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The appellant was convicted of three Criminal Code offences: 1) possessing child pornography, contrary to s. 163.1(4); 2) accessing child pornography, contrary to s. 163.1(4.2); and 3) making child pornography, contrary to s. 163.1(2). The appellant was designated a long-term offender (LTO) and was sentenced to three concurrent six-year terms of imprisonment and a ten-year long-term supervision order (LTSO) was imposed. Multiple images and videos of child pornography were discovered on the appellant's computers and other electronic devices. The trial judge concluded that there was overwhelming evidence regarding the accessing and possessing child pornography charges. The making child pornography charge turned on the trial judge's interpretation of what constituted child pornography. The forensic psychiatrist that examined the appellant noted that he admitted to always having been sexually attracted to young girls and his participation in sexual-offender programming had not curbed the attraction. The appellant had previous

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convictions for accessing and possessing child pornography. The appellant's grounds of appeal regarding his convictions were: 1) an erroneous failure to find a breach under s. 8 of the Charter; 2) improper admission of bad character evidence; 3) erroneous interpretation of "child pornography"; and 4) erroneous failure to find unreasonable delay. The appellant's grounds of appeal regarding his sentence were: 1) the LTO designation; and 2) the sentence fitness.

HELD: The majority of The Court of Appeal dismissed the conviction appeal and varied the sentence. The grounds of appeal regarding the convictions were dealt with as follows: 1) the appellant wanted to cross-examine the officer who was the affiant in the information to obtain (ITO), but did not identify any flaws with the warrant, nor did he suggest that the warrant was not complied with. The trial judge rejected the request and the appellant argued that was an error. The appellant argued that the ITO had superfluous information that could have prejudiced the trial judge. The appellant also indicated that the ITO affiant had coloured the ITO in a negative way because she had been involved in his prior convictions, but he did not identify anything factually inaccurate in the ITO. The trial judge did not err in his refusal to allow leave to cross-examine; 2) the appellant argued that evidence admitted by the trial judge was not able to be admitted because he did not first open the door to let it in. At trial, the appellant did not ask for an adjournment and it was indicated that he was aware of the possible admission into evidence the week prior. The appeal court did not find anything to indicate that the trial judge relied on the evidence when reaching his verdicts of guilty on the charges under s. 163.1 of the Criminal Code; 3) each of the three items said to be making child pornography depicted the appellant naked, so the trial judge had no hesitation finding that the appellant made them. The appellant conceded that the videos and images did contain other video or images that were child pornography. The trial judge may have reframed the analysis in an overly-simplistic way, but the trial judge's finding of fact on the actus reus was not in error. The definition of child pornography was met, either under s. 163.1(1)(a)(i) or s. 163.1 (1)(b) of the Criminal Code; 4) the overall time between the appellant's charges and sentence was 41 months, which was longer than the presumptive 30-month ceiling set out in Jordan. The trial judge concluded that the appellant had been responsible for just over one year of the delay, which left 29 months of delay. Pursuant to Jordan, delay can still be unreasonable if it is under 30 months and the onus to prove so is on the accused. The appellant did not adduce any evidence to satisfy the onus. The trial judge did err in his understanding of the application of s. 11(b) to sentencing hearings, but his finding that the time between charges and sentencing did not exceed the 30-month ceiling was correct. The appeal court dealt with the sentence appeal as follows: 1) there was no error in the trial judge's determination that the predicate offences merited a sentence of at least two years' imprisonment. Nor did he err in finding that there was a substantial risk that the appellant

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would reoffend. The appellant did not argue that the trial judge erred in respect of the third requirement, that there was a reasonable possibility of eventual control of the offender's risk in the community. The trial judge's conclusions were not found to be unreasonable or unsupported by the evidence; and 2) the appeal court agreed that two of the three six-year concurrent terms of imprisonment were illegal sentences. The maximum penalties of five years' imprisonment for the offences of accessing and possessing child pornography were not increased to ten years' imprisonment until 2015, which was after the offences were committed. The maximum penalty for making child pornography was ten years at the time of the offence. The appellant nonetheless argued that the six-year sentence was demonstrably unfit, reflected an improper emphasis on one or more of the objectives of sentencing, failed to properly address the objective of rehabilitation and was not proportionate to the gravity of the offence and his degree of responsibility. The court did not find error in the trial judge's emphasis on denunciation and deterrence over the appellant's rehabilitation when previous attempts at rehabilitation had been unsuccessful. The six-year sentence for making child pornography was double the previous high sentence, which engaged greater appellant scrutiny. Many previous sentences for making child pornography involved consecutive sentences and the totality principle. The images in the videos made by the appellant in this case involved the appellant superimposing his images onto child pornography. The appeal court was not persuaded that the appellant's conduct was markedly less grave than making child pornography when the child was directly involved rather than superimposing images. The six-year sentence was not found to be demonstrably unfit. The dissenting appeal court judge agreed with the majority in all aspects except the six-year sentence for making child pornography. The dissenting judge found that the sentence was demonstrably unfit. This was the appellant's first conviction for making child pornography. The trial judge did not refer to the only case brought to his attention that dealt with making child pornography, nor did he refer to cases from other jurisdictions. The dissenting judge found that comparative cases dealt with conduct of greater severity than the appellant's. The sentence was an unreasonable departure from the principle of proportionality and must be set aside. The appropriate sentence for the making of child pornography conviction, according to the dissenting judge, would have been two years concurrent to the other two offences.

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R v Norred Construction Ltd., 2019 SKPC 15

Crooks, February 11, 2019 (PC19012)

Offence – Occupational Health and Safety Act – Strict Liability – Defence of Due Diligence
Regulatory Offence – Occupational Health and Safety Act – Strict Liability – Defence of Due Diligence

The defendant company was charged with: 1) an offence contrary to s. 124(1)(a) of The Occupational Health and Safety Regulations (OHSR) and ss. 3-78(g) and 3-79 of The Saskatchewan Employment Act (SEA) for causing serious injury to a person by not covering a hole in a floor, roof, or work surface; 2) an offence contrary to s. 124(1)(b) of the OHSR and ss. 3-78(g) and 3-79 of the SEA for causing injury to a person by failing to ensure that an opening or hole in a floor had a guardrail and toeboard. The injured person fell into the basement at a residential construction site, resulting in him being bedridden for three months. It was unknown how he fell. The issues were: 1) did the Crown prove the actus reus of section 124(1)(a) and 124(1)(b) of the OHSR; and 2) if so, did the defendant establish a defence of due diligence: a) in relation to installing a cover for the hole; and b) in relation to installing a guardrail and toeboard?
HELD: The issues were determined as follows: 1) the defendant had an obligation to ensure that any opening in a floor or work surface that a worker could step or fall into is either covered appropriately or provided with a guardrail and a toeboard. The steps were not taken as confirmed by the injured person, the defendant, and an Occupation Health and Safety Officer. The court had to determine whether the injured person was a worker or a self-employed person. The charges contrary to the SEA require that the injured person be a worker. A worker is in the service of an employer. The injured person filed tax documents suggesting that he was a self-employed person and he and the defendant had an agreement stipulating that he was an independent contractor. The injured person was not limited to working for the defendant. The court, however, found that there were more factors pointing to the injured person being a worker: the defendant hired the injured person to assist in the completion of the contract to frame the house; he was working for an hourly wage; the injured person supplied only basic tools; only the defendant stood to lose or make money on the project; and the defendant had complete control of the work. The injured person was a worker who suffered serious injury as a result of the event; and 2) the defendant indicated that he did not cover the hole or put up a guardrail because he was expecting to receive and install the staircase that day. The defendant argued that there were other parties who also had responsibility for safety on the site. Previous cases have concluded that obligations under occupational health and safety legislation are joint and several. The court did not determine whether an injury needs to be foreseeable because it was found that this injury was foreseeable. The charge in count one requires that an opening be covered with something capable of supporting a load of 360 kilograms per square meter. The Occupational Health and Safety Officer did not know how this

could be done so the court found the defendant not guilty of count one. The injured person had been working on the second floor for approximately five hours when the fall occurred, yet no guardrail had been installed. The guardrails were being prepared. The defendant was not complying with the guardrail requirement in a timely way. The defendant failed to satisfy the court on a balance or probabilities that it was not practicable or reasonably practicable to do more than was actually done. The defendant was found guilty of count two.

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Eiserman v Maple Creek (Rural Municipality No. 111), 2019 SKPC 17

Meekma, March 6, 2019 (PC19014)

Municipal Law – Council Members
Small Claims – Debt
Statutes – Interpretation – Municipalities Act, Section 82(1)
Statutes – Interpretation – Small Claims Act, Section 3(1)

The plaintiff was the former reeve of the defendant municipality. The plaintiff claimed for payment of an indemnity and supervision claim from 2016 when he was the reeve. In 2010, after a flood to the municipality, a $1,000 monthly payment was instituted to be paid to the reeve (the plaintiff at that time) for additional work. The monthly payment was passed each year by resolution. The resolution also provided for additional payments: an hourly rate for councilors to attend meetings; a $25 fee for them to attend at the office; a mileage rate; and daily meal allowances. A resolution was passed in January of 2014, 2015, and 2016. In September 2015, the plaintiff and the then administrator signed a cheque payable to the administrator for $10,000. RCMP investigated and there was a forensic audit. Resolutions passed at the January 31, 2016 meeting included: relieving the plaintiff of his supervision duties; removing the plaintiff's signing authority; providing that the deputy reeve perform the supervisory duties and signing authority; and providing for the $1,000 per month remuneration. The plaintiff indicated that the $1,000 was to cover everything done by the reeve that did not require paperwork. He said that his role in 2016 did not change. The plaintiff's total claim was $13,887.50, with $10,000 being the $1,000 per month as "Office Reeve". The defendant's witness, another councilor, testified that the $1,000 was for office supervision and supervision of public works. According to the witness, the deputy reeve was doing that work for the period claimed by the plaintiff. The $1,000 payment was paid monthly but discontinued by resolution on May 11, 2016. The issues were: 1) did the court have jurisdiction to order payment by the defendant for remuneration payable pursuant to a resolution; and 2) was the plaintiff entitled to

any or all of the payments for 2016?
HELD: The issues were determined as follows: 1) the defendant argued that a resolution of council does not create a debt that the plaintiff can sue for, it argued that the only remedy would be for a judicial review in the Court of Queen's Bench and for an order mandamus requiring the defendant to pay the funds in compliance with the statute. Further, the defendant argued that the plaintiff could not claim conversion because it was not pled. The court concluded that s. 82(1) of The Municipalities Act did create a right to claim the remuneration as a debt that would fall within s. 3 of The Small Claims Act. Further, s. 82(1) does not refer to "court": therefore, the Provincial Court was not precluded from jurisdiction; and 2) pursuant to s. 93(1) of The Municipalities Act, council could impose duties of staff supervisor on the reeve, and then could also remove those duties. In January 2016, council relieved the plaintiff of his supervision duties. The defence witnesses both testified that the "Office Reeve" was to include supervision of the office. They differed on whether it also included supervision of public works. The wording of the resolution cancelling the payment referred to discontinuing the "Office Supervision Payment" was found to confirm the payment was for office supervision, as was the resolution commencing the payment to the deputy reeve. The court found many reasons to support the defendant's position that the $1,000 per month payment was for office supervision. The court concluded that the plaintiff was not entitled to the $1,000 per month, but he was entitled to the sum of $3,887.50 for expenses. The court did not make an order as to costs.

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R v Sidhu, 2019 SKPC 19

Cardinal, March 22, 2019 (PC19015)

Criminal Law – Dangerous Driving Causing Death
Criminal Law – Dangerous Driving Causing Bodily Injury
Criminal Law – Sentencing – Sentencing Principles
Criminal Law – Sentencing – Victim Impact Statements

On April 6, 2018, there was a collision between a semi-tractor and a bus at a highway intersection. There were 29 people on the bus: 16 people died and 13 were injured. Many of the injuries were serious. The occupants of the bus were the players and associated people with a hockey team. The accused was the driver of the semi-tractor. The semi-tractor was pulling a lead trailer and a pup trailer. It was hauling a load of peat moss with a total weight of 45,364 kilograms. The accused was travelling at a speed between 86 and 96 km/h. There were numerous signs before the intersection, including a stop sign requiring the accused to stop. The accused did not stop at the stop sign, nor was there any evidence of an attempt to stop. The

semi-tractor proceeded into the intersection and the bus hit it just forward of the wheels of the lead trailer. The accused was not under the influence of drugs or alcohol, nor did he appear to be distracted by using his cell phone. He pled guilty to the following: 16 counts of dangerous driving causing death, contrary to s. 249(4) of the Criminal Code; and 13 counts of dangerous driving causing bodily harm, contrary to s. 249(3) of the Criminal Code. There were 90 victim impact statements filed with the court at the sentencing hearing. The accused was 30 years of age, married, with no children. He was originally from India where he had obtained a commerce degree. He came to Canada in late 2013. The accused took a short training course and obtained a commercial licence in the summer of 2017. He began driving for a trucking company on March 17, 2018. He drove with another person for the first two weeks and began driving on his own the third week. The accused did not acknowledge the signs of the approaching intersection because he was focused on his rear-view mirrors, looking at the tarps on his load that were flapping. The accused voluntarily remained in Canada throughout the investigation and he was arrested in July 2018 and thereafter released on conditions. He did not have a criminal record and had a clean driving record. The accused accepted full responsibility for the collision. He had profound remorse and he apologized to the families at the sentencing hearing. The Crown argued that the accused should be sentenced to 10 years' incarceration on each count, with the sentences to be served concurrent to one another. The accused submitted that the appropriate range of sentence was fourteen months to four- and one-half years' incarceration.

HELD: The maximum sentence for each of the dangerous driving causing death counts was 14 years' imprisonment and 10 years' imprisonment for each of the dangerous driving causing bodily harm convictions. Parliament increased the maximums to life imprisonment (causing death) and 14 years (causing bodily injury) on December 18, 2018 after the offences in this matter, so the accused was subject to the lower penalties. The aggravating factors considered by the court were: the accused's actions directly killed 16 people and injured 13 people; the impact that the collision and its aftermath had on the survivors and families and friends of those on the bus; the accused was a trained commercial driver working at the time of the collision; this was a prolonged period of inattention; and the speed was excessive given that he was approaching a major intersection with multiple signs indicating a need to decrease speed. There were also many mitigating factors considered by the court: the accused entered guilty pleas to all 29 charges at the earliest opportunity; the accused had sincere remorse; he was a young man with no previous criminal record and a clean driving record; there were no alcohol or drugs involved; the accused was not using his cell phone prior to the collision. The accused will face deportation as a result of the convictions because he was only a permanent resident of Canada. Cases recognize that professional drivers are under a heavier obligation and greater responsibility than non-professionals.

The evidence showed that the accused had ample time to react. The court found the accused's moral blameworthiness to be high. The court found that a significant period of incarceration was warranted after considering: all of the sentencing principles in the Criminal Code; the circumstances of the offence and offender; aggravating and mitigating circumstances; and other sentences given to other offenders in similar circumstances. The longest sentence thus far was six years' incarceration when four people died and nine were injured. The court concluded that concurrent sentences were appropriate because all of the offences arose from the same circumstances. Totality and restraint also guided the court's decision. The accused was sentenced to eight years' incarceration for each count of dangerous driving causing death, with each sentence to be concurrent to one another. With respect to the dangerous driving causing bodily harm counts he was sentenced to five years' incarceration, concurrent to one another, and concurrent to the dangerous driving counts causing death. The court also made ancillary orders.

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Yashcheshen v Bowen, 2019 SKQB 43

MacMillan-Brown, February 11, 2019 (QB19041)

Civil Procedure – Amendment – Statement of Claim
Civil Procedure – Application to Strike Statement of Claim
Civil Procedure – Queen's Bench Rule 7-9(a) to (e)

The plaintiff applied to amend her statement of claim and both defendants, the individual defendant, Dr. B., and the professional association (association), applied to have the plaintiff's statement of claim struck. The plaintiff's claims against the association were for being negligent and/or acting improperly when dealing with her complaint and she also argued it was vicariously liable for the action of Dr. B. The plaintiff's claim against Dr. B. included claims that he was not authorized to practice medicine and had made fraudulent medical opinions to an insurer that resulted in her being denied benefits and thereby suffering damages. The plaintiff was self-represented, and she drafted her own statement of claim.
HELD: The defendants' applications were allowed, and the plaintiff's claim was struck in its entirety. The court granted the plaintiff some latitude with respect to her statement of claim given that she drafted it herself and was not a lawyer. The plaintiff did not apply to amend her claim until she had been served with both of the defendants' applications to strike her claim, but the timing of the plaintiff's application was not fatal. The plaintiff failed to provide a draft amended statement of claim as is the normal course in an application to amend. The court also found that there was a lack of connection between the proposed amendments and the allegations

in the statement of claim prior to amendments. The plaintiff cannot raise new causes of action by way of amendment to save her claim. The court also found that the proposed amendments were nonsensical. The association argued that the plaintiff's claim disclosed no cause of action pursuant to Queen's Bench Rule 7-9(2)(a). The court can only look at the statement of claim to make the determination under Rule 7-9(2)(a). Dr. B. also relied on Rule 7-9(2)(a), but he also argued that the plaintiff's claim was immaterial, scandalous, frivolous, vexatious, and an abuse of process pursuant to Rule 7-9(2)(b) to (e). The court can look beyond the statement of claim to determine if it should be struck pursuant to Rule 7-9(2)(a) to (e). The association argued that s. 60(1) of The Medical Profession Act, 1981 was a complete answer to the plaintiff's claim. The claim did not contain any allegations of bad faith nor was there the required factual foundation for such an allegation. The court also failed to find the necessary nexus between the association and Dr. B. to meet the test for vicarious liability. The court held that s. 60(1) of protected the association from the plaintiff's claim and the association was not liable for Dr. B.'s actions. The causes of action against Dr. B. fell into three categories: negligence, breach of contract, and fraudulent misrepresentation. Looking just at the plaintiff's claim, the court agreed with Dr. B. that it failed at the proximity stage for negligence, the duty of care. There was no duty of care owed by Dr. B. to the plaintiff. Further, the claim did not contain the allegations necessary to establish a contractual relationship between the parties. Neither did the plaintiff's claim contain the required elements of the tort of fraudulent misrepresentation. The court would strike the plaintiff's claim against Dr. B. in its entirety pursuant to Rule 7-9(2)(a). The court nonetheless considered Dr. B.'s remaining arguments. Dr. B. provided opinions to the insurer based on information provided to him. He did not examine the plaintiff. The court found that the plaintiff's claim violated Rule 13-8 because vast portions of the claim contained evidence rather than factual allegations in summary form. The court indicated that the offending portions would be struck. The court also found multiple examples of allegations in the plaintiff's claim that were scandalous, frivolous, and vexatious. Those portions would also be struck. The plaintiff also pursued a claim against the insurer for denial of benefits. Many of the allegations in the claim against the insurer mirrored those against Dr. B. The multiplicity of actions was found to be an abuse of process. The court did not order costs against the plaintiff.

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Swidrovrich v Saskatchewan Place Association Inc., 2019 SKQB 50

Elson, February 15, 2019 (QB19051)

Employment Law – Dismissal Without Cause – Moral Damages
Employment Law – Dismissal Without Cause – Notice Period – Damages
Employment Law – Dismissal Without Cause – Punitive Damages
Employment Law – Dismissal Without Cause – Solicitor-Client Costs
Employment Law – Just Cause

The plaintiffs in the two actions were both dismissed from the defendant employer on January 20, 2012. They were both part of the management team and according to the defendant, their employment was terminated for misconduct amounting to just cause. The defendant asserted that a trip the plaintiffs took to Phoenix, Arizona in 2011 served no business purpose and they thereby breached their duty of honesty. The plaintiffs argued that the trip did serve a business purpose and it was authorized by the then executive director, W. The trip was similar to two previous trips. The defendant was a non-profit corporation with its sole member being a city. The defendant's purpose was to operate and manage a large arena. The defendant was governed by a board of directors (board). The executive director reported to the board. The plaintiffs reported to the executive director. There was a new executive director, L., who started after the plaintiffs took their trip. The executive director could spend up to $25,000 annually without board approval and each subordinate director could spend up to $15,000 annually without the executive director's approval. The trips taken in 2009 and 2010 were covered under the executive director's discretionary limit and there was evidence that the 2011 trip was also to fall under that limit. Plaintiff A. was 62 years old when he was dismissed. He had worked for the defendant for more than 22 years and he had no history of discipline during that time. A. indicated that he had no retirement plans when he was dismissed even though there was a letter of resignation (that was later withdrawn) during the investigation that indicated he had considered retiring in the fall of 2011. Plaintiff S. was 56 years old at the time of the dismissal. He had commenced employment with the defendant in 1994. The board chair testified that S. remarked that he was going on a "boys'" trip at the end of October 2011. This led him to pursue an investigation after the trip to determine whether funds of the defendant were used for the trip. The plaintiffs claimed expenses of $7,953.16 for the trip. W. testified that the main purpose of the trip was to provide client appreciation for two clients and, as a secondary purpose, to do facility research. The issues for the court were: 1) did the defendant establish just cause for the dismissal of the plaintiffs; 2) what was the period of reasonable notice for each plaintiff; 3) if just cause was not established, were the plaintiffs entitled to receive moral damages and/or punitive damages and, if so, in what amounts; and 4) was this an appropriate case for solicitor-client costs?
HELD: The issues were dealt with as follows: 1) the defendant had to present clear, cogent and convincing evidence that it had not expressly or implicitly authorized the 2011 trip, and that the

plaintiffs knew, or ought to have known, this to be so. The court found that the defendant failed to meet the burden of proving dishonesty. W. authorized the 2011 trip, as he was authorized to do as the plaintiffs' immediate superior. The court did not agree with the defendant's argument that W. had exceeded his authority and that both plaintiffs were aware of it. The court concluded that W.'s views regarding client appreciation and facility research were honestly held. It was determined that there was no evidence that the plaintiffs were aware or should have been aware that W. acted improperly. The court nonetheless canvassed the next step, a determination as to whether summary dismissal was a proportionate response to the dishonesty proven. If the dishonesty proven was that the trip was not authorized, the court indicated that it would have been extremely serious such that dismissal would be a reasonable outcome. If the dishonesty was that the plaintiffs failed in their duties and responsibilities to the board, dismissal would not have been appropriate because of W.'s authorization for the 2011 trip; 2) the four factors to determine reasonable notice are: character of the employment; the length of service of the employee; the age of the employee; and the availability of similar employment. Both plaintiffs were older and held executive positions for years. S. was awarded damages for 20 months. The court found that A. would have remained in his position until age 65 if he had not been dismissed. A. was awarded damages for 24 months; 3) each plaintiff sought moral damages of $200,000 as well as punitive damages of $200,000. Moral damages are not aggravated damages, they are damages for mental distress, and they are compensatory in nature. Punitive damages, on the other hand, are not compensatory, and focus on whether the conduct of the defendant justifies punishment. The court was not satisfied that the defendant's conduct was malicious, oppressive, or high-handed and therefore did not award punitive damages. Similarly, the justification for moral damages was determined not to be made out. The court concluded that it would not be appropriate to infer bad faith onto the defendant; and 4) the court did not award solicitor-client costs, noting that they would be inappropriate given the conclusions on moral and punitive damages.

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Saskatchewan College of Psychologists v Lebell, 2019 SKQB 54

Allbright, February 21, 2019 (QB19082)

Professions and Occupations – Psychologists

The applicant, Saskatchewan College of Psychologists, applied for an order pursuant to s. 29 of The Psychologists Act, 1997 suspending the licence of the respondent psychologist. The grounds for the

application were that the respondent had been disciplined by the discipline committee for diagnosing patients without an authorized practice endorsement (APE) as required by s. 23 of the Act. The respondent acknowledged the sanctioned conduct and agreed to a number of terms imposed upon his practice, including sending a notice to all patients to whom he had provided a diagnosis since 2009, that he did not have an APE endorsement. Another term was that if the respondent failed to comply with any of the terms, his licence to practice would be suspended until he did so. The respondent sent the required notice to his clients and to the Workers' Compensation Board (WCB), a third-party payer to whom he provided services. However, following the discipline order imposed upon the respondent, the applicant alleged that he provided diagnoses on three occasions for his WCB patients for which an APE was required. The lawyer for the applicant's professional conduct committee sent correspondence to the respondent's lawyer advising of concerns. Before receiving a response or conducting an investigation, the committee provided a report to the applicant's executive committee recommending suspension of the respondent. It accepted the report and approved this application to the court for an order suspending the respondent's practice licence pending an investigation. The respondent deposed in his affidavit that he was 72 years old and his practice was his sole source of income. If he were suspended on an interim basis, he believed that his practice would suffer irreparable harm.

HELD: The application was dismissed. The court was not satisfied that the applicant had demonstrated the requisite basis to allow it to order the interim suspension of the respondent. It noted that the test for ordering an interim suspension of a professional is analogous to the three-part test for granting relief on interlocutory injunctions. In this case, the court found that the applicant had not established a strong prima facie case. Its allegation that the respondent was making unauthorized diagnoses contrary to the order had been made without the respondent's response or contacting the WCB to confirm if it understood that the respondent was making diagnoses. The applicant had failed to demonstrate irreparable harm. In examining the balance of convenience, the court was satisfied that it did not favour granting an interim order of suspension because the jurisprudence indicates that extreme caution should be used in determining whether an interim suspension is appropriate pending a full investigation or hearing.

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Wilson v Welch, 2019 SKQB 62

Scherman, March 1, 2019 (QB19083)

Civil Procedure – Summary Judgment
Real Estate – Agreement for Sale – Cancellation

The parties each brought summary judgment applications in two actions that they brought against each other. They had entered into an agreement whereby M.W. and D.C. would purchase land and a house owned by J.W. for $265,000. During the first year of the agreement, M.W. and D.C. were to pay $1,200 per monthly rent with $1,000 of the payment being applied to the purchase amount. If M.W. and D.C. defaulted on any payments, it was left to J.W.'s discretion whether or not the contract would be void. At the end of the 12-month rent-to-own period, M.W. and D.C. requested an extension because their proposed mortgage lender wanted a more formal sales agreement, but J.W. would not agree to the form of the agreement. She did agree to provide a one-month extension if M.W. and D.C. paid an additional $1,200, which they did. Although attempts were made between the lawyers to effect the sale and transfer, J.W. advised that she elected to treat the agreement as at an end and intended to list the property for sale. She made an application for an appointment for a hearing of an application for leave pursuant to The Land Contracts (Actions) Act to commence an action to cancel the agreement. M.W. and D.C. commenced an action for an order of specific performance and claimed damages caused by J.W.'s refusal to provide and transfer and complete the sale. J.W. filed a defence and a counterclaim seeking cancellation of the agreement. When the applications were heard, J.W. applied for an order that M.W. and D.C. tender the outstanding purchase price, failing which the agreement would be cancelled. M.W. and D.C. said that they agreed to an order nisi to cancel the agreement, subject to them being given relief from forfeiture for a reasonable period to permit them to get their financing in place. The issues with respect to J.W.'s summary judgment application were: 1) whether it was available in cancellation of agreement for sale proceedings; and 2) whether summary judgment was appropriate in this case.
HELD: The summary judgment application by J.W. was granted. The court granted an order nisi for cancellation of the agreement and gave M.W. and D.C. relief against forfeiture based upon them paying $252,000 within 90 days of the date of the decision. The court noted that it had been asked to intervene in this situation where both parties desired the same result but had failed to take steps to achieve it. This was unnecessary litigation and it was therefore appropriate that each party bear its own costs. The court found with respect to the issues in J.W.'s application that: 1) summary judgment applications are available in foreclosure and thus they were also available in cancellation proceedings under Queen's Bench rule 10-45; and 2) it was an appropriate case in which to decide on a summary basis whether there should be an order nisi for cancellation of the agreement. M.W. and D.C. were in breach of the agreement when they failed to pay the balance due. J.W. was entitled to treat the agreement as cancelled and to seek leave under the Act to cancel the agreement.

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Ebenal, Re (Bankrupts), 2019 SKQB 67

Thompson, March 11, 2019 (QB19063)

Bankruptcy and Insolvency – Conditional Discharge

The bankrupts, a husband and wife, assigned in bankruptcy in 2018. The Ministry of National Revenue objected to their discharge on the grounds that this was a tax-driven bankruptcy pursuant to s. 172.1 of the Bankruptcy and Insolvency Act (BIA) and their assets were not of a value equal to fifty cents on the dollar on the amount of their unsecured liabilities, and this fact had not arisen from circumstances for which the bankrupts could not justly be held responsible. Each of the bankrupts owed just over $400,000 in income tax debt comprised of principal, penalties and interest. Their personal tax liability arose in 2011, 2012 and 2013. Over this period, the husband had provided residential renovation services and the wife was working as a hairdresser through a corporation in which each of them held a 50 percent share. In 2013, the husband discovered that his pension had been embezzled and his savings lost. In 2014, he was notified that he, his wife and the company would all be audited by the CRA. He was told by his newly-acquired accountant that the firm would handle the matter and do its own audit. In 2015, before the first assessment decision, the bankrupts sold one of their properties so that they could deal with their non-tax debt. They were at that time unaware of their tax liability. The process of the assessment was slowed both by the Canada Revenue Agency's (CRA) change in auditors and by the fact that the individual in charge of their file at their accounting firm had been arrested and charged with drug trafficking. In 2016, the couple learned that their business owed approximately one million dollars in tax debt. Their accountant advised them that he would have an appeal conducted with a senior CRA auditor. The reassessment appeals occurred in 2017, but the accountant failed to provide the CRA with the audit that he had agreed to prepare, and the couple then learned that he had left the country and that he had not filed their returns for 2015. The reassessment appeals were not successful and the reassessments were confirmed in 2017. The bankrupts only learned of the extent of their indebtedness for income tax at that time. The bankrupts were in their late 50s and suffered from poor health. They had been able to secure only part-time employment and had no surplus income nor savings.
HELD: The court found that the husband and wife were honest but unfortunate bankrupts and they had rebutted the presumption that they had acted dishonestly. They did not know that they earned the amount that CRA assessed for the years 2011, 2012 and 2013 until four years later, in 2017. By that time, their circumstances had been significantly reduced. As it was unable to grant absolute discharges

under s 172.1 of the BIA, the court ordered the wife to serve a one-day suspension after which she would be discharged. The husband would be discharged after he paid $217 in trustee fees.

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Qaisar v SGI Canada, 2019 SKQB 68

Kalmakoff, March 11, 2019 (QB19064)

Civil Procedure – Pleadings – Statement of Claim – Application to Amend
Civil Procedure – Pleadings – Statement of Defence – Application to Strike

The plaintiffs had been injured in a motor vehicle accident in 2005 when their vehicle was struck by the defendant, Frank, who was fleeing from the police in a stolen vehicle while he was impaired. Frank was subsequently convicted of numerous offences and sentenced to six years' imprisonment. In 2007, each of the plaintiffs filed statements of claim, naming Frank as a defendant and SGI as a nominal defendant under ss. 51.1, 52 and 54(1.1) of The Automobile Accident Insurance Act (AAIA) (personal injury action). The claims were later consolidated and alleged negligent conduct on the part of Frank and sought non-pecuniary damages to compensate the plaintiffs for pain and suffering, loss of future income and loss of earning capacity. The plaintiffs then jointly filed a third claim naming Saskatchewan Government Insurance Corporation (SGIC) as a defendant. This claim arose from the same incident and sought payment of the injury payments and family security benefits set out in a package policy contract that they had with SGIC (family security action). Between 2007 and 2012, the plaintiffs and their then lawyer dealt with adjusters from SGI to resolve their claim. When the adjusters requested updated medical information, a detailed breakdown of their damage claims and a settlement proposal, the plaintiffs' lawyer did not comply and answered that their economic loss exceeded coverage limits under both AAIA and the family security coverage. SGI then filed its statement of defence in the personal injury action and denied liability in a general way, denied the nature and extent of the plaintiffs' injuries and pled provisions of the AAIA that restricted the amount recoverable in such actions. The SGIC filed a statement of statement of defence in that claim, stating that plaintiffs were not entitled to payment or judgment because the claim was subject to restrictions and limits set out in the policy. SGI initially accepted service of the statements of claim on behalf of Frank, but in 2013, it obtained an order setting aside that acknowledgement. In 2013, Frank was served with the plaintiffs' claim and mediation took place, but Frank did not participate. In 2017, SGI filed a statement of defence on behalf of Frank pursuant to s. 56(2) of the AAIA in force at the time the action was commenced.

The plaintiffs brought applications for: 1) an order striking Frank's statement of defence because SGI had not complied with the provisions of the AAIA, arguing that it was an abuse of process because it was filed without Frank's knowledge or consent and SGI was defending only as a means of delaying the family security action and was barred by the passage of time; 2) an order pursuant to Queen's Bench rules 3-72(1)(c)(iii) and 3-72(3) permitting amendments to their statement of claim in their action against SGIC. They sought leave to allege breach of contract, breach of fiduciary duty and bad faith by SGIC in the course of dealing with the plaintiffs' claim. They sought general and special damages, punitive damages and solicitor-client costs. SGIC argued that the amendments would create a claim that should be struck under Queen's Bench rule 7-9(2) as frivolous, vexatious and an abuse of process. The proposed amendments were devoid of factual merit and proposed an entirely new cause of action for which the applicable time limit had expired and which would not be permitted under s. 20 of The Limitations Act; and 3) an order consolidating the personal injury action and the family security action.
HELD: The applications were dismissed with the exception that some of the plaintiffs' proposed amendments to their claim against SGIC were allowed. The court found with respect to each that: 1) under s. 51.1(4) of the AAIA, SGI was authorized to file the statement of defence on behalf of Frank and that he was a Part VIII beneficiary as defined under s. 2(1)(ff.1). Further, filing the statement on behalf of Frank was not an abuse of process. SGI was authorized by the AAIA to defend the case and there was no evidence that SGI undertook the defence for improper motives. The Limitations Act (LA) does not provide a time limit for the filing of a statement of defence in actions such as this and as Frank was never noted for default, it was permitted under Queen's Bench rule 3-15(4); 2) a number of the proposed amendments would not be permitted because they could be struck under Queen's Bench rule 7-9(2). SGIC's contractual duty of good faith was not breached simply by its denial of the claim, nor was it in a fiduciary relationship with the plaintiffs. Because the parties had not been able to agree on the total amount of the claim, SGIC was entitled to proceed to bypass Part IV of the package policy and require the matter to be resolved by court action. The proposed amendments also asserted new causes of action and were barred by the LA and would not have been permitted under s. 20; and 3) the two actions should not be consolidated because SGI and SGIC are distinct defendants with very different interests.

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Munawar v Istifo Brothers Property Ltd., 2019 SKQB 69

Scherman, March 14, 2019 (QB19084)

Small Claims – Practice and Procedure
Statutes – Interpretation – Small Claims Act, 2016

The applicant made an application without notice for an extension of time to appeal the decision made against him in favour of the respondent by a Small Claims Court judge. The applicant did not appear and his application did not identify the applicable provisions of The Small Claims Act, 2016 that gave the court jurisdiction to grant the relief sought, nor had he provided affidavit evidence to establish the factual basis upon which the court could base its decision. The court was also concerned about whether leave could be granted in an application without notice.
HELD: The application was dismissed. It was open to the applicant to make another application to extend the time to appeal in accordance with the procedure it provided in this decision. As the Act was silent as to procedure on applications such as this and as to whether notice should be provided to the party opposite, the court held that the principles and authorities related to applications to extend the time for appeal to the Court of Appeal would be appropriate, utilizing the four factors: explanation for the delay; a bona fide intention to appeal; whether the proposed appellant has an arguable case; and whether the extension would prejudice the respondent. The last factor would require that the proposed respondent be given notice of the application seeking leave to extend the time to appeal.

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Comfort Cabs Ltd. v United Steelworkers, Local 2014, 2019 SKQB 70

Acton, March 14, 2019 (QB19085)

Administrative Law – Judicial Review

The applicant, a taxi company, applied for judicial review of the preliminary and subsequent arbitral decisions of an arbitrator appointed under a collective agreement between the applicant and the respondent union. The respondent brought a grievance regarding alleged violations of the agreement. The applicant raised a preliminary objection that the respondent had engaged in inordinate and undue delay in bringing the grievance forward to arbitration as it had been filed in May 2015 and the respondent notified the applicant of its intention to proceed in November 2017. It argued that it had been prejudiced by the delay. At the hearing, the respondent communicated a stipulation to the arbitrator to address the issue of prejudice. Based upon the stipulation, the arbitrator accepted that prejudice had not been established and allowed the matter to proceed to a hearing on the merits. The respondent's grievance was that the applicant had violated an article

in the agreement by failing to provide a monthly list of flat-rate out-of-town trips for a period of 49 months despite the local president's pleas for proper posting. The arbitrator found that the article required transparency through the monthly posting contractually mandated by the provisions of the City of Saskatoon's Taxi Bylaw. He also found that the applicant had engaged in undermining the principle that the union had the exclusive right to represent its members and awarded damages of $20,000 to the respondent for harms to the respondent's reputation and ability to represent its members.
HELD: The application was dismissed. The court noted that the applicant was aware of and admitted to violations of the agreement in its attempt to have the union decertified. It found that the arbitrator's reasons in the case of both decisions were clear, intelligible and consistent with other arbitral jurisprudence. His decisions fell within a range of possible acceptable outcomes.

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R v Moreau, 2019 SKQB 71

Dawson, March 14, 2019 (QB19065)

Criminal Law – Fraud – Sentencing

The accused pled guilty to defrauding her employer of money exceeding $5,000 contrary to s. 380(1)(a) of the Criminal Code. In her position as financial manager, the accused was to prepare the payroll for the salaried employees, including her own payroll. The accused defrauded her employer of $107,109.47. She did this by adjusting her own holiday and overtime payments. She was able to do this without detection because it was her role to determine whether the payments to employees were correct. From 2012 to November 2014, she perpetrated 58 fraudulent transactions beginning during her second month of employment. The losses to the employer had a significant negative impact on its company. Victim impact statements obtained from the owners of the company and the accused's manager indicated that they felt betrayed because they regarded the accused as a friend and their trust in their employees was shaken. The author of the Pre-Sentence Report indicated that the accused, 41 years of age, had suffered from physical abuse during her childhood and from her partners. She had five children with different men and the two youngest, 15 and three years old, were still in her care as a single parent. She was assessed at low risk to re-offend. Although not affected by alcoholism or drug addiction, the accused was attracted to gambling and was using the Gamblers Anonymous hotline when she felt the urge to gamble. The accused took full responsibility for her crime, expressed remorse and her desire to repay the victims. Since March 2015, the accused had been on permanent disability through Canada Pension Plan and

received some financial assistance through the Saskatchewan Assured Income for Disability. Her health problems were significant. The accused suffered from stage IV terminal melanoma and as a result of immunotherapy treatments had acquired an additional permanent, potentially life-threatening condition known as hypophysitis. Her oncologist reported to the court that physical incarceration would have a significant adverse impact on her health. When the Crown inquired of Pine Grove Correctional Centre whether it could accommodate the accused's medical needs, it stated that it could not. The Crown argued that the accused should receive a custodial sentence of 18 months and the defence submitted that a conditional sentence served in the community was appropriate.
HELD: The accused was given an 18-month conditional sentence. She was to be confined to her house for the first 12 months of it and was only permitted to leave it with the consent of her supervisor to attend medical appointments. The court made an order for restitution in the amount of $107,100 in favour of the accused's former employer.

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Adamovics v Adamovics, 2019 SKQB 72

Scherman, March 14, 2019 (QB19086)

Family Law – Custody and Access – Interim

The self-represented petitioner brought an application seeking interim joint custody of her eight-year-old son and shared equal parenting time. The respondent opposed the application on the ground that it would disturb the status quo as his son had had his primary residence with him for the previous 11 months. The parties were married in Latvia in 2009 and their son was born in 2010. The applicant stayed at home to look after him and she continued to do so alone after the respondent immigrated to Canada without them. In 2015, they joined the respondent at his residence in Saskatchewan. The petitioner stayed at home to look after the child while the respondent worked in the construction industry. In her affidavit, the petitioner deposed that she left the family home in March 2018 because of the financial, physical and mental abuse inflicted upon her by the respondent. She stated that at the time she left, the parties agreed that their son would live with her half-time once she obtained her own residence. She explained that she had not been able to bring this application earlier because after leaving the family home, she suffered from depression and lack of financial resources. She now had employment income of $44,000 per year. The respondent denied the allegations and deposed that there had been no such agreement and that the petitioner left their son in his care.

HELD: The application was granted. The court ordered that the parties would have interim joint custody of their son and they would share parenting of him on alternate weeks. It found that the status quo relied upon by the respondent did not exist as it had been only an 11-month period while the petitioner was establishing herself so that she could exercise her parental role and prior to it, she had been his primary caregiver for his entire life. There was no evidence before the court that would suggest that the child's best interests would not be served by maximum contact with each parent.

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Sheasby v Yurchuk, 2019 SKQB 74

Mitchell, March 15, 2019 (QB19066)

Family Law – Custody and Access – Interim
Family Law – Child Support – Interim

The petitioner and the respondent separated in 2012. In 2013 they executed an interspousal agreement, but neither sought a divorce decree nor any court order incorporating the terms of the agreement. The agreement stipulated that the parties would have joint custody of the two children of the marriage and that their primary residence would be with the respondent with the petitioner having reasonable access. At the time, the petitioner's income from oil field employment was $88,800 and the respondent's, $43,000. The petitioner was to pay child support in the amount of $750 per child commencing in August 2013. In 2015, the petitioner lost his job on the oil rigs and respondent agreed to accept $750 per month in child support in lieu of the $1,500 as of April 2016. In March 2018, the petitioner obtained new employment paying approximately $74,600 per annum. He commenced this petition shortly afterward and requested an order that he be given interim custody of the children pursuant to s. 16 of the Divorce Act and that the respondent pay him interim child support in accordance with the Guidelines. The respondent opposed all of the application and sought an order enforcing child support payments in arrears of $26,300. She asserted the 2016 agreement to reduce the petitioner's child support would be temporary until he found work. Further, the petitioner had stopped paying child support in March 2018. She sought an order forcing the petitioner to comply with the terms of the interspousal agreement. The petitioner requested that the arrears be expunged on the basis of the second agreement and because he asserted that the children had been in his care for 40 percent of the time for some time, and consequently he had overpaid support from 2015 to 2017. HELD: The petitioner's and the respondent's applications were dismissed. The court found that it lacked jurisdiction to grant any corollary relief requested under the Divorce Act since the terms of

the interspousal agreement had not been incorporated in a court order either as part of a divorce decree or other court process. It decided to treat the matter as an interim application under relevant provincial legislation. The court found that it was not in the best interests of the children to alter the existing custody and access arrangement on an interim application. The evidence presented by the parties was conflicting as to the amount of time the children spent with the petitioner and they took different views on the effect of the second agreement. The matter should proceed to a pre-trial hearing. The court ordered the petitioner to resume making monthly payments of $750 per month for child support and the arrears should not be expunged, but no further action should be taken to enforce payment until the issues relating to the question of the interpretation of the second agreement were argued.

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R v Werminsky, 2019 SKQB 78

Acton, March 20, 2019 (QB19067)

Criminal Law – Assault – Sexual Assault – Sentencing

The accused pled guilty to one count of sexual assault under s. 271 of the Criminal Code. After drinking at the accused's house, the complainant fell asleep there. When she awoke, the accused was having intercourse with her. When she tried to leave, the accused detained her for approximately ten minutes. The accused admitted to having sexual intercourse with the complainant, but initially said it was consensual. His criminal record consisted of three charges for possession of cannabis, resisting arrest and mischief in 2015. The accused had a mental deficiency resulting from an attack made upon him when he was 15 resulting in an acquired brain injury. He had been living under house arrest for approximately 18 months and had not committed any violations.
HELD: The accused was sentenced to three years' imprisonment in a federal penitentiary followed by one year of probation. The court took into account 119 days the accused spent on remand and gave him credit for same at the rate of 1.5 to 1 and at the rate of .5 days for each day of his house arrest, totaling 452 days.

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Strelioff v Serhienko, 2019 SKQB 79

Elson, March 18, 2019 (QB19068)

Municipal Law – Council Members – Disqualification
Statutes – Interpretation – Municipalities Act, Section 142, Section

144, Section 148, Section 149

The applicant ratepayer of the Rural Municipality of Blaine Lake (RM) applied to the court to disqualify and remove the respondent councillor from the RM's council pursuant to s. 148(2) of The Municipalities Act. He submitted that the respondent failed to disclose a business relationship he had with another ratepayer in the RM. The respondent rented a quarter section from two lessors. On November 30, 2017, he filed with the RM an updated public disclosure statement that identified land descriptions for all the farmland he was actively farming. The disclosure included a description of the quarter section, a description of the lease and its expiry date of April 2019, but he did not provide the names of the lessors. During 2017, the council decided to replace one of its service trucks with another used vehicle. The Reeve of the RM deposed in his affidavit that the respondent gave leads to the council about used trucks advertised on the internet. One of the trucks so advertised belonged to one of the respondent's lessors. The respondent moved a resolution in November 2017 that council create a committee to investigate replacing the truck. In the minutes of the meeting before the resolution was moved, the respondent stated that he could not be involved because of the lead that he had given earlier and removed himself from the meeting during the discussion and vote on the resolution taken in December 2017. After the vote, he mentioned the name of the owner and divulged details about the truck to the reeve. The RM eventually acquired the truck. The applicant argued that the respondent knowingly breached the public disclosure requirements set out in s. 142 of the Act and that he was in a conflict of interest at the time of the December 2017 council meeting and improperly participated in the discussion and vote on the motion regarding truck replacement, contrary to s. 144 of the Act.

HELD: The application was dismissed. The court found that the respondent had not contravened s. 142(2)(a)(i) nor s. 142(2)(c) when he did not include the names of the lessors of the farmland he rented in his public disclosure statement. The names of all landowners in the RM are matters of public record. The respondent had not contravened s. 144 of the Act either. There was no evidence that by moving the resolution to replace the RM's truck, the respondent was trying to further his private interests. He had not had any further involvement in the purchase of the truck. In the alternative, the court went on to find that if there had been any contraventions of the Act, they would not justify the declaration of disqualification and removal from council of the respondent under s. 148(6)(b) or s. 149 of the Act.

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Mokelky v Animal Protection Services of Saskatchewan Inc., 2019 SKQB 80

Kalmakoff, March 19, 2019 (QB19069)

Injunction – Mandatory Injunction
Statutes – Interpretation – Animal Protection Act, 2018

The plaintiffs brought an action against the defendant, Animal Protection Services (APS), alleging unlawful seizure of approximately 125 cattle from their farm in February 2019, non-compliance with The Animal Protection Act, 2018, violations of the Charter and bad faith on the part of APS and its employees. They then applied for injunctive relief, seeking an order that the animals seized by the APS be returned to them. The APS sent an animal protection officer to the farm on January 31, 2019 in response to anonymous complaints regarding the health of the cattle. He noted that although some of the cattle were in good condition, others were thin. The animals did not appear to have access to feed, water or bedding. The officer provided an inspection notice recommending a number of improvements, including that a veterinarian attend the cattle and a nutrition plan be developed, and ensuring that proper food, water, shelter and care be provided to the cattle. The APS received further complaints following the first visit and sent a veterinarian on February 14 who made a number of recommendations to improve the plaintiffs' care for the animals. The officer then advised the applicants that he was issuing a corrective action order under s. 13 of the Act that contained the same recommendations as those made by the veterinarian. He conducted a compliance inspection on February 22 and found that there was no feed, water or bedding for the animals. Two more visits were made by the officer and the veterinarian and by February 27, the officer prepared an information to obtain a search warrant under s. 14 of the Act. When he attended at the farm with RCMP officers and a different veterinarian, they found 16 cattle carcasses. In his affidavit, the veterinarian present at the search deposed that that applicants' cattle were in distress due to lack of adequate food, improper feeding methods, lack of access to adequate shelter during an extremely cold period, lack of water and dangers associated from the failure to remove the carcasses. The veterinarian recommended to the officer that the animals be removed from the premises. The applicants claimed that the evidence demonstrated that the APS failed to comply with the Act in a number of ways, such as failing to afford them time to take corrective action prior to seizing the animals contrary to s. 13(3)(d) of the Act and conducting a search that was not properly authorized by s. 14. Because of the high-handed actions of the APS's employees, it was not entitled to the good faith defence under s. 26. They argued that they had met the test for injunctive relief set out in RJR-MacDonald because the illegal actions by the APS meant that they had a strong prima facie case that they would suffer irreparable harm if the injunction were not granted, because the harm to them could not be adequately remedied by damages and the balance of convenience favoured granting the injunction.
HELD: The application was dismissed. The court first noted that the

applicants' statement of claim made no reference to injunctive relief and therefore their application for such relief could properly be dismissed on that basis. It found that the applicants had not met the test set out in RJR-MacDonald either. They failed to show: 1) a strong prima facie case, required because they sought a mandatory injunction, requiring the respondents to take positive action. In this case, the applicants had failed to establish that the respondent's actions were illegal or contrary to the provisions of the Act or that they had acted in bad faith; 2) that the harm could not be compensated with damages because cattle are regarded as commodities that can be valued and thus damages could be calculated; and 3) they would suffer greater harm from the refusal of the remedy.

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Stebner v Saskatchewan (Information and Privacy Commissioner), 2019 SKQB 91

Danyliuk, March 28, 2019 (QB19078)

Injunction – Interlocutory Injunction

The plaintiff brought applications for orders granting a mandatory interlocutory injunction to remove publication of an investigation report by the defendant, the Information and Privacy Commissioner (IPC), and the continuation of a short-term publication ban granted ex parte earlier. The IPC opposed this application. The CBC and PostMedia (the media) applied to set aside the temporary publication ban. The plaintiff, a medical resident of the College of Medicine at the University of Saskatchewan, accessed three patients' personal and private medical information in April 2018, immediately following the bus crash involving the Humboldt Broncos hockey team. The entity in charge of provincial health records, eHealth, recorded it as inappropriate. It contacted the College to determine the reasons for the plaintiff's access to the records. The plaintiff told the College that she had treated two of the three patients before the collision and wanted to see how they were doing. Perceiving the plaintiff's action as a potential breach of privacy rights, eHealth then reported the matter to the IPC. During the investigation conducted by the IPC, the plaintiff provided a number of inconsistent explanations regarding why she had accessed the files. In its report, the IPC determined that the plaintiff's access constituted a breach of ss. 23 and 24 of The Health Information Protection Act. The plaintiff asked the University's privacy officer to request that the IPC remove her personal information from the report, and it agreed only to the extent that she would be referred to by her initials. She then retained her own lawyer, who contacted the IPC requesting that the plaintiff's personal information be removed. The commissioner indicated the

report would be made public, although amended to redact her name. The plaintiff then brought the application for an interlocutory injunction.
HELD: The plaintiff's applications were dismissed. The media's application was granted. The court dealt with a preliminary issue as to whether the IPC was protected by statutory Crown immunity and found that it was not and was potentially subject to injunctive relief. It found that the plaintiff's evidence had not met the tests established in Potash Corporation v Mosaic that would permit it to grant interlocutory injunctive relief. Regarding the first element of the injunction test, the court found that regardless of whether the standard was a serious issue to be tried or a prima facie case, the plaintiff had not met either. The IPC had the right to investigate and report. Except for personal embarrassment, the plaintiff had not demonstrated that she would suffer irreparable harm. The balance of convenience favoured protecting the IPC's ability to publish reports. The plaintiff had not satisfied the court that there was any justification to restrict the media from reporting on the case heard in open court and it set aside the existing order.

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Slater v Slater, 2019 SKQB 93

Megaw, April 2, 2019 (QB19079)

Family Law – Family Property – Consent Order – Enforcement Statutes – Interpretation – Family Property Act, Section 26

The parties agreed to a consent judgment and order in 2017 that dealt with the equalization of family property and the payment of support by the respondent. The petitioner deposed that the respondent failed to make payments as required in the judgment and in 2018, she obtained an order allowing the enforcement of the support order against the respondent's two corporations, of which he was the sole shareholder, pursuant to The Enforcement of Maintenance Orders Act, 1997 (see: 2018 SKQB 234). In this application, she sought an order making the two corporations jointly and severally liable for the payment of the equalization amounts to be paid under the judgment. She had become aware that one corporation had sold its primary asset and had cash available, and thus sought to have the funds applied against the judgment. She took steps to register the judgment against the title to the land owned by the corporation. The petitioner relied upon the decision in Hannah v Warner and s. 26 of The Family Property Act (FPA) to argue that justice required the corporate assets solely controlled by the respondent not be used to avoid paying his personal obligations to her. The respondent applied for an order discharging the judgment registered against the land owned by the corporation because his individual debt obligations could not be visited on

either of the corporations.
HELD: The petitioner's application was dismissed as was the respondent's. The court found that the issue was whether it could vary the 2017 consent judgment to include the two corporations. The judgment did not provide any remedies or recovery against the corporations and it had been perfected. The corporations were not parties to this action and thus a money judgment could not be enforced against them. There was nothing in the circumstances of this case that would allow the court to amend or vary the judgment. The decision in Hannah was distinguished because the terms of the settlement agreement in that case provided the court with authority to return to s. 26 of the FPA to enforce the judgment beyond the parties. The petitioner's registration of the judgment was improper, and she had no claim against the corporate assets to enforce the judgment. However, the court could not discharge the interest on the land because the defendant's application should have been brought by the owner, the corporation.

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Fibabanka A.S. v Arslan, 2019 SKQB 94

Kalmakoff, April 3, 2019 (QB19080)

Civil Procedure – Limitation Period
Civil Procedure – Pleadings – Statement of Claim – Application to Strike
Statutes – Interpretation – Limitations Act, Section 6(1)

The defendants applied to strike the plaintffs' claims on the basis that they were statute-barred. The plaintiffs, Turkish financial institutions, brought actions against the defendants, the Arslan family, Turkish citizens residing in Turkey, and Murad Al-Katib, who resides in Saskatchewan. Each of the plaintiffs had initiated legal proceedings in Turkey in May 2013, claiming amounts owing to them after the defendants had defaulted on loans. The plaintiffs had been unable to locate assets for any of the Arslans in Turkey in order to satisfy the debts. The Arslan family owned a Turkish corporation called Arbel. They were also substantial shareholders in a Canadian corporation known as AGT, of which Al-Katib is the CEO. During the same period, another Turkish financial institution, Sekerbank, which was not involved in this application, also brought legal proceedings against Huseyin Arslan in Turkey for defaulting on debt obligations. Sekerbank's lawyer reviewed the Turkish Registry Gazette to ascertain the status of Arbel and learned in January 2013 that the members of the Arslan family were no longer shareholders. The shares were completely owned by AGT and other Saskatchewan companies. He contacted a Saskatchewan lawyer and learned from him that on May 31, 2013, Huseyin Arslan, as settlor, and Al-Katib, as trustee, established an irrevocable trust, the Carme

Trust, in favour of their respective children. In June 2013, the trust acquired almost all of the Arslans' holdings in AGT. Sekerbank then filed a claim against Huseyin Arslan and Al-Katib alleging that the transfer of Huseyin's share holdings in AGT to that trust was a fraudulent conveyance. Sekerbank's lawyer advised each of the three plaintiffs in this application about Sekerbank's claims in Canada in June 2015, February 2016 and May 2016 respectively. The plaintiffs then filed claims in Saskatchewan on December 21, 2016 and February 15, 2017 alleging fraudulent conveyance on the part of the defendants.

HELD: The application was granted and the plaintiffs' claims struck as statute-barred. The court found that the claim of each plaintiff would be statute-barred if its claim were discovered or ought to have been discovered before December 21, 2014 and February 15, 2015 based upon the filing dates of their statements of claim. It determined that under s. 6(1)(a) to (d) of The Limitations Act, all four elements of discovery that related to the plaintiffs' claims would have crystallized with the discovery of the transfer of the Arslan brothers' shares in AGT to the Carme Trust on June 3, 2013 as, before that occurred, they would not have had a claim against the defendants for fraudulent conveyance. Although the plaintiffs rebutted the presumption in s. 6(2) of the Act that they were not aware of the transfer of the shares until they were informed of same by Sekerbank's lawyer, the court determined that, pursuant to s. 6(1) of the Act, they ought to have discovered their claims in mid-2013 as Sekerbank had done. The plaintiffs, sophisticated creditors who had loaned large amounts of money to the defendants, had failed to discover their claims through reasonable diligence by taking steps to investigate the defendants' holdings in Arbel after the defaults occurred.

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