The Law Society of Saskatchewan Library's online newsletter
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Criminal Law – Assault – Uttering – Appeal

The accused appealed his conviction for knowingly uttering threats to cause bodily harm to the complainant, contrary to s. 264.1(1) of the Criminal Code. The appellant had posted a nude photograph of the complainant, his former girlfriend, on his Facebook page and included a message stating his intention to choke and shoot her. They had had a long relationship, during which time the appellant had physically and emotionally abused her. Sometime after their relationship ended, the appellant had unfriended her on Facebook. One of the complainant's friends told her about the photograph posting and sent her screen-capture images of the photograph and textual postings, ostensibly from the appellant's Facebook page. After the complainant asked the appellant to remove the photograph, he sent her a series of text messages containing more abusive and threatening messages. The Crown had not included these messages in the charge, but they were used by the trial judge as evidence regarding the appellant's intention in his posting on Facebook. At trial, the complainant identified the Facebook page as the appellant's because he was the only person to whom she had sent the nude photograph and there were other things shown on the screen capture that she recognized as his Facebook page. She admitted that she was concerned about the photograph but not worried about the textual message as the

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appellant always talked like that to her. He might hit her again but he wouldn't kill her. The appellant argued that the trial judge had erred in the following ways: 1) by relying on documentary evidence that had not been authenticated. The Crown should have been required to authenticate the screen-capture and text evidence. Although the appellant had not argued it at trial, he alleged on appeal that the Crown failed to comply with the requirements of s. 31.1, s. 31.2 and s. 31.3 of the Canada Evidence Act; and 2) the verdict was unreasonable and not supported by the evidence for these reasons: i) the Crown had not established the date on which the offence took place. The trial judge found the evidence established that a threat had been conveyed to the complainant and others via Facebook. He was able to make this finding notwithstanding that the exact dates on which the threat had been posted on and deleted from Facebook had not been proven; and ii) the appellant's words had not constituted a threat to be taken seriously and therefore the Crown had not proven the mens rea.
HELD: The appeal was dismissed. The court found that the trial judge had not erred and it ruled as follows with respect to each ground: 1) the Crown had satisfied the requirement for authentication under s. 31.1 of the Act by showing the screen capture to the complainant who identified it and provided reasons to support her identification. The presumption of integrity under s. 31(3)(b) of the Act applied in this case and was not rebutted by the appellant as he had adduced no evidence. The screen captures constituted the best evidence available to the Crown to adduce the appellant's Facebook page itself into evidence; and 2) the trial judge's conclusion that time was not an essential element of the offence charged was correct and that, in the circumstances, the dates of posting and deleting the threat were incidental elements of this particular offence. In another case, though, such dates might become essential to the elements of the offence under s. 264.1; and ii) as the appellant had not testified, his intention in uttering the words had to be determined by whether a reasonable person would consider them to be a threat. The trial judge correctly concluded that there was no other reasonable meaning ascribable to the words used and thus the actus reus was made out. His finding regarding the mens rea was amply supported by the evidence. The accused argued that he had not intended the words to be taken seriously but had not adduced any evidence in support of his claim.

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Disclaimer
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Whitmore Ryan-Froslie Wilkinson, February 27, 2017 (CA17015)

Family Law – Child Support – Interim – Determination of Income – Appeal
Family Law – Spousal Support – Interim – Appeal
Family Law – Custody and Access – Interim – Appeal

The appellant husband appealed the parenting and support provisions in an interim order made by a Queen's Bench judge in chambers. The order awarded the parties joint custody of their two children and placed the children in the primary care of the respondent with specified access to the appellant. For support purposes, the appellant's income was found to be $1,400,000, due in part to an attribution of corporate pre-tax income to the appellant pursuant to s. 18(1)(a) of the Federal Child Support Guidelines (Guidelines). The respondent's annual income was $50,000. The interim order required the husband to pay Table support for the two children and $32,000 per month for interim spousal support. The parties had separated after 11 years of marriage. By mutual agreement, the respondent stayed at home to parent the children during the marriage and took them to their appointments and activities and was the only parent who participated in parent-teacher interviews. The chambers judge concluded that the status quo was that the respondent was the primary caregiver, so the children should reside with her. During the marriage, the parties lived a lavish lifestyle. The appellant was the president and general manager of a corporation of which he and his mother were the shareholders. The appellant received an annual salary of $250,000. Between 2006 and 2008, the appellant received bonuses from the corporation exceeding $10 million. After paying income tax, he paid the remainder as a shareholder loan to the corporation. The judge found that the appellant had withdrawn on average the amount of $1.15 million annually over the next nine years to finance the family' needs and that this average provided a good point of comparison in determining the appellant's ability to obtain income from the corporation for the most recent taxation year. Because the judge found that the corporation's pre-tax income for 2015 was $1.3 million and it had accumulated $10 million in operating account, he concluded that an attribution of $1.15 million from the corporation's 2015 earnings would not place it at financial risk or affect its obligations to third parties. The appellant's salary was added to the attributed income to determine his income for support purposes. The judge then considered s. 4 of the Guidelines and noted that the Table amount applied presumptively pursuant to s. 3. The appellant's estimate that the respondent's and children's combined annual needs could be satisfied by a payment of $89,600 per year was rejected by the judge. He found that the appellant failed to rebut

the presumption on the ground that his proposal constituted an austerity budget that did not reflect the parties' pre-separation lifestyle. Regarding spousal support, the judge found that the respondent was entitled to interim support on both a compensatory and non-compensatory basis. He reviewed the amounts recommended under the Spousal Support Advisory Guidelines (SSAG) that indicated a range between $31,000 and $34,000. The appellant's annual expenses were analyzed and after deducting the funds necessary to meet his needs and expenses, the judge concluded that the appellant had significant ability to pay spousal support. The appellant argued that the chambers judge erred as follows: 1) in determining the respondent should be the primary caregiver because the status quo was only one factor that should have been considered; 2) in attributing the amount of corporate income pursuant to s. 18 of the Guidelines. The appellant raised numerous issues with the judge's review of the corporation's financial position; 3) in awarding presumptive Table support for child support; and 4) in awarding the amount of spousal support. The chambers judge adhered to the SSAG when s. 11 requires that when income exceeds the ceiling of $350,000, the income-sharing formula, spousal support becomes a matter of discretion.
HELD: The appeal was dismissed. The court found with respect to each ground that the chambers judge had not erred: 1) in concluding, based on uncontested evidence, that the respondent had been the primary caregiver and that it was in the children's best interest that she should remain so, especially in light of the appellant's demanding work schedule; 2) in his approach to applying s. 18 of the Guidelines and his conclusions regarding the corporation's situation, for example, in analyzing the corporation's historical patterns of distribution for assistance in determining how much of its pre-tax income for the most recent tax year could be attributed to the appellant; 3) in relying upon the pre-separation lifestyle of the family in his decision that a suitable level of child support was the Table amount. The appellant had not demonstrated that the judge improperly exercised his discretion in holding that the Table amount was appropriate; and 4) the appellant had not presented any arguments before the chambers judge regarding s. 11 of the SSAG and the ceiling. The chambers judge applied the correct test in determining whether the award of spousal support complied with the objectives of s. 15.2 of the Divorce Act.

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R v Bray, 2017 SKCA 17

Caldwell Herauf Ryan-Froslie, February 16, 2017 (CA17017)

Criminal Law – Motor Vehicle Offences – Impaired Driving – Conviction – Application for Leave to Appeal

The applicant sought leave to appeal pursuant to s. 839 of the Criminal Code from the order of the Summary Conviction Appeal Court dismissing her appeal against her conviction after trial in Provincial Court on a charge of impaired operation of a motor vehicle contrary to s. 253(1)(a) of the Code (see: 2016 SKQB 265). The applicant raised the following issues: whether the police entry into her bedroom constituted a search within the meaning of s. 8 of the Charter; whether the police required informed consent from her husband to enter the residence and her bedroom; and whether the evidence of impairment ought to have been excluded under s. 24(2) of the Charter.
HELD: The application was denied. The court found that the legal principles regarding the first two issues were well-settled and the proposed appeal would not transcend the particular in its legal applications. The third issue rested on findings of fact by the trial judge and error made by the summary appeal court judge in supporting the findings. There was insufficient merit to particulars of the proposed appeal to warrant granting leave.

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R v Racine, 2017 SKCA 18

Caldwell Herauf Ryan-Froslie, February 14, 2017 (CA17018)

Criminal Law – Motor Vehicle Offences – Dangerous Driving – Conviction – Appeal

The self-represented appellant appealed his conviction for driving while disqualified, possession of stolen property under $5,000, evading a police officer, dangerous driving and two breaches of recognizance. He appealed his global sentence of four years with remand credit of 491 days and further 60-day credit for arbitrary detention, resulting in a remaining sentence of two years and six months. The grounds of appeal regarding conviction were that the trial judge erred in failing to accept the appellant's arguments that another person was driving the stolen vehicle.
HELD: The appeal was dismissed as to conviction and sentence. The trial judge's conclusion on the appellant's credibility was supported by the evidence. The evidence of the appellant's dangerous driving was also supported by the evidence. The appellant's argument that a police report that was not disclosed

to him violated his right to make full answer and defence under s. 7 of the Charter was also rejected as it would not have affected the trial judge's conclusion that the appellant evaded a police officer. The appellant's two-year sentence for driving while disqualified was within range and not demonstrably unfit as the sentencing judge had noted that the appellant was a habitual driving offender. The credit given for remand was in accordance with s. 719(3) of the Code.

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R v Rowlett, 2017 SKPC 12

Rybchuk, March 1, 2017 (PC17014)

Regulatory Offence – Saskatchewan Employment Act – Strict Liability – Defences – Due Diligence

The accused and victim were members of a crew working to repair a high voltage transmission line when the victim was fatally electrocuted. The accused was charged as the victim's supervisor by Occupational Health and Safety, with the following three counts contrary to ss. 3-9(a) and 3-78(g) of The Saskatchewan Employment Act: 1) not following the Safety Rule Book procedure to review and revise the job hazard identification and risk assessment if job conditions change; 2) not ensuring a jumper cable was used prior to the cutting of the energized shield wire; and 3) not ensuring Class II rubber gloves were used as required by the Rule Book. A shield wire was broken between two towers. The four crew members met and made an original job plan to simply rejoin the ends of the broken wire. During the repair, it became apparent that the original plan could not work because the bucket truck could not reach high enough to rejoin the shield wires above the power lines where the break had occurred. A new plan was required. The truck would have to be moved and the wire would have to be cut to splice more wire in. A jumper cable was not attached to the wire before it was cut. The victim was holding the end of the wire that was conducting electricity when the cut was made. He was electrocuted to death.
HELD: The court determined the accused's liability for the offences as follows: 1) the job conditions changed when the bucket could not reach the shield wire yet none of the crew members physically reviewed and revised the Form when the overall changes were discussed. The court did not agree with the accused that the Rule Book only required a verbal review of the job hazard identification and risk assessment. The court found

that the Rule Book and the form itself required the changes in the job plan be documented when the job steps, tasks, and risks changed in nature, sequence and scope. The Crown proved beyond a reasonable doubt the actus reus of the offence. The accused did not have a basis for a reasonable belief that reviewing the physical form was not required. The court found that the Rule Book negated the accused's argument that he was operating under a reasonable mistaken belief in fact; 2) the accused conceded the actus reus of the offence was proved by the Crown beyond a reasonable doubt. He did argue that he was duly diligent and therefore not guilty of the offence. The court found that the accused was obligated to take steps to ensure that the wire was not cut before he installed the jumper. The accused said that he was going to get the jumper cable after he taped the wire, but he did not verbalize this to anyone. The court found that there were no circumstances preventing the accused from telling the others that he was going to get a jumper cable and that the cut should not be made yet. The court concluded that it was reasonably foreseeable that an employee would cut the shield wire on the tape and it was also reasonably foreseeable that the victim would be fatally electrocuted once the cut was made. The accused did not establish on a balance of probabilities that he took reasonable steps or measures necessary to avoid the accident. The accused was guilty of the offence; and 3) the court found problems with the Crown's argument that rubber gloves were to be worn in general when repairing downed lines: rubber gloves are clearly required when the line has not been "de-energized". The court found that the wire was de-energized so there was no requirement to wear rubber gloves while working on it. The Crown did not prove beyond a reasonable doubt that the accused failed to ensure the health and safety of the workers because the approved work procedure by the employer was for workers to not wear rubber gloves when working on transmission lines. Nonetheless, the court would have found that the accused had met all the requirements of due diligence for the offence and would not have been found guilty.

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R v Lewis, 2017 SKPC 13

Baniak, February 17, 2017 (PC17013)

Criminal Law – Evidence – Identity

The accused was charged with 11 counts, including possession of a loaded prohibited firearm, contrary to s. 95(1) of the Criminal

Code, dangerous operation of a motor vehicle, contrary to s. 249(1)(a) of the Code, failure to stop a motor vehicle that was involved in an accident, contrary to s. 252(1) of the Code, and theft of a motor vehicle, contrary to s. 333.1(1). The accused and a passenger allegedly struck a vehicle in an intersection and fled the scene on foot. The police found the loaded prohibited firearm in the abandoned vehicle. None of the witnesses to the accident could identify the driver or the passenger. A Crown witness testified that he had sold the vehicle involved in the accident to the accused and identified him. As well, just before the accident, police officers in Saskatoon had been told to be on the watch for a suspect involved in an armed robbery. The suspect's photo was recognized by an officer who was patrolling in his vehicle. When he saw the accused drive by him in the vehicle that was later involved in the accident, he was able to identify the accused. Shortly after the accident, the accused allegedly stole another vehicle.
HELD: The accused was found guilty of all charges. The court accepted the police officer's and the witness's evidence that identified the accused as the driver of the vehicle. The circumstantial evidence supported the charge that it was the accused who stole the other vehicle after fleeing the accident scene.

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Beckett v McCrimmon, 2017 SKPC 21

Demong, February 16, 2017 (PC17012)

Contract – Breach – Implied Warranty – Damages

The plaintiffs sought damages against each of the defendants. They alleged that they entered into a contract with the defendants for provision of tiling services for their home and the goods provided were not fit for their intended purpose and that the services were not of a good and workmanlike quality. In order to remedy the deficiencies, the plaintiffs had to demolish and replace the flooring and other items at a cost to them of $27,000, which they claimed as damages. The defendant McCrimmon visited the plaintiffs at their home, driving a vehicle with the corporate defendant's name on it. McCrimmon gave the plaintiffs a verbal quote of $12,000 to $15,000. The plaintiff agreed to engage the defendant company to do the work. Shortly after, the plaintiffs made a payment in advance of $3,000 by cheque to McCrimmon personally. After work commenced, McCrimmon provided a document entitled "Breakdown and

Estimate" with the defendant corporation's corporate logo on it. It did not include an express warranty relating to the goods or services provided, nor did it expressly waive the implied common law warranty of fitness for purpose or workmanlike quality. Unbeknownst to the plaintiffs, the corporate defendant had been struck from the corporate register a few days after they received the detailed quote. The plaintiffs eventually paid $15,075 to the corporate defendant against a final invoice in the amount of $16,049. They told McCrimmon that there were deficiencies and the work was not completed, but McCrimmon never returned to the work site to deal with the problems. As a result, the plaintiffs advised McCrimmon that due to his lack of response they had begun remediation efforts. The issues were as follows: 1) whether there was a contract between the parties. McCrimmon argued that there wasn't one and there was no express written warranty given to the plaintiffs. The plaintiffs had approved the work done by the defendants and they had manufactured evidence of deficiencies etc.; and 2) whether the company was liable for the damages or just McCrimmon, or was liability to be assessed on a joint and several basis.
HELD: The plaintiffs were awarded damages in the amount of $27,900. The court preferred the evidence of the plaintiffs to that of McCrimmon. It found the following with respect to the issues: 1) there was an oral agreement for provision of goods and services and it was a contract. The defendants' decision not to set out an express warranty did not negate the implied common law warranty, and there was no evidence that the parties agreed to waive it. The court was satisfied by the plaintiffs' evidence that the work was deficient and did not meet the test of good and workmanlike quality and that they had not agreed to accept it; and 2) the defendant corporation remained liable under s. 278 and s. 291 of The Business Corporations Act regardless of the fact that it had not been registered when the work was done. McCrimmon was jointly and severally liable because he failed to inform the plaintiffs that the corporate defendant was struck and not entitled to carry on business but then obtained the benefit personally. The court reserved judgment to make an accounting of how much each of the defendants would have to pay until the parties provided evidence on that point.

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Grad v Kortje, 2017 SKPC 23

Demong, February 28, 2017 (PC17015)

Contracts – Breach

The plaintiff and defendant entered into a written contract regarding the provision of daycare services. The contract contained a clause requiring that if the defendant was withdrawing her children from the plaintiff's daycare, she was to give one month's written notice. The defendant gave one month's notice orally, and the plaintiff confirmed by email that since notice had been given, the outstanding amounts owing for that month were due. The defendant's husband then advised the plaintiff that they did not want to terminate the daycare service. The plaintiff reminded the defendant that she was required to give written notice if she in fact wanted to terminate services, but she never did. When the plaintiff notified the defendant one month later that the next payment was due, the defendant responded that she had given notice and would not be utilizing the services. The plaintiff brought this action, alleging that the defendant was in breach of contract because she failed to give written notice as required and that the oral notice, considered in light of the defendant's husband's equivocation the following day, left her uncertain as to the defendant's intent. She sought payment of $800 as the cost of one month of daycare and also claimed the amount of $10 per day for so long as the amount remained unpaid because the contract contained this provision for late payment of monthly fees.
HELD: The plaintiff was awarded damages in the amount of $800. The court rejected the plaintiff's claim for late fees of $2,300 as at the date of trial because it was a penalty clause.

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Leader v Saskatchewan Government Insurance, 2017 SKPC 25

Demong, February 27, 2017 (PC17016)

Civil Procedure – Provincial Court – Small Claims – Procedure
Civil Procedure – Provincial Court – Small Claims – Jurisdiction
Statutes – Interpretation – Small Claims Act, 1997, Section 3

The plaintiff alleged that Saskatchewan Government Insurance (SGI) declined to provide insurance coverage to her because her license had allegedly been suspended at the times at which she was involved in two separate motor vehicle accidents. She alleged that SGI had wrongly found her to be at fault, and as a result she had to pay a surcharge and was assessed demerit points on her license. Under s. 7 of The Small Claims Act, 1997, the Provincial Court judge reviewed the plaintiff's claim prior to the issuance of a summons to determine whether the plaintiff had a valid claim and if it disclosed a triable issue.

HELD: The court issued a fiat, refusing to issue a summons for the plaintiff's claim as it was drafted. Pursuant to s. 3 of the Act, the court had no jurisdiction to sit in appeal of a decision made by an administrative body such as SGI. The plaintiff was free to bring claims against each of the drivers that were involved in each of the accidents.

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Affinity Credit Union 2013 v Brothers Estate, 2017 SKQB 47

Brown, February 14, 2017 (QB17042)

Civil Procedure – Summary Judgment
Foreclosure – Farmland – Saskatchewan Farm Security Act
Foreclosure – Procedure

The plaintiff granted a mortgage to the defendants in the amount of $119,500. The mortgage was registered against the land of one of the defendants, M. The defendants were in a common-law relationship at the time, but separated after the loan was registered. M. died in January 2015. No payments were made on the mortgage since M.'s death. In June 2016, the Farm Land Security Board (FLS Board) concluded that there was no reasonable possibility of meeting the mortgage obligations from cash flow, the sale of the asset was required. The plaintiff therefore brought the application pursuant to s. 11(1) of The Saskatchewan Farm Security Act (SFSA) to obtain an order that ss. 9(1)(d) of the Act did not apply to the mortgage. The issues were as follows: 1) whether leave to commence action for foreclosure should be given pursuant to ss. 11(1)(a) of the SFSA; and 2) whether further relief ought to be provided to the administrator of M.'s estate. The administrator requested that his liability be limited to dealing with the foreclosure proceedings, that any further responsibility be terminated upon conclusion of the foreclosure action, and that the reasonable testamentary expenses be reimbursed to the administrator in priority to all funds or distributions once the plaintiff was paid.
HELD: The issues were determined as follows: 1) the FLS Board report was considered, as was the establishment by the plaintiff that the mortgagors had no reasonable possibility of meeting the obligations under the mortgage. Leave pursuant to s. 11(1)(a) was found to be appropriate. The court concluded that s. 9(1)(d) did not apply to the proposed action; and 2) the new Queen's Bench Rules do direct to move proceedings to a just resolution in a timely matter, but the summary procedure rules still require an application. In this case, there has not yet been an application on

notice brought by the administrator. The administrator only filed an affidavit in response to the plaintiff's application. The court concluded that it was not possible, at the time and with the evidence available, to determine whether an order requested by the administrator would be just and equitable. Further, the court noted that the chance was not significant that matters would become inefficient and inequitable if they were not ordered in this decision.

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G.L. v Saskatchewan (Minister of Social Services), 2017 SKQB 48

Megaw, February 16, 2017 (QB17043)

Family Law – Children in Need of Protection – Permanent Order – Adoption
Statutes – Interpretation – Child and Family Services Act, Section 39, Section 66
Statutes – Interpretation – Children's Law Act, Section 6, Section 12
Statutes – Interpretation – Adoption Act, 1998, Section 14(2)

The Ministry of Social Services brought an application for summary judgment to dismiss the petition for custody and access. The petitioners were the grandparents of three children and sought custody of all of them. They filed their petition in November 2016 requesting to be designated as persons of sufficient interest pursuant to s. 6 of The Children's Law Act (CLA) and to be granted interim custody. In February 2016, a Queen's Bench judge had granted a permanent wardship order for the two eldest children pursuant to The Child and Family Services Act (CFSA). The youngest had been apprehended pursuant to the CFSA, but the matter had not proceeded to a final order. All of the children had been apprehended by the Ministry because they had been neglected while in the care of their parents. The parents filed an appeal of the permanent wardship order but did not pursue it. In October 2016 the Court of Appeal dismissed the appeal for want of prosecution. In March 2016, the petitioners had been informed by a child protection worker that the eldest children's files would be transferred to the adoptions unit on the day following the expiry of the appeal period. Before the period expired, the petitioners indicated that they wished to be considered as caregivers for the eldest and the youngest child. A home study was completed that was not favourable. Concern was expressed over the petitioners' failure to recognize that the children were in need of protection. The current caregivers for the two eldest children applied to

adopt them during the fall of 2016 and the applications were accepted. The petitioners were told by the Ministry that it was proceeding with the adoption plan. It argued that it was too late for the grandparents to become of the custodians of the two eldest children because under s. 66 of the CFSA, the permanent order could not be challenged. The petitioners explained their failure to act sooner on the matter because of unfamiliarity with the child protection system or of the effect of the application to dismiss the parents' appeal of the permanent wardship order. HELD: The application for summary judgment was granted and the petition with respect to the children was dismissed. The court found that there was no genuine issue for trial because it determined that the two eldest children had been placed in a home for adoption and therefore under s. 39 and s. 66(1) of the CFSA, the committal order could not be varied. After reviewing the purposes of the CFSA and the CLA, the court held that the petitioners could not dispute the order through the application of the CLA because to do so would allow the effects of the CFSA to be avoided. The court found with respect to the youngest child that the protection proceedings under the CFSA should proceed. The petitioners were declared to be persons of sufficient interest in the proceedings and would have standing to participate in them.

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Lee v Metis Nation-Saskatchewan Secretariat Inc., 2017 SKQB 49

Labach, February 16, 2017 (QB17044)

Aboriginal Law – Metis
Injunction – Interlocutory Injunction – Requirements

The applicants applied for an injunction restraining the respondents from proceeding with the Metis Nation Legislative Assembly and General Assembly (MNLA-GA) set for February 2017. Since the election of the Provincial Metis Council (PMC) in September 2012, there was internal strife that led to the required meetings not being held. As a result, the federal government suspended funding to the Metis Nation of Saskatchewan (MNS). Funding was reinstated in 2016 under the condition that an expert advisor be retained to receive the money payable from the government and act as an independent advisor. When the chief electoral officer suddenly resigned, it was unanimously carried by PMC members present at the meeting to direct an MNLA-GA to be held in February 2017. The applicants argued that the PMC had no authority to set the February 2017 MNLA-GA because

that authority was taken away when the expert advisor was appointed the receiver/manager of the secretariat pursuant to the engagement letters. They also advised that the terms of the PMC members expired in September 2016 so they were no longer authorized to carry out or administer policies or programs on behalf of the MNS.
HELD: The requirements of an injunction were examined by the court: 1) because the meeting was scheduled to take place in only a couple days, the court concluded that it didn't just need to be satisfied that there was a serious question to be tried, but also that the applicant had a strong prima facie case. The expert advisor was not a receiver/manager of the secretariat. The expert advisor only acted in an independent oversight advisory role, assisted in organizing meetings, provided advice, preserved records, and played a very limited role in paying bills associated to the MNS office and with meetings. The court was also not satisfied that the powers of the PMC ceased four years after they were elected. The applicants' interpretation of the MNS Constitution would lead to the absurd result than an election could never again be called. Only the PMC can call an MNLA meeting and an MNLA is required to set an election. The MNS Constitution is silent about what is to occur if an election is not called within four years of the previous election. The applicants failed to meet the first requirement of an injunction; 2) the court determined that the applicants failed to provide any evidence that they would experience any harm or damage if the MNLA-GA were to proceed; 3) the court found that the respondents would suffer the greater harm if the injunction was granted than the applicants would if it was not. The court found it ironic that the applicants took the position that somehow their democratic rights were being trampled by calling an MNLA-GA, which was part of the MNS democratic process. Further, a failure to proceed with the MNLA-GA could result in the federal government suspending funding again.

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R v Gopher, 2017 SKQB 50

Smith, February 21, 2017 (QB17059)

Regulatory Offence – Appeal – Parking Ticket
Regulatory Offence – Strict Liability – Defence of Due Diligence

V.N. put the appropriate amount of money in a parking meter but entered the wrong licence plate number. She input the licence plate for the other vehicle she and her spouse owned. The

respondent, V.N.'s spouse, received a parking ticket because he was the registered owner of the vehicle. The Justice of the Peace found that the due diligence test was met because V.N. put the correct amount of money in the meter. The city appealed. The appeal court had to determine whether the facts accepted constituted a due diligence defence to a parking ticket offence.
HELD: Parking tickets are regulatory in nature and are thus strict liability offences. The court agreed with the city that earnest incompetence was not the legal equivalent of due diligence. The bylaw itself indicated that inputting the wrong licence plate number was non-payment for the parking stall. The court ordered that the parking ticket be paid within 30 days.

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R.F. v J.M., 2017 SKQB 51

Brown, February 17, 2017 (QB17047)

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

The issues were: 1) the best parenting regime of the parties' child; 2) whether the custody of the child should remain with the respondent or should be made joint; and 3) how much child support should be paid. In July 2012, the parties agreed that the child should primarily reside with the respondent with reasonable access on reasonable notice to the petitioner. The petitioner was struggling with addictions at that time, but had since completed treatment and was working full-time leading a positive, productive life. The five-year-old child had severe apraxia that required regular therapy and routine. The petitioner earned $40,000 per year, but would earn $50,000 when his apprenticeship was completed. The respondent earned $34,000 per year and had been working for the same employer for several years. The petitioner and his new partner had a baby in November 2016.
HELD: The petitioner and his new partner were dedicated to the child and his needs. The respondent was also a positive resource for the child. It was in the child's best interests to spend time with the respondent. The court concluded that the child should spend more time with the respondent and ordered spending time with her four times per year in British Columbia and eight times per year in Saskatchewan. More of the economic

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responsibility for access would fall on the petitioner because she chose to relocate away from Saskatchewan. The court also took into consideration that the respondent was going to move back to Saskatchewan but did not follow through because the petitioner said he may be moving to British Columbia. The petitioner changed his plans to move. The court said that the issue of transportation and its costs could be approached via an undue hardship application, a s. 7 expenses analysis, or as an incident to the access order. The court did not require the respondent to bring an undue hardship application requesting the petitioner to share in access transportation costs. When the child was to visit BC, the court required the respondent to forward the plan to the petitioner. The court ordered that the petitioner would not be responsible for paying more than $600 on each case. If the parties were unable to agree, the court ordered that the petitioner would drive to Calgary where the respondent would pick the child up. The return exchange would occur in the reverse. When the respondent was granted access in Regina the transportation costs were to be borne by her. The court also ordered regarding access during Easter, February break, and Christmas. Skype, Facetime and/or phone access was also addressed by the court. The court did not change the custody decisions made by the parties in 2012 on the interim basis. The respondent was ordered to pay monthly child support of $300. The s. 7 costs, excluding travel costs, were to be shared with the petitioner paying 53.4 percent and the respondent paying 47.6 percent. Gymnastics and swimming were not extraordinary and were not included in the s. 7 costs. The s. 7 amount payable by the respondent was $222 per month.

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Surespan Construction Ltd. v. Saskatchewan, 2017 SKQB 55

Ball, February 22, 2017 (QB17048)

Civil Procedure – Queen's Bench Rule 7-5
Civil Procedure – Summary Judgment
Contracts – Tender Call

The defendant published an invitation to tender the supply, fabrication, delivery, and erection of a steel bridge. The plaintiff and company S. were the only two bidders. Both bids were rejected because they were substantially higher than estimated and the defendant concluded they were non-compliant with the terms of the tender. The work was re-tendered as two separate projects: one for supply of the steel and one for the erection of

the steel. The tender required contractors to hold a prescribed Canadian Welding Bureau (CWB) certification. The plaintiff did not have Division 1 certification because it did not have a registered professional engineer employed full-time. The issues were as follows: 1) was the plaintiff's evidence admissible and sufficient to support its application for summary judgment; 2) whether Special Provision 2.1 (SP 2.1) applied to the plaintiff: a) as a requirement for submitting a compliant bid, and/or b) as a requirement for receiving the contract; 3) whether the plaintiff's bid was compliant with the tender; 4) whether any non-compliance was material; 5) whether the plaintiff's bid was substantially compliant, and whether the irregularity was waived by the defendant; 6) whether the defendant acted honestly and in good faith in rejecting the bids, cancelling the competition and re-tendering the work as two separate contracts; and 7) if the defendant breached its obligations to the plaintiff, what damages should be awarded. The parties both applied for summary judgment.

HELD: The court was satisfied that the summary judgment process would provide a proportionate, expeditious, and less expensive means to properly adjudicate the dispute. The issues were determined as follows: 1) the plaintiff's witness often demonstrated selective memory and a tendency to avoid answering reasonable, straightforward questions. He said that he believed the SP 2.1 required the plaintiff to obtain the welding certification upon the award of the contract, but other evidence contradicted that belief. The court inferred that the plaintiff submitted its bid knowing that it did not and could not comply with the certification requirement in the hope that it would be waived or revised by the defendant; 2) the court concluded that SP 2.1 was entitled "Contractor Qualifications" for a reason: unless the plaintiff held the welding certification prescribed by SP 2.1, it was not qualified to receive an award of Contract B (the actual contract for performance); 3) the plaintiff's bid was not compliant with the invitation to tender because the plaintiff did not hold the required certification when it submitted its bid or at any time thereafter. When the plaintiff was asked for clarification of its certification, it replied with what the court found amounted to three conditional or qualified bids; 4) the invitation to tender contained sections for irregular and non-compliant bids. The defendant had discretion to waive or correct non-compliant bids that would not give an unfair advantage over other compliant bids. Non-compliant bids that were non-compliant in a material way were incapable of being accepted. The section also indicated that a bid would be rejected if it was unqualified in any way. The court interpreted that portion to be intended to apply to a "material" condition or qualification. The court concluded that the responsibilities of a full-time engineer that were required for

Division 1 certification would have been significant. The welding certification requirement of SP 2.1 was found to be material. Therefore, the plaintiff's bid was materially non-compliant so that it was not capable of forming Contract A (a contract that comes into existence between the owner inviting tenders and every bidder that submits a bid that is compliant with the owner's offer). The bid also contained a material condition or qualification, which obligated the defendant to reject it; 5) the court said that even if the non-compliance was not material, the defendant was under no obligation to waive it and in fact did not do so; 6) the defendant could rely on the Privilege Clause to reject the bids. The defendant's reasons for cancelling the bid competition were found to be reasonable. The court concluded that the defendant acted reasonably, honestly, and in good faith in rejecting both bids; and 7) it was not necessary to determine damages.

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D. A.-P., Re, 2017 SKQB 56

Megaw, February 23, 2017 (QB17049)

Family Law – Child in Need of Protection – Indefinite
Family Law – Child in Need of Protection – Person of Sufficient Interest

The Ministry of Social Services applied for orders that two children, aged five years and 23 months respectively, be found to be in need of protection pursuant to s. 11(b) of The Child and Family Services Act, that the maternal great-grandmother and maternal grandmother be declared persons of sufficient interest under s. 23(1) of the Act regarding each of the children respectively, and that the children be placed in their care on an indefinite basis pursuant to s. 37(1)(b) of the Act. The children's mother, J.A., opposed the application and argued that the existing temporary arrangement be extended for a period of six months to allow her to establish that she had the ability to care for the children. The Ministry had been involved with the family since the birth of the oldest child. They had identified risks such as domestic violence, drug use and the lack of safe, stable housing. The father of the children had a lengthy and violent criminal record, and although J.A. had been advised by social workers that she should sever her relationship with him, she had not done so. Both children had been apprehended shortly after the birth of the second child in April 2015 because the father had assaulted J.A. One child was placed with J.A.'s mother and the

other with her grandmother. Throughout the past five years, the Ministry had offered J.A. assistance through various programs to allow her to improve her parenting skills and deal with her addictions, but she had been unable to complete the programs or to refrain from using drugs.
HELD: The application was granted. The court found that the children were in need of protection under s. 11(b) of the Act. The court found the evidence showed that J.A. had not made the necessary commitment to the children. Because they were doing well in the care of her mother and grandmother, it would order that the children remain with them indefinitely pursuant to s. 37(1)(b) of the Act, as persons of sufficient interest pursuant to s. 23(1). By making such an order, the court would be placing the onus on J.A. to establish in the future that things had sufficiently changed to allow her to begin parenting her children.

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Eichelberg Estate v Eichelberg, 2017 SKQB 57

Megaw, February 23, 2017 (QB17050)

Civil Procedure – Minutes of Settlement – Enforcement

The dispute between the parties regarding the sale of a quarter section of land had been settled in 2014 by Minutes of Settlement after 30 years of failure to resolve the matter. The petitioner (executor of the estate) brought an application in 2016 to enforce the agreement. The court ordered that the land be listed for a period of six months at a minimum price of $155,000. If an offer was received and the respondent did not complete the sale as required, the matter could be returned to the court (see: 2016 SKQB 326). The land was listed and an offer to purchase in the amount of $140,000 was made. The offer included a down payment of $13,000 with the balance to be paid in cash at the time of possession six weeks later. The executrix accepted the offer and applied to the court for approval of the sale. The respondent objected because another offer of $145,000 was made after the first offer, although it was subject to financing. The respondent argued that the petitioner had not complied with the terms of the court order in that the land had to be listed for six months prior to being sold.
HELD: The application to approve the sale of the land was granted subject to the terms and conditions of the contract of purchase. The court interpreted the order according to its words and found that it did not require the petitioner to collect offers for the six-month period. The executrix had not acted in a

commercially unreasonable manner by accepting the first offer.

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Trimble, Re (Bankrupt), 2017 SKQB 59

Thompson, February 28, 2017 (QB17051)

Bankruptcy and Insolvency – Exemptions – Homestead
Statutes – Interpretation – Saskatchewan Farm Security Act, Section 2(1)(u), Section 65

Synergy Credit Union applied to contest the bankrupt's claim for a homestead exemption under The Saskatchewan Farm Security Act (SFSA). The entitlement to the exemption depended upon whether he was a farmer within the meaning of Part V of the SFSA at the time of his bankruptcy assignment. If not, the bankrupt would be entitled to claim an exemption of his personal residence under The Enforcement of Money Judgments Act (EMJA) but would lose the full exemption of the home quarter. The bankrupt had lived and farmed on the land in question between 1988 and 2005. In 2005, he was unable to maintain his off-farm employment and his grain farming operation because of the illness of a family member. From 2005 to 2014, the income from the land was limited to the proceeds of sale from forage grown on it. His tax returns from 2014 and 2015 identified farm income of $1,600 for land rent. The bankrupt had incorporated a business in 2006 to service oilfields. In 2012, he executed a guarantee and postponement of claim in favour of Synergy for all debts of the corporation up to $2 million from the date of demand. The corporation filed an assignment in bankruptcy in October 2015 due to the downturn in the energy sector. In November 2015, the bankrupt assigned in bankruptcy. In 2016, a total of $648,000 remained outstanding on the bankrupt's line of credit. Synergy proved its claim in bankruptcy.
HELD: The bankrupt failed to prove that he was a farmer within the combined effect of the s. 65 definition of "farmer" of Part V of the SFSA and the s. 2(1)(u) definition of "producer" and, therefore, was not eligible for the homestead exemption. The court reviewed the cases in which individuals had been found to be farmers under the various parts of the SFSA and found that although there was evidence that the bankrupt had farmed in the past, there was insufficient evidence that he was engaged in the business of farming since 2004. In addition, the personal guarantees to Synergy were not incurred in relation to farming operations or the bankrupt had not suspended farming

operations due to economic conditions.

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R v Racette, 2017 SKQB 60

Zarzeczny, March 2, 2017 (QB17052)

Criminal Law – Assault – Assault with a Weapon – Motor Vehicle
Criminal Law – Motor Vehicle Offences – Assault with a Weapon
Criminal Law – Motor Vehicle Offences – Impaired Driving – Refusal to Provide Breath Sample

The accused was charged with multiple offences: committing an assault with a weapon, namely the vehicle he was driving, contrary to s. 267(1) of the Criminal Code; impaired driving contrary to s. 255(1) and s. 253(1)(a); leaving the scene of an accident contrary to s. 252(1); refusing to provide a breath sample contrary to s. 245(5); and dangerous driving contrary to s. 249(1)(a) of the Code. At trial, a number of witnesses testifying for the Crown said that they had been present in a convenience store where they observed the accused, whom they thought was drunk, harassing the store clerk. Two of the witnesses were neighbours of the accused and the others were young men who were also in the store. The clerk called the police. One of the young men remonstrated the accused for his conduct, and when he and his friends left the store, the accused kicked the driver's side door of their vehicle. The young men observed the accused get into his vehicle. All of the witnesses observed the accused drive over a number of curbs when he left the parking lot. The young men then drove out of the parking lot. Although they could not see the driver, they testified that they were followed by same vehicle that they had seen the accused get into at the store. When they stopped at an intersection, the following vehicle was being driven at a high speed and it smashed into the rear end of their vehicle, which caused it to crash through a hedge and hit a nearby residence. The driver of the other vehicle drove it a short distance but soon abandoned it and fled on foot. The police, responding to the call from the clerk, located the accident and then found the accused a few blocks away. An officer arrested him and took him to the police cruiser. She testified that she could smell alcohol coming from the accused at that point. He also behaved very belligerently. On the basis of this behaviour and her knowledge of his similar conduct at the convenience store, as well as having learned from the witnesses of the accused's erratic driving there, she made the breath demand. The officer read the accused his rights and warnings and advised him

of the various charges. At the station, the accused was given instructions on how to provide a proper breath sample, but after being corrected a number of times by the breath technician, he failed to blow hard enough to provide a sample and was then charged with the offence under s. 254(5) of the Code. The issue to be decided in this case was whether or not the Crown has proven, beyond a reasonable doubt, that it was the accused who drove the automobile in question and who was guilty of one or more of the counts as proffered against him in the Indictment. HELD: The accused was found not guilty of committing the assault with a weapon. The court found that on the evidence provided by his neighbours and the young men who were present at the convenience store, there was no question that it was the accused who drove the vehicle that collided with the other vehicle. However, the court was not satisfied that the Crown had proven that the accused had the intent to use his vehicle as a weapon as required by the s. 2 of the Code. The court noted that the accused's driving misconduct was consistent with his state of intoxication and found him guilty of impaired and dangerous driving. He was also found guilty of leaving the scene of the accident. The court found that there had been subjective and objective grounds to support the police officer's breath demand under s. 254(3) of the Code. The Crown had proven beyond a reasonable doubt that the accused failed or refused to provide a sample of his breath contrary to s. 254(5) of the Code.

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Jones v Smith, 2017 SKQB 63

Keene, February 28, 2017 (QB17054)

Civil Procedure – Queen's Bench Rules, Rule 7-5
Contracts – Debt – Demand Loan
Statutes – Interpretation – Limitations Act, Section 10

The plaintiffs applied for summary judgment pursuant to Queen's Bench rules 7-2 and 7-5. They loaned the sum of $40,000 to the defendant and her then-husband in April 2012. At the time of the loan, the defendants verbally promised to repay it as soon as they could. In March 2015, the plaintiffs wrote to the defendants and demanded repayment and issued their claim in May 2015. The defendant husband did not file a defence. He had declared bankruptcy in September 2014 and the plaintiffs eventually received $530 from the trustee in bankruptcy. They discontinued their claim against the husband and amended it by removing him as defendant and continuing with the wife as sole

defendant. The plaintiffs deposed in their respective affidavits that they made the loan to the defendants because they were their friends who owned a neighbouring farm and they wanted to help them when they learned that the defendants believed that they were going to lose the farm because of their debts. The defendant advised them that they needed $40,000 to keep them out of immediate danger and they then supplied a cheque in that amount made out to the defendant's husband. The plaintiffs provided evidence that the defendant looked after the farm's financial affairs from 1992 to the time of her divorce in 2013. The defendant confirmed in questioning that she was a joint tenant of the farmland and that she deposited the loan cheque to a joint chequing account and that payments were made by her for farm purchases. The defendant raised three defences: 1) that she was not liable for the loan because it was made to her former husband; 2) that the amount of the loan had been reduced; and 3) the claim was statute-barred by The Limitations Act.
HELD: The application for summary judgment was granted and the plaintiffs were awarded $40,000 less the $530 bankruptcy payment. The court found that there was no genuine issue requiring a trial and that there was sufficient evidence provided by the affidavits and transcripts of questioning to make its determination. It preferred the plaintiffs' evidence to the defendant's. Regarding each of the defences raised, the court found respectively that: 1) the evidence of joint tenancy and the involvement of the defendant in the farm operation indicated that the defendant was liable for the loan; 2) the defendant had not established that the amount of the claim should be reduced other than by the amount of the payment received from the trustee; and 3) that it was demand loan and that default arose on the date of demand in March 2015 and thus the limitations defence would not work.

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Avramenko, Re (Bankrupt), 2017 SKQB 64

Thompson, February 28, 2017 (QB17055)

Bankruptcy and Insolvency – Conditional Discharge – Factors

The bankrupt applied to be discharged from bankruptcy. He was deemed bankrupt by operation of s. 57(a) of the Bankruptcy and Insolvency Act in January 2012 when his creditors rejected his proposal to pay $100,000 for proven unsecured debts that amounted to $1,240,300. The trustee's report disclosed that there were proven claims of $1,179,297. The receipts in the bankruptcy

amounted to $110,693 and these arose primarily from the sale of the bankrupt's interest in non-exempt real property, after the trustee obtained a court order for partition and sale. The bankrupt failed to assist the trustee with the bankruptcy administration. The trustee recommended that the bankrupt should be required to pay $120,000 to the bankruptcy estate as a condition of his discharge. The trustee explained to the court that this amount was the amount agreed to by all the parties on December 5, 2013, when they prepared a consent order. There were numerous and significant s. 173 facts in this case, such as that the assets of the bankrupt were not of a value equal to $0.50 on the dollar on the amount of his unsecured liabilities and the bankrupt could be held to be responsible for the value of his assets in that he failed to account satisfactorily for loss of assets or deficiency of assets to meet his liabilities and that he had contributed to the bankruptcy by unjustifiable extravagant living. The bankrupt, his wife and his two children were all involved in a set of large, complex and interrelated farming operations. The bankrupt entered bankruptcy with relatively few assets while almost all the property involved in the farming operation as well as personal property was held in his wife's name, and this arrangement allowed the bankrupt and his family to preserve their standard of living. The issues were as follows: 1) was the bankrupt an honest but unfortunate debtor who should be relieved of the burden of his debts; and 2) if not, what disposition was appropriate in the circumstances.
HELD: The court accepted the trustee's recommendation and ordered the bankrupt to pay $120,000 to the bankruptcy estate as a condition of his discharge. Regarding the issues, the court found the following: 1) the s. 173 facts were proven, and therefore, the bankrupt was not an honest but unfortunate debtor; and 2) the circumstances of the bankruptcy were serious. The bankrupt had conducted himself in a manner that was subject to censure and had surplus income. Because the bankrupt had initially proposed to pay his creditors $100,000 prior to bankruptcy and then agreed to pay $120,000 at the time of the consent order, the court agreed with the trustee's recommendation.

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Thirsk v Saskatchewan (Public Guardian and Trustee), 2017 SKQB 66

Barrington-Foote, March 1, 2017 (QB17057)

Civil Procedure – Pleadings – Statement of Claim – Application to

Strike
Civil Procedure – Queen's Bench Rules, Rule 1-3, Rule 7-9(1)(a), Rule 7-9(2)(a), Rule 7-9(2)(e), Rule 13-8
Statutes – Interpretation – Administration of Estates Act, Section 6
Statute – Interpretation – Public Guardian and Trustee Act, Section 50

The defendant, the Public Guardian and Trustee (PGT), was appointed pursuant to s. 42 of The Administration of Estates Act (AEA), to be the administrator of the estate of Faron Nippi, who died intestate in April 2012. The plaintiff, the former common-law spouse of Nippi, commenced an action against the PGT in September 2016. She was self-represented and alleged in her lengthy and poorly drafted statement that, among other things, the PGT failed to protect the property rights of her and Nippi's four minor children. It stated that the PGT failed to retrieve the full estate, mismanaged certain assets that were retrieved, and failed to properly use The Dependants' Relief Act (DRA), the Indian Act and The Family Property Act (FPA) in the course of administering the estate. The PGT applied for an order pursuant to Queen's Bench rule 7-9(1)(a) that the claim be struck as disclosing no reasonable cause of action under rule 7-9(2)(a) and as an abuse of process under rule 7-9(2)(e). The PGT alleged that the claim did not plead the material facts as required by Queen's Bench rule 13-8 or particulars as required by rule 13-9. The plaintiff responded by filing a notice of application to amend the claim. The issues were as follows: 1) whether the amended claim pled material facts, which, if true, could constitute a cause of action based on a breach of a duty owed by the defendant to the plaintiff as administrator of the estate. The lack of material facts pertained to the following: a) miscellaneous claims made by the plaintiff; b) the claim that the PGT as administrator of the estate owed a duty of care to the plaintiff; and c) the claim that the plaintiff suffered compensable damages; 2) whether the defendant was immune from the plaintiff's improper administration claims, including negligence, due to the statutory immunity granted by s. 50 of The Public Guardian and Trustee Act (PGTA); and 3) whether the claim constituted an abuse of process as a result of overlap or duplication of existing actions relating to the administration of the estate and the action for relief pursuant to the FPA and DRA.
HELD: The application to strike was dismissed with the exception of some paragraphs of the claim. The court gave leave to the plaintiff to amend the statement of claim to plead the material facts as provided in the judgment within 30 days. The court approached the Queen's Bench rule 7-9(2)(a) application as an application to strike the amended claim. The court found that it could cure the self-represented plaintiff's failure to comply

with Queen's Bench rules 1-3 and 13-8 under its authority pursuant to rule 1-6. The court reviewed the amended claim, the notice of application and the statement of claim together. It distilled the allegations made in each and found with respect to the issue of whether the claim in negligence should be struck on the sub-grounds that: 1a) various paragraphs regarding miscellaneous claims should be struck on the basis of insufficient facts. In some instances, the court exercised its discretion to permit the plaintiff to make amendments to cure the insufficiency of the facts pled; 1b) the pleadings should not be struck on this ground. It was not plain and obvious that the amended claim did not plead material facts which could establish that the PGT owed a duty of care to the plaintiff to retrieve and prudently manage the assets of the estate and that there were facts as pled that could be found to constitute breaches of that duty; and 1c) the pleadings should not be struck on this ground. When read as a whole, they supported that if there was a reduction in the value of the family claim as a result of the PGT's conduct, the plaintiff had claimed the entire amount of the estate as it was before the alleged misconduct; and 2) the court found that as the PGT was acting as an administrator pursuant to the AEA, it was not given immunity as provided by s. 50 of the PGTA. The section was ambiguous and should not be interpreted to preclude a claim in negligence against the official administrator acting pursuant to letters of administration granted by the AEA; and 3) the claim was not struck on the basis that it was an abuse of process under Queen's Bench rule 7-9(2)(e) either. The plaintiff's claim for improper administration resulting in the alleged reduction in the value of her FPA and DRA claims was against the PGT rather than the estate. The plaintiff's separate FPA and DRA claims were based upon her statutory rights as Nippi's spouse. As the claim against the PGT was not related to the same dispute, it would not be an abuse of process to pursue the claim for improper administration in this action.

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Lamont Estate v Lamont, 2017 SKQB 67

Zuk, March 1, 2017 (QB17058)

Estate Administration – Transfer of Farmland – Payment of GST
Real Property – Transfer of Farmland – Payment of GST
Statutes – Interpretation – Excise Tax Act

The plaintiff, the personal representative of the estate, sought the

court's direction respecting the Goods and Services Tax (GST) payable, if any, on the transfer of farmland from the estate to the defendant. The plaintiff determined that GST was payable unless the defendant became a GST registrant and filed the proper forms. The defendant refused to either pay the GST or become a GST registrant.
HELD: The court was satisfied that the value of the land was $167,600. The GST would be if $8,380 if payable. Section 165(1) of the Excise Tax Act was clear that the recipient of the taxable supply, the defendant, was required to pay GST of 5 percent. The tax became payable upon transfer of the land from the estate to the defendant pursuant to s. 168(5)(b). The plaintiff had the obligation pursuant to s. 22(1) of the Act to collect the GST. The GST would not be payable if the beneficiary of the land was a GST registrant prior to the transfer of land (s. 167(2)). The defendant was liable to the estate for payment of the GST upon transfer of the land from the estate to him. The court concluded that it did not have authority to order the defendant to tender payment of the GST to the estate prior to the transfer. The court adjourned the matter for 90 days to allow the defendant to either remit $8,380 to the estate solicitors or to provide the estate solicitors evidence that he became a GST registrant, including his GST number. Further, the defendant must sign a joint declaration prepared by the estate solicitor within 90 days in accordance with s. 167(2) of the Act. The Act allowed the defendant to self-assess after receiving the transfer of farmland, but the defendant had to be registered at the date of the transfer and the property had to be used or supplied primarily in the course of the commercial activities of the recipient. The court did not allow the defendant to self-assess because there was no evidence as to whether the farmland would be used in the defendant's commercial activities. The court adjourned the plaintiff's application to allow the sale of the land.

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Radu v Radu, 2017 SKQB 68

Smith, March 6, 2017 (QB17060)

Civil Procedure – Application to Strike Statement of Claim – Abuse of Process
Civil Procedure – Application to Strike Statement of Claim – No Reasonable Cause of Action
Civil Procedure – Application to Strike Statement of Claim – Res Judicata
Civil Procedure – Application to Strike Statement of Claim –

Scandalous, Frivolous, or Vexatious
Civil Procedure – Costs – Solicitor and Client Costs
Civil Procedure – Limitation Period
Civil Procedure – Queen's Bench Rules, Rule 7-9

All three defendants applied to strike the plaintiff's statement of claim. The plaintiff applied to examine the lawyer defendants on their affidavits. The plaintiff and defendant, D.R., were married in 1984 and separated in 2006. They entered into an interspousal agreement in October 2006. In 2010, the plaintiff began believing that the agreement was unconscionable and too one-sided in favour of D.R. The lawyers named as defendants were involved in the agreement; D.F. was D.R.'s lawyer and J.C. gave the plaintiff independent legal advice. The agreement required the plaintiff to pay spousal support for 22 years. In 2012, the trial judge determined that the agreement was not unconscionable and that it was in substantial compliance with the Divorce Act. The plaintiff's spousal support obligation was reduced to eight years. The plaintiff appealed the decision and also issued the statement of claim now subject to the applications. The Court of Appeal reduced the monthly spousal support from $1,319.51 to $821 per month and ordered that the support be paid indefinitely. The bases of the claims to strike the statement of claim were that it: disclosed no reasonable claim; was scandalous, frivolous, or vexatious and/or an abuse of the court; offended the doctrine of res judicata; or it breached the limitation period.
HELD: The court first considered the application to strike by D.R. and held that the claim should be dismissed. The issue was res judicata. The claim was vexatious and frivolous. The court next considered the application to strike by the lawyers. The claim against D.F. was dismissed because she did not owe the plaintiff a duty, she was acting for D.R. The court also dismissed the claim against J.C., noting that the action was a desperate attempt to relitigate the trial. The court found that any reasonable observer would have found the lawyers to be diligent lawyers attempting to advance their respective clients' interests. The claims against the lawyers were scandalous, frivolous, and vexatious. To allow the claims against the lawyers would also be an abuse of the court. The plaintiff's application to examine the two lawyers on their affidavits was also dismissed. The court did not consider whether the claims also breached the statute of limitations. Solicitor-client costs were not awarded to the defendants because the court did not find the conduct of the plaintiff or his counsel amounted to that necessary to award the costs. Costs were awarded to the defendants.

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Vanston v Scott, 2017 SKQB 69

Smith, March 6, 2017 (QB17061)

Civil Procedure – Minutes of Settlement – Enforcement
Wills and Estates – Estate Administration

The plaintiff and deceased were married in October 2010. The deceased passed away in September 2012. The defendants were the deceased's two children from his first marriage. The court ordered a trial to determine the domicile of the deceased at the time of his death, and determined his domicile was in Alberta. The defendants appealed the decision. A new trial was ordered by the appeal court. The plaintiff then commenced an action for an order for expenses to be paid by the estate. Minutes of Settlement were signed at pre-trial by the plaintiff and one of the defendants. The Minutes of Settlement were conditional on the other defendant, who was not at the pre-trial, approving the Minutes of Settlement. The other defendant did sign the Minutes of Settlement, and Letters of Administration with Will Annexed were granted to the plaintiff. The defendants determined that funds in an account that they thought would be used to pay them $128,000 as per the Minutes of Settlement had been removed by the plaintiff. The defendants then brought the application pursuant to s. 29 of The Queen's Bench Act, 1998 against the plaintiff seeking an order for judgment against the plaintiff and estate based on the Minutes of Settlement. The plaintiff indicated that the money in the account was used to pay creditors and that she could not meet the commitment in the Minutes of Settlement.
HELD: The court had authority to enforce Minutes of Settlement. The plaintiff's commitment was clear and unequivocal. She misapprehended the current debts of the estate. The court found that was not a reason to release the plaintiff from her obligation under the Minutes of Settlement. The court granted judgment in favour of the defendants in the amount of $128,000 against the estate and the plaintiff in her personal capacity. The court awarded the defendants costs jointly against the estate and the plaintiff in her personal capacity.

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