondent resided in a town close to her extended family, two hours from the petitioner. The parties married in March 2015 and the respondent and her two children moved to the petitioner's residence in June 2015. The parties' daughter was born December 2015 with spina bifida, a condition the respondent also had. The condition required catheterization of the bladder every few hours. The respondent was adept at the procedure. The marriage ended in July 2016. The petitioner told the respondent she could not return to the family home so she relocated to her home town. The respondent's eldest child reported inappropriate touching by the petitioner to the police. The respondent indicated that the petitioner was unable to safely catheterize the infant. The chambers judge concluded that the respondent's relocation was due to the petitioner's unilateral

decision to not allow her and the three children back into the family home. The respondent's options were limited. The chambers judge acknowledged the presumption against interim relocation, but found it had been rebutted by evidence of compelling circumstances justifying the move. He found the respondent had the special skills necessary to meet the child's ongoing needs and he outlined the compelling circumstances behind the respondent's relocation. The respondent applied to admit fresh evidence pursuant to rule 59 of the Court of Appeal Rules. The fresh evidence related to the ongoing medical needs of the child, the status of the allegations made by the eldest child, and Christmas access. The issues were if the chambers judge erred as follows: 1) in finding compelling circumstances that justified the mother remaining in the town with the children; and 2) in making the access order he did.
HELD: The appeal was dismissed. The appeal court applied the relaxed rule for admission of evidence relating to a child's best interests, and received the fresh evidence from the respondent. The respondent intended to return to work in her town after surgery scheduled for 2017. She had daycare arranged adjacent to her employment and her employer would allow her to leave her employment to catheterize the child if needed. With respect to the child's medical needs the respondent indicated the child had numerous bladder infections upon returning from the petitioner's care. The respondent indicated that the parties and children spent Christmas 2015 with the petitioner's family on the understanding that the children would spend Christmas 2016 with her family. The court went on to consider the issues: 1) the petitioner argued that the status quo was shared parenting due to the seven months of the child's life that the parties lived together. There were many undisputed facts that supplied a reasonable and reasoned basis for the chambers judge's decision. The chambers judge fully addressed the rebuttable presumption against interim relocation, but recognized that compelling reasons for relocation could serve to rebut the presumption. The appeal court did not find an error in the chambers judge's approach, nor in his conclusion; and 2) the access ordered avoided undue discomfort for the child and it minimized disruptions in her day-to-day regimen. The petitioner did not take issue with the respondent's request to spend Christmas 2016 with the child, so the paragraph dealing with Christmas access in the interim order was set aside.

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R. v. Tran, 2016 SKPC 47

Hinds, March 23, 2016 (PC16152)

Criminal Law – Procedure – Application for Non-suit

The accused was charged with stealing the property of the complainant of a value not exceeding $5,000, contrary to s. 334(b) of The Criminal Code, and with mischief by willfully damaging property of the complainant, contrary to s. 430(4) of the Code. The complainant purchased half of an easement owned by the City of Regina. The easement was situated between the complainant's property and the property of the accused. After the complainant had the easement surveyed, the new boundary between the properties was marked by pegs and stakes. Shortly after the boundary was marked, the accused moved the sod from it to his own property. After the complainant testified at trial, the defence applied for a directed verdict.
HELD: The application was dismissed. The court found that the Crown had adduced some evidence to prove the charges.

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R. v. Mohammadian, 2016 SKPC 49

Lavoie, March 30, 2016 (PC16153)

Criminal Law – Controlled Drugs and Substances Act – Possession of Cocaine for the Purpose of Trafficking
Constitutional Law – Charter of Rights, Section 8, Section 9

The accused was charged with possession of cocaine for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, and with having in his possession proceeds of property not exceeding a valued of $5,000 knowing that they were obtained from trafficking in a controlled substance, contrary to s. 5(1) of the Act, and committing an offence, contrary to ss. 354(1) and 355(b) of the Criminal Code. The defence brought a Charter application alleging that the accused's ss. 8 and 9 Charter rights had been breached and that as a result the evidence obtained from a warrantless arrest and subsequent search incident to it should be excluded. A blended voir dire and trial were held. The arresting officer testified that he was involved in drug investigations and received information from a long-term confidential informant describing a male drug trafficker and the type of vehicle he was driving. The officer located the vehicle and followed it. The driver, the accused, appeared to match the informant's description. The accused parked in a lot and the officer saw a woman get into the vehicle and exit it only a short time later. The accused then drove to

another location and based upon the trust that the officer had in his informant's identification of the accused and his vehicle, he decided to arrest the accused. A search of the vehicle yielded three cell phones, packages of spitball cocaine and $745 in cash. The officer answered calls made to the cell phones following the arrest, and the callers used language consistent with purchasers calling a trafficker in a dial-a-dope operation. The officer stated that it was necessary to arrest the accused immediately because he knew from experience that the accused could have swallowed the drugs.
HELD: The Charter application was dismissed and the accused was found guilty of both charges. The court found that the officer had reasonable and probable grounds to effect a warrantless arrest of the accused. There was clearly sufficient objective criteria to do so based on the totality of the evidence. As the arrest was lawful, the search was lawful and there was no breach of the accused's Charter rights. The court admitted all of the evidence. The court concluded that the amount of drugs in the accused's vehicle and the manner of its packaging was evidence that the accused was in possession for the purpose of trafficking.

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Dampare v. Hussain, 2016 SKPC 52

Metivier, April 11, 2016 (PC16154)

Contracts – Breach – Repudiation

The plaintiffs brought an action against the defendant for damages in the amount of $6,600 under a loan agreement signed by the parties. They also claimed $2,000 for repayment of a personal loan advanced to the defendant. In their corporate capacities, the plaintiff company alleged that the defendant company owed $18,590 for unpaid wages and other items arising out of a verbal agreement to operate the defendant's semi-truck and share the net profits. The parties entered into the loan agreement because the defendant was behind in his lease payments for his truck and he wanted someone to take over the lease for a cash payment of $6,600. The plaintiffs paid the funds necessary to bring the defendant's lease payment for the truck up-to-date. They wanted to start a trucking business but could not take over the lease until their credit problems were resolved. At the end of the time period covered by the agreement, the plaintiffs had not taken over the truck lease. The defendant argued that his obligation to repay the plaintiffs under the

agreement was contingent on the term that they take over the lease.
HELD: The plaintiffs' claim under the loan agreement was dismissed. The court found that, based on the wording of the loan agreement and the surrounding circumstances, the payment made by the plaintiffs was intended as a deposit. The plaintiffs repudiated the contract by failing to take over the lease, and the defendant was entitled to retain the deposit. The court found that the defendant had not repaid the personal loan as he claimed and awarded judgment to the plaintiffs. The defendant company was also ordered to pay the plaintiff company for some of its claims, such as labour and expenses to operate the truck.

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Bzdel v. Ivanovska, 2016 SKPC 54

Marquette, April 15, 2016 (PC16155)

Contracts – Breach

The plaintiff commenced a summons claiming judgment against the defendant in the amount of $16,200 for breach of contract. He claimed that he paid various sums of money to the defendant and she had a contractual obligation to return the funds. The parties met on an Internet dating site in 2010 and began communicating via email. The plaintiff resided in Saskatchewan and the defendant in the Ukraine. They met in person over the course of their four-year relationship and eventually the defendant moved to Canada. The defendant denied the claim and counterclaimed for compensation for providing housekeeping services to the plaintiff and special damages for the loss of employment income experienced upon moving to Canada.
HELD: The plaintiff's claim for breach of contract was dismissed for lack of evidence. The court accepted the defendant's evidence that the parties were in a dating relationship. The plaintiff did not submit any documentation, such as a contract or promissory note, that indicated that the defendant would repay the plaintiff nor was there any evidence that he had verbally advised the defendant when he provided her with funds that she would be expected to repay them at a future date. There was no evidence to support a resulting trust either. The court dismissed the defendant's counterclaim. It found that there was insufficient evidence to award financial compensation to her regarding her claim that she performed housekeeping services for the plaintiff or that she lost income when she moved to Canada.

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R. v. Bako, 2016 SKPC 83

Marquette, June 6, 2016 (PC16156)

Criminal Law – Attempted Murder

The accused was charged with attempting to murder the victim while using a restricted firearm by discharging it at the victim, contrary to s. 239(1)(a)(i) of the Criminal Code. He was also charged with nine other offences related to the incident. The accused had been visiting at the victim's house and had in his possession a prohibited firearm, a semi-automatic handgun as per s. 84(1) of the Code. The victim told the accused to leave the house. She testified that she backed him out the door and out of the house, and when she returned to close the inside front door, the accused shot her in the torso. Other witnesses testified that the accused fired two more shots into the house. The accused testified that the gun was accidentally discharged during a scuffle between him and the victim. He panicked and ran from the house towards his vehicle. People inside the house began firing guns at him, so he fired two shots into the air away from the house to prevent anyone from coming out. The Crown entered forensic evidence of three .32 calibre cartridges found inside the home.
HELD: The accused was found not guilty of attempted murder. The court accepted the evidence of the victim and the Crown witness and found that the accused had intentionally fired his handgun into the house – one shot hit the victim and two shots were fired into the house. The court found that the Crown had not proven that the accused had intended to kill the victim. He had not threatened her and it could not draw the inference of an intention to kill based on the location of the wound to the torso. The court found that when the accused fired the first shot into the house, it coincided with the unexpected return of the victim to the door. However, he was found guilty of the lesser included offence of unlawfully causing bodily harm, contrary to s. 269 of the Code. It was reasonably foreseeable that his unlawful act would result in a risk of bodily harm to another person.

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R. v. Saemann, 2016 SKPC 105

Matsalla, August 16, 2016 (PC16150)

Criminal Law – Motor Vehicle Offences – Driving with Blood Alcohol Exceeding .08
Constitutional Law – Charter of Rights, Section 10(b)

The accused was charged with impaired driving and driving while his blood alcohol level exceeded .08. Before his trial commenced, the accused alleged that his s. 10(b) Charter rights were infringed and, therefore, certain evidence adduced by the Crown ought to be excluded. During a traffic stop conducted to check the sobriety of the accused, a police officer noticed the smell of alcohol and asked the accused if he'd had anything to drink. When the accused answered affirmatively, the officer asked him to take an ASD test. The accused failed and was placed under arrest for impaired driving. The officer read from a card to inform the accused of his right to counsel. The accused said that he understood and when asked whether he wanted to speak to a lawyer, the accused answered in a vague way so that the officer said that he needed to know yes or no. The accused then said, "No, I don't think that I need to talk to a lawyer". At the detachment, the officer told the breath technician that the accused was not going to get a lawyer and the technician then asked the accused if that was correct, to which the accused said that he did not need one. The accused testified that when he asked if he could make a call at the detachment, the officer said no. He wanted to call his partner to obtain a phone number for a specific lawyer but had not pressed the issue. He assumed that he could not call a lawyer but admitted that he did not advise the officers of the name of counsel nor did he advise them that he wanted to speak to his partner to obtain a phone number of counsel.
HELD: The accused's s. 10(b) Charter rights had not been breached. The court found that the accused was aware of his rights and decided that he did not need to speak to a lawyer and when asked again, he confirmed his decision. He waived his right to counsel and did so unequivocally. The accused's intention was of no assistance to him as he had not communicated it to the officers.

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R. v. M. (T.), 2016 SKPC 135

Hinds, October 11, 2016 (PC16151)

Criminal Law – Assault

The accused was charged with committing assault on his infant son, contrary to s. 266 of the Criminal Code. The infant's mother testified that before she left the 10-month-old baby in the care of the accused, he did not have any bruises on his face or body. When she returned to her home an hour and a half later, the accused was incoherent and the house smelled of marijuana. Her son was crying, and when she inspected him, she found bruises on his face. The doctor who examined the infant at the hospital on the night in question testified as an expert witness. She confirmed that she found a number of bruises on the infant's body. In her opinion, infants who are not yet walking do not sustain such injuries, but bruises to the face are common to children who are learning to walk. In her opinion, the bruises were not caused by a single fall. There was other evidence given that the infant had fallen off a bed before.
HELD: The accused was acquitted. The court found that based on the evidence that the child had had previous accidental falls. As there was a reasonable inference that arose from the circumstantial evidence other than guilt, the Crown had not met the standard of proof of beyond a reasonable doubt.

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R. v. Franc's Consulting Inc., 2016 SKPC 145

Lavoie, November 9, 2016 (PC16159)

Taxation – Income Tax Act – Failure to Report Income
Taxation – Income Tax Act – Tax Evasion

The accused, Franc's Consulting, and the accused, Messier, were jointly charged with failing to report taxable income, contrary to paragraph 239(1)(a) of the Income Tax Act (ITA), and with willfully evading the payment of taxes by failing to report taxable income, contrary to paragraph 239(1)(d) of the ITA. Messier incorporated Franc's Consulting in 2000 and was the sole shareholder and director. Franc's offered small business bookkeeping. Messier also operated another business providing tax services to small businesses. In 2005 Messier sold Franc's for $110,000. The purchaser took over the lease, the business offices, the client and office assets but not the shares in the corporation. Messier personally prepared and filed tax returns for Franc's for 2005 and 2006, and her personal returns for 2005, 2006 and 2007. After the Canada Revenue Agency audited these returns, they found that Messier had not reported any of the sales proceeds of the assets of Franc's as income or capital gains of any kind by either Franc's or herself. Messier declared a capital cost

allowance for the equipment on the Franc's return after the assets had been sold. She failed to report all required personal income from inappropriate shareholder loan credits and from bookkeeping income she performed as a sole proprietor after the sale of Franc's. Messier also declared ineligible costs as business expenses on all the tax returns as well as other failures to report recapture on the value of the sale of Franc's equipment and interest income from the deferred monthly payments received from the purchaser of Franc's. The defence argued that the Crown had not proven beyond a reasonable doubt that either of the accused were guilty of making false returns or evaded tax due to the absence of mens rea.
HELD: The court found Messier and Franc's guilty on both counts. The court reviewed Messier's testimony and the admissions that she had made during the trial and concluded that she had the requisite intent to commit the acts in question each time she prepared and filed the inaccurate tax returns.

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R. v. Trail, 2016 SKPC 147

Gray, October 31, 2016 (PC16160)

Criminal Law – Motor Vehicle Offences – Driving with Blood Alcohol Exceeding .08
Constitutional Law – Charter of Rights, Section 8, Section 9, Section 10(b)

The accused was charged with impaired driving and driving while his blood alcohol content exceeded .08. The defence brought a Charter application alleging that the accused's ss. 8, 9 and 10(b) rights had been violated and requested that the evidence be excluded pursuant to s. 24(2) of the Charter. A blended voir dire and trial was held. The police were dispatched to a single vehicle accident at 12:33 am. The officer testified that when he arrived at the scene he saw that a truck had collided with a steel crash cushion. Road conditions were good and there were no other traffic accidents that night. The officer noticed that the accused's speech was slurred but could not smell alcohol because he was suffering from a cold. The accused's eyes were bloodshot. The accused admitted that he had consumed alcohol but gave inconsistent information regarding how much he had consumed and when he'd had his last drink. The officer placed the accused under arrest for impaired driving at 12:48 am and estimated that the time of driving to be 12:30 am based on the time of the dispatch. At 12:51 am the breath demand was made

and the right to counsel provided. The accused indicated that he understood and said that yes, he probably wanted to speak to a lawyer and named someone, but the officer did not recognize the name. The accused arrived at the police station at 1:54 am because the officer had to speak to the witnesses at the scene and wait for a tow truck. At the station the officer asked the accused if he wanted to call a lawyer, but the accused said no. The officer read him the Prosper warning and the accused indicated that he understood and responded again that he did not want to call a lawyer. In the interval between the two breath samples, the officer asked the accused if he would be prepared to provide a written statement. The accused was cautioned and acknowledged the warning in writing. He then wrote answers to questions posed by the officer. The witness to the accident also testified that he thought that accused was intoxicated and could smell alcohol on him. He saw the accused try to drive his damaged truck after the collision. The issues at the voir dire were as follows: 1) the accused's ss. 8 and 9 Charter rights had been violated because the officer's grounds to make a breath demand were insufficient pursuant to s. 254(3) of the Code, thereby making the subsequent detention arbitrary; and 2) the accused's s. 10(b) Charter rights were breached because the officer had violated his implementation duty because he failed to note the name of the lawyer that the accused had given and to make further inquiries of the accused regarding this lawyer. At trial, the issues were as follows: 3) whether the time of driving had been proven; 4) whether breath samples were taken as soon as practicable to permit the Crown to rely on the presumption of s. 258(1)(c) of the Code; and 5) whether the offences had been proven.

HELD: The Charter application was dismissed and the accused was found guilty of both charges. The court found the following with respect to the Charter issues: 1) the accused's ss. 8 and 9 Charter rights had not been breached because it was satisfied that there was evidence that objectively supported the officer's subjective belief; and 2) the accused's s. 10(b) Charter rights were not breached. The officer had not violated his implementation duty. The accused had not been diligent in exercising his right. He had adduced no evidence to contradict the officer's testimony. The court found that the accused's written statement was given voluntarily and with an operating mind. The accused had refused the opportunity to contact a lawyer and there was no change in his jeopardy at the time the statement was requested and therefore no need to further advise him of his right to counsel. The warned statement and the Certificate of Qualified Technician were both admissible. The court found the following with respect to the trial issues: 3) the time of driving was proven beyond a reasonable doubt and the breath demand

made and breath samples taken within the prescribed time; 4) the breath samples were taken as soon as practicable. The officer's explanation for the reason for the delay in leaving the scene of the accident was adequate and reasonable; and 5) the elements of each offence had been proven beyond a reasonable doubt.

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R. v. Bryden Consturction Transport Co. Inc., 2016 SKPC 171

Cardinal, December 13, 2016 (PC16146)

Regulatory Offence – Highway and Transportation Act, 1997 – Strict Liability – Defence of Due Diligence

An employee of the accused was driving with a trailer and dozer on it. He pulled into the weigh scales as require. He had a permit allowing a weight of 18,000 kg, but the weight of the axle groups was 26,610 kg so the accused was issued a summary offence ticket for committing the offence of exceeding the weight specified in the permit, contrary to s. 38(1)(c) of The Highway and Transportation Act, 1997. The accused had obtained the permit by calling the SGI permit office and telling them that he was hauling a D6T dozer and indicating the number of axles. The accused gave axle weights. Neither the accused nor SGI referred to kilograms or meters when referring to the weights and lengths of the unit. The permit shows the maximum length in meters and weights of the axles in kilograms. The accused did not dispute the weight, but argued the following: 1) the charge was incorrect because the permit was improperly granted by the issuing agency; and 2) even if the charge was correct, the accused was entitled to an acquittal because due diligence was exercised. HELD: The issues were dealt with as follows: 1) the accused argued that the difference in wording found in s. 16(5) of The Vehicle Weight and Dimension Regulations as compared to s. 16(8) should be reconciled in their favour. The accused argued that they did not need to get a permit for 18,000 kg because the axles could have a single weight of 9,100 kg each or a combined weight of 18,200 kg. The court did not find merit in the argument. The axle in question was clearly a tandem axle group as defined in the Regulations, which are not considered single axles for the purposes of allowable weight. Further, there was no confusion between the accused and SGI when the permit was being purchased as to it being a tandem axle. The permit was properly issued and it allowed for a weight of 18,000 kg. The accused committed the actus reus of the offence; and 2) the

offence is a strict liability offence so the accused had to prove on a balance of probabilities that they either believed in a mistaken set of facts, which, if true, would render the act or omission innocent, or that they took all reasonable steps to avoid the overweight tandem axle group. The accused testified that they had never weighed the dozer and that the weight would be affected by the attachments on the dozer. No one took all reasonable steps to avoid the axle from exceeding 18,000 kg as allowed by the permit. The employee that loaded the dozer did not make any attempt to locate a scale to ensure the weight was not over that allowed by the permit. The inaction did not meet the standard of due diligence. A reasonable person in the circumstances would have done more. The accused was guilty of the offence.

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R. v. Dunlop, 2016 SKQB 71

Chow, March 4, 2016 (QB16406)

Criminal Law – Judicial Interim Release Pending Trial

The accused applied for judicial interim release, pursuant to s. 515 of the Criminal Code. The charges against him included criminal negligence causing harm, contrary to s. 221, dangerous driving causing bodily harm, contrary to s. 249(3), failing to remain at the scene of an accident, contrary to s. 252(1.2), and failing to stop for a peace officer, contrary to s. 249.1(1) of the Code. He was apprehended in June 2014 and his trial was scheduled for December 2014, but due to the illness of the Crown prosecutor, the trial was rescheduled to May 2016. The Crown opposed the accused's release on each of the three grounds enumerated in s. 515(10). Regarding the first ground, the Crown argued that the accused's ties to Saskatchewan were limited and that he had been previously convicted of numerous offences similar to the one with which he was presently charged. In addition, at the time of the alleged offences, the accused was unlawfully at large for an alleged parole violation in Alberta. The defence submitted that the accused's ties to the province were strong as his father, grandparents and his child live in Saskatchewan. One of his friends in the province had offered to act as surety and provide the accused with a place to reside and employment. The accused proposed to post bail of $1,000 and be subject to electronic monitoring to alleviate any concerns about his attendance in court. The Crown pointed to the similar offence committed in Alberta by the accused and his long criminal

record as being reasons to deny the application on the second ground.
HELD: The application was denied. The court found that the Crown had met the onus of establishing that the accused's detention was justified. Under s. 515(10)(a) the accused should not be released because his ties in the province were not strong and he was not considered an appropriate candidate for the electronic monitoring. The accused had accumulated 12 convictions for failing to appear or to attend court and another nine for failing to comply with probation orders or recognizances. Respecting the second ground, s. 515(10)(b), the court found that there was a substantial likelihood that the accused would reoffend if released and his continued detention was necessary to protect the public. The court reviewed each of the factors set out in the third ground, s. 515(10)(c), and determined that the Crown's case was strong, the offences were serious and would result in a lengthy jail sentence. The accused's release would undermine the public's confidence in the administration of justice.

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101135512 Saskatchewan Ltd. v. Saskatchewan Government Insurance, 2016 SKQB 377

Dufour, November 21, 2016 (QB16376)

Civil Procedure – Queen's Bench Rules, Rule 3-10(2)

The plaintiff applied for an order pursuant to Queen's Bench rule 3-10(2) to extend the time for service of its statement of claim on the defendant, SGI. The plaintiff's business was involved with the oil industry and its trucks regularly traveled across the border into Alberta. In 2013, a truck driven by one its employees was involved in an accident in Alberta with a truck owned by Alberta residents. The plaintiff was insured by SGI but was informed by SGI in 2014 that it would not cover any damages assessed against the plaintiff from the accident because the plaintiff had not complied with a condition of its certificate of registration. Correspondence between the lawyers for the two parties followed, and in June 2014 the plaintiff's counsel wrote to SGI asking it to reconsider the decision to deny coverage. No response to the request was received and when the statutory limitation period for commencing an action against SGI was about to expire, the plaintiff issued a statement of claim on August 31. The plaintiff decided not to serve the claim unless it became necessary if demands were made by SGI or the Alberta

residents. Neither made a demand within the six months that the plaintiff thought was the period in which any Alberta claim against it had to be served. In August 2015, the plaintiff was served with the Alberta residents' statement of claim regarding the accident. This occurred seven months after the expiration of the Saskatchewan limit of six months under Queen's Bench rule 3-10(1) to serve SGI. The plaintiff argued that the lack of service of its claim was not due to personal inaction but premised on a strategic decision related to the actions of the Alberta plaintiffs and SGI. The plaintiff was unaware that the Alberta plaintiffs had 12 months to serve their claim.
HELD: The application was allowed. The court found that the claim was not served due to an erroneous assumption but not due to the personal inaction of the plaintiff. However, SGI was unable to identify any actual prejudice that it might suffer if the time for service was extended and the court refused to presume prejudice. The court found that the plaintiff had made an innocent mistake and would suffer prejudice if the application was denied.

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Schneider v. Royal Crown Gold Reserve Inc., 2016 SKQB 380

Scherman, November 21, 2016 (QB16377)

Torts – Negligence – Duty of Care
Torts – Negligent Misrepresentation – Damages
Barristers and Solicitors – Negligence – Duty to Non-Client

The plaintiffs in this class action were victims of fraud perpetrated by promoters of Royal Crown Gold Reserve (RCGR), the defendants Scott and Taillefer. RCGR no longer existed, Scott disappeared and Taillefer had died without assets. The issue was whether the defendant law firm McMillan and one of its tax lawyers, Friedman, were liable to the plaintiffs in negligence or negligent misrepresentation arising from a tax opinion that was given to RCGR by Friedman. The fraudulent scheme created by Scott consisted of incorporating RCGR and creating Offering Memorandums, in which RCGR purported to be offering for sale interests in placer mining cells, subdivisions of registered mining claims, owned by RCGR. It was never the registered owner of the claims. Representing that the cells it owned were going to be developed as placer gold producing properties, RCGR's marketing pitch was that there was a tax vehicle that would allow investors to write-off their investment against taxable income. In 2005, Scott contacted McMillan regarding an income

tax law matter and was referred to Friedman. Scott then advised Friedman that RCGR owned mining claims containing metal deposits. RCGR wanted to explore alternatives that would permit it to raise monies to fund the exploration and development of these deposits for the benefit of RCGR. One option that Scott pursued with Friedman was raising the monies by the sale of a portion of the claims to one or more purchasers. These investors would acquire the claim and further money would not be requested. Scott retained McMillan to provide a preliminary opinion relation to the potential for deductibility of amounts expended by investors to acquire ownership of a portion of the claims from RCGR. In his opinion, Friedman described the general right of a taxpayer to claim deductions of Canadian Development Expenses (CDE). The amount of the CDE of a particular taxpayer depended on a number of independent factors. He warned that investors should consult their own tax advisors regarding claiming a deduction for CDEs that might arise upon their acquisition of the mining claim. He also stated that the opinion was based upon facts supplied by Scott in his officer's certificate and that they had not been independently verified and if they were inaccurate, the tax characterization of expenditures might differ substantially from that offered in the opinion. Scott implemented the scam through marketing entities who sold the investments to their existing clientele. Most of the clientele were unsophisticated investors. CRA disallowed their claims for CDEs. The plaintiffs alleged that all class members were advised of the existence of the opinion orally and in writing and many received copies of it. Their claim in negligence rested on the basis that the opinion was not wrong but that Friedman knew or ought to have known that it would lend credibility to Scott's sales and marketing of the scheme. The defence argued that there was no duty of care owed because the inquiry and opinion was the first step in an iterative process used in tax law consultations and that it was directed to and for the benefit of RCGR only. It clearly stated it was limited to the categorization question.

HELD: The action was dismissed. The court found that the plaintiffs had not proven that they had received or read the opinion letter when they made their investments. With respect to the plaintiff's claim in negligence, the parties agreed that the circumstances of the case did not fall into a category where a duty of care had been held to exist. The court decided that there was no duty of care. There was no sufficient proximity between the plaintiffs and the defendants that a prima facie duty should arise. The court could find no basis to conclude that the defendants should reasonably have foreseen that Scott or RCGR would structure its transactions and planned to market them in a public offering or might use the opinion letter to promote the

transactions with the specific characteristics they did. The opinions were qualified to be applicable only the characterization provided by Scott and prepared for the sole benefit of RCGR. If a duty of care was found, it should not be imposed upon the defendants because of public policy reasons such as that the law provided the plaintiff class with a remedy. Further, if it found a duty of care for lawyers who give limited scope opinions solely for the benefit of a client with respect to a hypothetical issue, it would have a chilling effect. In the event that the matter was appealed, the court found that it accepted the evidence of two tax lawyers who testified as experts that Friedman had met the standard of care expected of them in either negligence simpliciter or in negligent misrepresentation. With respect to the allegation of negligent misrepresentation, the court reviewed the factors set out in Queen v. Cognos and found that no special relationship existed between the investors and McMillan. Friedman's opinion was correct. The court gave little weight to the evidence provided by RCGR's selling agents as to what they understood from the opinion and their reliance upon it. The investors relied upon advice from the selling agents to the general effect that there was a lawyer's opinion letter that supported the deductibility as a CDE of their investment on the mining claims sold to them by the RGRC, but that was not what the opinion letter said. Thus the investors relied upon what they were told and not on the opinions. In the event it was wrong with respect to its findings as to negligence simpliciter or negligent misrepresentation, the court then dealt with the issue of causation and found that the plaintiffs, with the exception of 3 percent of the investor class, had not relied upon the opinion in making their investment. Their losses were not caused by either negligence or negligent misrepresentation of the defendants. The plaintiffs were entitled to judgment against each of Scott, Taillefer and RCGR in deceit because the false statements made by them induced the plaintiff class members to invest and as a result suffered damages. The court set the amount of damages against the defendants at $11,879,600. If the judgment was collected, it would be shared by the class members on a basis proportionate to their respective investments.

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Giesbrecht v. Schreiner, 2016 SKQB 381

Smith, November 22, 2016 (QB16378)

Family Law – Spousal Relationship – Determination

The petitioner claimed that she and the respondent were spouses within the meaning of s. 2 of The Family Maintenance Act, 1997. The respondent alleged that they had been friends. The petitioner provided evidence that she began living with the respondent in his residence in 2008 but the respondent stated that he had only rented her a room in his home.
HELD: The court found that the petitioner had proven that she and the respondent had been in a spousal relationship between 2008 and 2012 based upon its review of her evidence of the relationship and assessed under the criteria established in Molodowich v. Penittinen.

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Bast v. Zealand, 2016 SKQB 382

Smith, November 22, 2016 (QB16379)

Corporations – Investigation

The individual applicants represented the board of directors of Prime West Mortgage Investment Corporation. The respondent Zealand was the former CEO of Prime West who was fired by the board. The respondent Harris was an investment dealer and a shareholder of Prime West. The defendant Lambert was a consultant who had been hired by Zealand. The remainder of the respondents were shareholders who were unhappy with the current board. The applicants sought an order under s. 222 and s. 223 of The Business Corporations Act for the appointment of an inspector to investigate the conduct of Zealand, Harris and Lambert because they had concocted a plan to unseat the applicants as the board. When the plan was revealed, two of the applicants confronted Zealand and terminated him. The plan was not effected at the next shareholders meeting and the applicants maintained their position as the board.
HELD: The application was dismissed. The court found that the applicants were in complete control of Prime West's ongoing business and could conduct their own investigation. This was not an appropriate case for the court to appoint an investigator.

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Raghuraman v. McNab, 2016 SKQB 385

Gabrielson, November 24, 2016 (QB16380)

Civil Procedure – Summary Judgment
Civil Procedure – Pleadings – Statement of Claim – Striking Out
Civil Procedure – Queen's Bench Rules, Rule 7-9

The defendants applied for an order pursuant to Queen's Bench rule 7-9, striking the plaintiff's claim against them, or in the alternative, to Queen's Bench rule 7-5, granting summary judgment in their favour and dismissing the action, and for costs of the application. The defendant police officers were dispatched to a scene of domestic violence involving the plaintiff. The complainant alleged that the plaintiff had slapped her. The defendants arrested the plaintiff and charged him with assault. At his trial, the plaintiff was found not guilty. He later commenced an action against the Crown prosecutors as well as these defendants in which he sought financial compensation from them for malicious prosecution and misconduct. The claim against the prosecutors was struck on the basis that it was frivolous, scandalous and vexatious, or alternatively, that there was no genuine issue for trial, which resulted in the case being dismissed (see: 2016 SKQB 240).
HELD: The application was granted. The court held as follows: 1) the claim was struck on the basis that it was scandalous, frivolous, vexatious and an abuse of process pursuant to Queen's Bench rule 7-9. As police officers, the defendants were protected by s. 10(3) of The Police Act, 1990. The defendants had reasonable and probable grounds to lay the charge and the fact that the plaintiff was acquitted did not establish that they were negligent in their investigation; and 2) the action was dismissed because there was no genuine issue to be tried under Queen's Bench rule 7-2 to rule 7-7. The claim of malicious prosecution and misconduct was not supported by particulars. On the basis of the s. 10(3) of the Act, the claim failed; and 3) costs in the amount of $2,000 should be awarded to the defendants because the plaintiff made unfounded allegations of misconduct against them.

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T. (K.M.) v. K. (E.A.), 2016 SKQB 386

Popescul, November 25, 2016 (QB16372)

Family Law – Child Support
Statutes – Interpretation – Family Maintenance Act, 1997, Section 3, Section 4, Section 9, Section 10, Section 11

The petitioner, a resident of Alberta, applied pursuant to The Inter-jurisdictional Support Orders Act (ISOA) requesting that

the court terminate his obligation to pay support for his 20-year-old daughter and for repayment of support paid retroactive to the date at which the respondent commenced a permanent relationship. The respondent filed a support variation application under The Family Maintenance Act, 1997, seeking a variation of support from $200 per month to the table amount of the Guidelines. The parties had never married nor lived together after the birth of their daughter in 1996. After the respondent obtained an interim order in 1996 pursuant to The Children's Law Act, 1997 and The Family Maintenance Act, 1997, the petitioner was ordered to pay $400 per month. In May 1998 the parties settled the action and entered into a child support agreement that provided the petitioner's support obligation would be $200 per month for as long as the child remained a child within the meaning of The Family Maintenance Act, 1997 but that the obligation ceased if the respondent married or established a common-law relationship and her partner was determined to stand in loco parentis to the child. The respondent was to notify the petitioner if she established such a permanent relationship. The agreement was filed with the court pursuant to s. 11 of The Family Maintenance Act. The child turned 18 in 2014 and commenced university. The respondent commenced a common-law relationship in 2009 but failed to inform the petitioner. The respondent's partner did not contribute to the support of the child and had not adopted her. The issues were as follows: 1) whether the court could grant a retroactive order rescinding the petitioner's obligation to pay child support either to when the respondent commenced the common-law relationship and/or to when the child turned 18 years old; and 2) whether the petitioner's child support payment should be increased to the Guidelines amount based upon his current income.

HELD: The petitioner's application was dismissed and the respondent's application to vary the amount of maintenance was granted. The court dealt with the applications under s. 12 of The Family Maintenance Act as an interim application to alter the existing interim order taking into account all relevant circumstances which would include the 1998 child support agreement. Regarding each issue, the court found the following: 1) it could not be deprived of jurisdiction by any agreement or contract regarding child support and it was free to intervene and determine the amount of support that ought to be paid. Here, the agreement could not extinguish the petitioner's legal obligation to pay child support, regardless of whether he could establish that the respondent's common law spouse stood in loco parentis. In this case, the evidence showed that the new spouse did not stand in loco parentis so the respondent's failure to notify the petitioner had no bearing on his obligation to pay child support.

The court also had jurisdiction to find that the petitioner's obligation to pay support beyond the child's 18th birthday was provided for in s. 3(7) and s. 4 of The Family Maintenance Act and to grant the application to make the order retroactive. As a full-time university student the child was unable to withdraw herself from the respondent's financial support; and 2) it could not make a decision to increase the amount of child support payable in the future based on the information before it in this application under ISOA. The court adjourned the application until additional material was filed.

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A. (P.) v. Saskatchewan (Ministry of Social Services), 2016 SKQB 390

Pritchard, November 25, 2016 February 1, 2016 (corrigendum) (QB16375)

Family Law – Adoption – Intercountry – Disclosure of Criminal Record
Administrative Law – Judicial Review – Procedural Fairness

The applicants applied for judicial review of the decision of the Ministry of Social Services to deny approval for intercountry adoption of two children. The children, relatives of P.A., resided outside of Canada, which required the application to be made pursuant to s. 27 of The Adoption Act, 1998. The applicants were required by the Act to engage an independent practitioner approved by the Director of Social Delivery to prepare a written report regarding their eligibility and suitability to adopt. The practitioner, a registered social worker, met with the applicants at least six times, and P.A. had mentioned that he had had three sexual assault charges made against him. The home study phase was completed and it was positive, but the applicants knew that it could not be finalized without their criminal reports. Once they were received the applicants and the practitioner were to meet again to discuss any matters arising from the new information. The practitioner received P.A.'s criminal report showing many other charges against T.A. in addition to the sexual assaults he had mentioned earlier. P.A. then wrote a letter to the practitioner advising her that he did not realize that those charges would be included since he had either been found not guilty or a stay had been entered. He requested that the information not be included in the home study report since he had not been convicted of any crime. The practitioner decided not to meet again with the applicants and informed them by

letter that she would not recommend that they be approved for the adoption because of the charges, P.A's lack of forthrightness about them and his request that they not be included in her report. P.A. once again wrote to the practitioner arguing that she should have met with him after receiving the report to allow him to explain. The director denied the adoption application and the applicants requested that the Minister review that decision. The decision was confirmed after review. The applicants argued the following: 1) the practitioner failed to provide procedural fairness when she did not give P.A. an opportunity to explain his criminal record as required by the Adoption Manual; and 2) that the practitioner gave too much weight to P.A.'s criminal record. These errors were repeated when the director denied the application because of the criminal record and in the ministerial review.
HELD: The application was dismissed. The court found that the Adoption Manual only required the practitioner to review the criminal record and to seek additional information regarding the history. In this case, P.A. had two opportunities to explain his position in his two letters to the practitioner before the director made her decision; and 2) the decisions of the director and the deputy minister to deny the intercountry adoption were within the Ministry's exercise of its discretion in determining the suitability of the applicants for an intercountry adoption. In assessing any risk to children who may be adopted undoubtedly included a consideration of an applicant's criminal history, particularly when it involved the number and type of offences with which P.A. had been charged.
CORRIGENDUM dated February 1, 2017: [32] This is to correct a typographical error in the spelling of the judge's name from J.L.G. Pritichard to J.L.G. Pritchard.

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Milo (Partridge) v. Partridge, 2016 SKQB 393

Megaw, December 2, 2016 (QB16381)

Family Law – Notice to Disclose
Civil Procedure – Contempt

The parties separated in 2010 and the petitioner commenced an action that year. The matter had not progressed primarily because the respondent had repeatedly failed to respond adequately to requests made by the petitioner for information. A pre-trial conference was scheduled for November 2014. The respondent failed to attend and then moved to Alberta with the

one child of the marriage without notifying the petitioner. When the pre-trial convened in December 2015, the respondent elected not to attend and an order for costs of $1,500 was made against him. A trial was scheduled to commence in March 2016 and the petitioner forwarded a notice to disclose and a notice to reply to written questions. The respondent provided an incomplete response to the demands for information and then sought an adjournment of the trial. The trial judge ordered that the respondent provide a physician's letter confirming the health problems the respondent claimed to suffer. When the physician's information was provided, it did not meet the terms of the order. The petitioner applied: 1) to compel a reply to the notice to disclose; 2) for a finding of contempt based on the respondent's failure to pay the costs order; 3) for a finding of contempt based on the failure to provide the medical report in accordance with the trial judge's order; and 4) costs.
HELD: The application was granted in part. The court found the following with respect to the relief requested: 1) it would order the respondent to respond to the notice to disclose within 14 days of service of the order upon him; 2) it would dismiss this portion of the application. It could not make a finding of contempt because the award was a money judgment and contempt was not available under Queen's Bench rule 11-26(3)(a)(i); 3) it would make a finding that the respondent was in contempt of the trial judge's order and it imposed a penalty of incarceration of 15 days. The respondent had 14 days in which to purge the contempt by providing the necessary medical report. The court would authorize a warrant for his arrest if he failed to comply; and 4) it would award costs of $1,500 to the petitioner.

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Amalgamated Transit Union, Local 615 v. Saskatoon (City), 2016 SKQB 396

Smith, December 8, 2016 (QB16397)

Administrative Law – Appeal – Appeal from Order or Reasons
Administrative Law – Appeal – Judicial Review – Certiorari
Administrative Law – Appeal – Labour Relations Board

The applicant union filed an unfair labour practice application (LRB 210-14) in response to a lockout commenced by the employer when collective agreement negotiations broke down. The basis of their application was that at the time of the lockout notice there was a pending application by the parties before the Labour Relations Board that had not been finally disposed of.

The matter was finally disposed of on October 3, 2014, during the period of lockout. In LRB 210-14, the board determined that the respondent's lockout was unlawful and it ordered the respondent to pay compensation to the union members for the monetary loss as a result of the lockout while an application was pending before the board. The applicant understood that to mean losses were to be paid up to the date that the application was finally disposed of. The applicant brought a second unfair labour practice (LRB 269-14) seeking damages for the period after October 3, 2014, until the return to work some two weeks later. The board dismissed the application and the applicant appealed for a review of the order in the nature of certiorari, quashing the decision of the board and directing that it be remitted back to the board before a differently constituted panel. The applicant argued the following: 1) the board violated principles of natural justice, in particular audi alteram partem; 2) the board made an unreasonable error by mischaracterizing the applicant's arguments as a collateral attack on a previous board decision; and 3) the board made an unreasonable error of fact and law with respect to the presence of a lockout during the relevant time. The city argued that the board had already discussed the period after the final disposition, when it was discussed LRB 210-14 and there was the order to pay damages only up to the final disposition date. The board also agreed that it had dealt with the period in question in the LRB 210-14 decision and it characterized the applicant's application as an application for reconsideration.

HELD: The applicant relied heavily on a clause in the order from LRB 210-14 that referenced the damages only being payable for the period that an application was pending before the board as allowing it to then apply for the period after the application was finally disposed of because it was not dealt with in the order. The applicant argued that it had to appeal from an order not the decisions and the applicant took no issue with the order that resulted from LRB 210-14 so could not appeal from that order. The court reviewed case law and determined that the appeal must be from an order not the reasons and therefore, the applicant did not have an opportunity to fully make its case respecting compensation for the period after the matter was finally disposed of. The board misapprehended that in LRB 269-14, and therefore, in sense the board breached audi alteram partem. The court made an order in the nature of certiorari quashing the decision of the board and remitted the matter back to the board for the issue of what compensation, if any, should be payable for the period after October 3, 2014, to the end of the lockout. The court did not find it necessary to order that the board be comprised of a different panel.

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Scheelhaase v. Moostoos, 2016 SKQB 398

Megaw, December 12, 2016 (QB16387)

Family Law – Child Support – Arrears

The respondent applied to vary a child support judgment issued in 1999 and to have the accumulated arrears extinguished. The respondent had been ordered to pay $100 bimonthly based on an income of $29,500. The respondent had been in arrears of payment since the original order. The petitioner was served but did not appear. There was no indication that the support obligation was ongoing. The Maintenance Enforcement Office stated that the arrears were in the amount of $7,390 and that it had been attempting to enforce collection of the arrears for over a decade. In support of his application to vary, the respondent explained that he had failed to pay because he was obligated to support three other children, now 19, 18 and 17, from two different mothers and because he had been unemployed from 1999 to 2006. At present, he earned $55,000 exempt from tax because of his First Nation status. His financial statement showed him having expenses of approximately $50,000.
HELD: The application was dismissed. The court found that the respondent's other support obligations had either ended or were coming to an end. He had the financial capacity to pay and there was no information that paying the arrears would cause him hardship. Unemployment itself was not an answer to the respondent's claim of an inability to pay the order, as he had not explained why he had been unemployed at the time of the order when the amount was set according to his income. He did not explain whether he had made any efforts to find work.

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Robert L. Conconi Foundation v. Bostock, 2016 SKQB 399

Schwann, December 12, 2016 (QB16388)

Statutes – Interpretation – Saskatchewan Farm Security Act, Section 11, Section 44
Civil Procedure – Pleadings – Statement of Defence – Striking Out – Abuse of Process
Mortgages – Foreclosure – Farm Land – Saskatchewan Farm Security Act

The applicant mortgagee applied to strike the defendant mortgagor's statement of defence. The defendant lived on the mortgaged property, a quarter section. When he defaulted on the mortgage, the applicant commenced foreclosure proceedings under The Land Contracts (Actions) Act (LCAA). The mortgagor defended the claim on the footing the property was "farm land" within the meaning of The Saskatchewan Farm Security Act (SFSA) because he was engaged in farming. A consent order was granted to hold a hearing as to whether the foreclosure proceedings were governed by the SFSA instead of the LCAA and, if so, whether Part III of the SFSA applied. At the hearing, counsel for the defendant agreed that his client would be bound by a ruling on Part III in order to avoid re-litigating the issue if foreclosure proceedings had to be commenced under the SFSA. The hearing judge determined that the mortgaged land was used for farming for the purposes of s. 2 of the SFSA. Therefore, Part II of the SFSA applied to the mortgage, and the foreclosure proceedings were a nullity. He also found that the quarter section was not entitled to the homestead protection of Part III. He found that the mortgage had been sought and given on the understanding of both parties for the purpose of facilitating subdivision and the sale of lots. The applicant then commenced foreclosure proceedings under the SFSA. An order was granted pursuant to s. 11(1) of the SFSA that s. 9(1)(d) did not apply to the mortgaged property. The mortgagor's statement of defence to the new statement of claim was that the mortgaged property was a homestead within the meaning of the SFSA and he relied upon s. 2 and s. 44 of the SFSA. He argued that since the proceedings under the LCAA were a nullity by operation of s. 11(3) of the SFSA and court order, the mortgagee was precluded from relying upon the hearing judge's determination regarding Part III of the SFSA.

HELD: The defendant's claim was struck. The court found with respect to the defendant's argument that a judicial ruling on whether foreclosure proceedings commenced under LCAA were a nullity because they were not commenced under the SFSA was not "proceedings" pursuant to it and, therefore, were not an order made with respect to an action for purposes of s. 11(3) of the SFSA. The ruling regarding the applicability of Part III of the SFSA was ancillary to the first ruling and not part of the previous foreclosure proceedings. The court found that the statement of defence could be struck because it was an abuse of process. The defendant through his counsel had agreed to be bound by the ruling on Part III of the SFSA. He had not adduced evidence at the hearing regarding the application of Part III protections to the land. The hearing judge had found that the purpose of the mortgage was to facilitate development and, therefore, s. 44(12.3)(b) expressly precluded Part III protection.

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Boyer v. Kuntz, 2016 SKQB 400

Megaw, December 13, 2016 (QB16389)

Tort – Theft by Conversion

The plaintiffs brought an action against the defendant of converting property belonging to them. The defendant worked for the plaintiffs as the manager of a game farm. They alleged that the property consisted of such things as fence posts, a Honda ATV, an irrigation pivot and appliances, as well as certain sums of money. The defendant denied the allegations. He said that one or other of the plaintiffs had authorized him to dispose of the property or, in the case of the ATV, gave him ownership because of wages owed to his step-son.
HELD: The plaintiffs were awarded judgment in the amount of $15,000 representing the value of certain items that the court believed had been wrongfully converted by the defendant. The other claims made by the plaintiff for property were dismissed either because they failed to adduce evidence or because the court believed the defendant.

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Adams (Litigation Guardian of) v. Adams Estate, 2016 SKQB 401

Megaw, December 14, 2016 (QB16390)

Wills and Estates – Dependants' Relief – Maintenance

The petitioner applied pursuant to The Dependants' Relief Act, 1996 against the executor of the estate of the deceased. The petitioner brought the application on behalf of her 10-year-old son. The deceased and the petitioner had separated in 2013. They agreed that the deceased would pay child support for the child in the amount of $400 per month. When he learned that he had lung cancer and could not work, he and the petitioner discussed the possibility that he might not pay any further support, but no further steps were taken. At the time of his death, the deceased was in a common law relationship with respondent executor. The deceased made a will just before his death that provided his son would receive the sum of $20,000 at the age of 21. The balance of the deceased's estate was to be paid to the respondent. The Canada Pension Plan paid $237 per month to the child as a

death benefit. The petitioner sought an increased share of the estate to provide for the child and suggested the amount of $64,000 in addition to the $20,000 left in the will.
HELD: The application was granted and the petitioner was awarded relief pursuant to the Act in the amount of $44,000 to be paid by the respondent to the credit of the child. The court found that the deceased's legal obligation to support his child was not diminished by his health problems. The CPP payments would be considered in determining his legal obligation. The court used the calculation of the difference between the amount of child support pursuant to the Guidelines and the CPP payments of $44,000 to be a reasonable estimate of the support obligation. The court found that the deceased's moral obligation had been satisfied by the bequest of $20,000.

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Banadyga v. Wal-Mart Canada Corp., 2016 SKQB 405

Schwann, December 16, 2016 (QB16394)

Class Action – Legal Fess – Pre-certification
Class Action – Settlement Agreement
Statutes – Interpretation – Class Action Act, Section 14, Section 40, Section 41

The plaintiff commenced a class action against the defendants alleging that she suffered harm, inconvenience, economic loss, mental distress, and other unspecified losses arising from a privacy breach committed by the defendants. She applied for certification on behalf of all persons in Canada who made online purchases with the defendant between June 2014 and July 2015. Another person commenced a similar action in Ontario. The plaintiff in Saskatchewan and the plaintiff in Ontario were successful in their settlement discussions with the defendant and a settlement agreement was reached. The settlement required the Saskatchewan proceeding to be discontinued after the plaintiff's legal fees were approved and the Ontario matter was given final approval. The first step in the settlement agreement was approval of the plaintiff's legal fees. The plaintiff identified three legislative provisions as legal authority for the order approving its legal fees: 1) s. 14 of The Class Actions Act; 2) s. 40 of the Act; and 3) s. 41 of the Act.
HELD: The court analyzed each provision in turn: 1) s. 14 was found not to be helpful to the plaintiff because it refers to a "class action" as defined in the legislation and that is defined to mean an action that has been certified as a class action; 2) s. 40 deals

with costs not fees, and therefore, it did not apply; and 3) s. 41 deals with a fee or retainer agreement between a lawyer and a representative plaintiff. The settlement agreement was an agreement among counsel, not a retainer agreement with the plaintiff. Section 41 did not apply. The court then discussed whether it should exercise its inherent jurisdiction to make the order. The court had numerous concerns with the proposed order: counsel fees are connected to the broader determination of whether the settlement agreement is fair, reasonable, and in the best interests of those affected. The Ontario court should have the full factual backdrop and a blank canvas to determine the issue of settlement approval and fee approval, which cannot be done if the Saskatchewan fees have already been determined by court order. The application was essentially unopposed so the court must be cautious in approving a settlement that is partially for the benefit of legal counsel. The court declined to exercise its inherent jurisdiction to grant the order for legal fees.

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R. v. Meyers, 2016 SKQB 413

McMurtry, September 15, 2016 (QB16404)

Criminal Law – Evidence – Admissibility – Out of Court Statements – Hearsay
Evidence – Admissibility – Hearsay Rule – Exception

The accused was charged with sexual assault, contrary to s. 271 of the Criminal Code, strangling the victim with his hand to enable him to commit the sexual assault, contrary to s. 246 of the Code, and uttering threats to the victim to cause bodily harm to her and her children, contrary to s. 264.1(a) of the Code. After the alleged offences occurred, the complainant went directly to the hospital. There she spoke to a sexual assault nurse during a sexual assault examination and also gave a brief oral statement to a police officer. Shortly after she gave an audio and videotaped statement to the police. Three weeks after making the statements, the complainant recanted her complaints against the accused. The Crown applied to admit the statements for the truth of their contents, showing that the statements should be believed and the complainant's trial testimony rejected. At the voir dire, the court admitted the three statements as necessary and reliable according to the principles set out in R. v. K.G.B. and the evidence was admitted at trial.
HELD: The accused was found guilty of sexual assault and uttering threats. The court did not find the complainant's

testimony to be believable. The court accepted that the complainant had been truthful in her videotaped statement. The accused was found not guilty of the choking charge. Although the court accepted that the accused attempted to choke the complainant, it found that he did so because he was angry but had a reasonable doubt that he was trying to overcome her resistance to the sexual assault.

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