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Subject Index

R. v. B. (M.), 2016 SKPC 98

Jackson, July 19, 2016 (PC16083)

Criminal Law – Sexual Offences – Sexual Interference – Person Under 16

The accused was charged with touching a person under the age of 16 for a sexual purpose, contrary to s. 151 of the Criminal Code. The complainant and her mother were tenants of a room in the accused's trailer. After a party, the mother drove a friend home. While she was away, the complainant testified, the accused entered the room where she was sleeping and touched her vagina with his hands. In the videotape of her interview and in her testimony, the complainant described that she awoke when the accused touched her and became very upset. She accused him of touching her. The accused asked her whether he should call the police and the complainant said to go ahead – he would be the one going to jail. In his testimony, the accused admitted that he had touched the complainant when he moved her back onto the bed because she had slid off it. He said that the complainant had not woken when he hoisted her back up on the bed. A half hour later, she emerged from the bedroom and inquired where her mother was. When he said that he didn't know, she became distraught. The complainant did not confront him at the time about touching her. He explained that he threatened to call the police because he did not know how to deal with complainant's distraught behaviour.

HELD: The accused was found guilty. The court accepted the evidence of the complainant and found the accused's answers to be contradictory, evasive and without credibility. Applying the test in R. v. D. (W.), the court found that there was nothing in the evidence of the complainant or the accused capable of raising a reasonable doubt concerning the guilt of the accused.

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R. v. S. (A.), 2016 SKPC 99

Kovatch, July 26, 2016 (PC16095)

Constitutional Law – Charter of Rights, Section 9
Criminal Law – Assault – Assaulting a Peace Officer

The accused was charged as a youth with assaulting a peace officer engaged in the execution of his duty, contrary to s. 270(1)(a) of the Criminal Code. The defence argued the accused's Charter rights had been infringed in various respects and requested the court to exclude the Crown's evidence and acquit the accused. The RCMP had been dispatched to a local reserve to answer a 911 call regarding a possible sexual assault upon a young person. When the officers arrived at the residence, they saw the accused kicking two older women. The officer told the accused to calm down but the accused continued to yell, swear and kick at the women, who were her mother and her grandmother. She was told she was under arrest for breach of the peace, and the officers handcuffed her. An ambulance had already arrived and the officers had to drag the accused towards it because she kept sitting down. When they reached it, the accused spit into the face of one of the officers. He advised her that she was under arrest for assaulting a peace officer and taken to the police cruiser. The officer told the accused's mother that she would be held in custody for the night and that she should come the next morning. The accused was held in a police cell at the local detachment. At 10:30 am the next day the accused and her mother were allowed to consult privately with a lawyer. The accused advised that no sexual assault had occurred and she was released. The accused's mother testified that she had made the 911 call because she had been told that her 15-year-old daughter was alone in a room with a much older man, she suspected that they had had sexual relations. After the man left, the accused began arguing with her mother and grandmother and then the police arrived. The accused testified that she resisted the officers because she was scared that she would be taken by

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Skyline Agriculture Financial Corp. v Farm Land Security Board

W. (M.A.J.), Re

Social Services.
HELD: The application was granted and the accused acquitted. The court found that there had been a breach of the accused's s. 9 Charter rights. The accused had been held for 10 hours before her release. The Crown had not provided any evidence upon which the court could conclude that the overholding was justified. The breach was more serious because the accused was young person. The court found that the police's actions in arresting the accused, who they thought had been a victim of a sexual assault, to be unorthodox and worsened an already tense situation. The appropriate remedy was to grant the accused an absolute discharge.

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R. v. R. (D.), 2016 SKPC 113

Lane, August 19, 2016 (PC16088)

Criminal Law – Voyeurism

The accused was charged with surreptitiously making a video recording of the complainant while she was asleep, contrary to s. 162(5) of the Criminal Code. The complainant testified that she had accepted a ride with the accused, with whom she was acquainted. In the vehicle, he told her that he loved her. He drove her to his home, which he shared with his wife and his daughter, who was the complainant's cousin. After consuming alcohol and marijuana, she became intoxicated and fell asleep in the house. She testified that she had never slept there before. When she woke up, the accused was standing over her and staring at her. She was later told that a video had been made of her sleeping then and she had not consented to it. The accused's daughter testified for the Crown. She said that she found the accused in his underwear in bed with the complainant. Later the accused's wife found a video on his cell phone. After watching it, she and her daughter turned it over to the police. The face of the maker of the video was not shown. The accused's daughter said that she could identify the accused in the video because she recognized his body and his hands and the shirt he was wearing. She recognized the complainant because of her hair and her shirt. She also recognized the blanket and the location of the bed.
HELD: The accused was found guilty. The court accepted the evidence of the complainant and the accused's daughter that she had seen the accused in bed with the complainant. It also accepted that she was in a unique position to be able to

recognize the accused in the video based on knowing him and because the circumstances shown in it matched what she had seen when she found the accused in bed. The complainant had never slept in the house on any other occasion. There was no other man in the house at the time, so the court found that the accused had made the video recording.

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R. v. McDougall, 2016 SKPC 126

Henning, September 29, 2016 (PC16172)

Criminal Law – Controlled Drugs and Substances -Possession
Criminal Law – Disqualified Driving
Criminal Law – Firearms Offences
Criminal Law – Possessing Property Obtained by Crime
Criminal Law – Refusal – Drug Recognition Testing

The accused was charged with a number of Criminal Code offences. The following were the subject of the trial: 1) possessing a prohibited weapon, a sawed-off shotgun, while he was prohibited from doing so, contrary to s. 117.01(1); 2) possessing ammunition while he was prohibited from doing so, contrary to s. 117.01(1); 3) being an occupant in a vehicle when he knew there was a prohibited firearm in the vehicle with no holder of a licence to possess the firearm in the vehicle, contrary to s. 94(1)(a)(ii); 4) possessing bear mace for a purpose dangerous to the public, contrary to s. 88; 5) carrying a concealed weapon, a knife, contrary to s. 90; 6) possessing a weapon, a sawed-off shotgun, for a purpose dangerous to the public, contrary to s. 88; 7) possessing ammunition for a purpose dangerous to the public, contrary to s. 88; 11) possessing a prohibited weapon without being the holder of a licence, contrary to s. 91(2); 12) transporting a prohibited weapon in a careless manner, contrary to s. 86(1); 14) possessing property, a wallet with ID and an Xbox, knowing they were obtained by an indictable offence, contrary to s. 355(b); and 15) possessing property, gas cards, knowing they were obtained by an indictable offence, contrary to s. 355(b). The accused also pled guilty to Criminal Code offences in counts 9 and 13: 9) operating a vehicle while disqualified, contrary to s. 259(4); and 13) refusing to comply with a demand to provide samples of his breath, contrary to s. 254(5). The Crown withdrew counts 8 and 10. The parties also agreed that the accused's trial would include two other charges: 1) possessing cannabis marihuana for the purpose of trafficking,

contrary to s. 5(2) of the Controlled Drugs and Substances Act; and 2) operating a vehicle while disqualified, contrary to s. 259(4) of the Criminal Code. The victim of the house invasion testified that unknown assailants entered his home, had firearms, and stole items, including alcohol, marihuana, an Xbox, and the victim's wallet. The Xbox, firearms, ammunition, marihuana, and other items were found in a vehicle the accused was driving. The accused was passed out behind the wheel of a running vehicle located on an off-ramp area. The vehicle was locked and in gear. The accused would not wake up, so paramedics had to make a forced entry into the vehicle. A sawed-off shotgun was located by the centre console in the vehicle. It was not loaded, but two shotgun shells were in storage in a compartment of the weapon. The marihuana found in plain view was in two bags: one weighing 15.92 grams and the other weighing 15.18 grams. Other marihuana weighed 28.01 grams, 17.97 grams, and 64.42 grams. A paper, which the Crown argued was a scorecard for drug sales, was tendered. The accused was subject to firearms and driving prohibitions at the time of his arrest. The accused testified that he had been working on the vehicle and when he finally got it going he decided to drive it. He met up with a friend and they eventually went to a house and were drinking. The accused said that he lent his vehicle to someone he had just met. When the vehicle was returned after a lengthy time, there were two additional people in it. The accused said that he drank quite a bit. He said that he left the house at 5:25 am and noticed two bags of marijuana in the vehicle but did not return them to the person that borrowed his vehicle. The accused said the scorecard was a document he used to record payments he made to the seller of the vehicle. The accused was located in the vehicle after noon. He said he did not have any memory of the seven intervening hours. Some of the accused's items were located in the victim's wallet that was located in the accused's vehicle.

HELD: The court indicated that for the accused to succeed, his evidence would have to be accepted. The court had many issues with the accused's assertion that he had a total lack of memory and knowledge for seven hours. The court concluded that the level of unawareness that the accused asserted could not exist given the driving that occurred. There were other aspects of the accused's evidence that the court did not find credible. The court concluded that the items were known to the accused. The items in plain view (marihuana, firearm, and Xbox) would have been recognizable to the accused. The court found that the accused's personal papers would not have been in the victim's wallet if the accused had not physically manipulated the wallet. The court found that he had

possession, knowledge, and control of all of the various packages of marihuana that were found. The court was not convinced beyond a reasonable doubt that the amount of marihuana was being possessed for trafficking, so the accused was only convicted of possession. The accused was found guilty of the three charges (counts 1, 2, and 3) relating to the shotgun. The court inferred that the bear mace was intended as a potential weapon for purposes other than to ward off bears. The accused was found guilty of count 4. The court dismissed count 5 because there was reasonable doubt that the knife was possessed for a purpose dangerous to the public peace. The accused was convicted of counts 6 and 7 because the court found the shotgun and ammunition were possessed for a purpose dangerous to the public peace. The court left counts 11, 12, 14, and 15 to be dealt with at the time of argument and submissions on sentencing because they may be duplicitous to other charges the accused was already convicted of.

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R. v. Little, 2016 SKQB 184

Danyliuk, May 20, 2016 (QB16179)

Criminal Law – Assault – Sexual Assault
Criminal Law – Evidence – Conduct of the Complainant – Application to Cross-Examine

The accused was charged with sexual assault. He denied the allegations. He applied for leave to cross-examine the complainant regarding her previous sexual history after receiving disclosure from the Crown that revealed the complainant had a history of mental health issues. She had stated in a meeting with health care professionals that her "current stressors included excessive alcohol use and feelings of guilt over past sexual experimentation". The applicant argued that, as credibility would be in issue at trial, his cross-examination of the complainant regarding her memory in respect to "sexual experimentation" was necessary to make full answer and defence. The complainant may have wrongfully attributed an act to the accused that may have occurred with other unknown individuals.
HELD: The application was dismissed. The court found that the defence had failed to adduce supporting evidence of sufficient particularity and relevance under s. 278.1(1) of the Criminal Code. Neither the application nor the accused's affidavit outlined any specific instances of sexual activity or the

identities of prior sexual partners. The defence had not established an underlying theory in order to show that there was a connection between the proposed cross-examination and a relevant trial issue under s. 276 of the Code. There was no evidence regarding how or whether past sexual experiences might be transferred to the accused. In these circumstances, s. 277 of the Code was a bar to such questioning of the complainant.

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R. v. Favreau, 2016 SKQB 189

Zarzeczny, May 25, 2016 June 3, 2016 (addendum) (QB16183)

Criminal Law – Judicial Interim Release – Application for Review

The accused applied for a review of a Provincial Court judge's order denying her bail and remanding her in custody. The application was made pursuant to s. 516(6) of the Criminal Code since the accused had been charged with offences specified in s. 515(6)(d). The accused had been charged with possession for the purpose of trafficking and trafficking in cocaine and methamphetamine, contrary to ss. 5(2) and 5(1) respectively of the Controlled Drugs and Substances Act. The Crown argued against the release of the accused at her bail hearing because she was a high-level dealer who distributed the drugs throughout the province. The Bail Report noted that she had a dated but serious prior related criminal record and mentioned that the accused had not received addictions treatment in the past, was unemployed and had no plans to treat her methamphetamine addiction. The defence presented a release plan for the accused that included her living at her former husband's residence with their 14-year-old son. She would be subject to electronic monitoring. Cash bail would be provided and the accused might be able attend in-patient treatment facility in the future. At the hearing of the review, the evidence presented by and on behalf of the accused was much more extensive than was the case before the Provincial Court judge. The accused testified that she had not used drugs while in remand for the previous six months and was determined to access addiction programming. She had sought and obtained support from the Elizabeth Fry Society to find in-house treatment facilities in Prince Albert. Representatives from the Society testified at the review as to their combined efforts. Her former husband testified that he would provide her with a

place to live and would report her to her bail supervisor if he found her using drugs. Her mother testified that she would support her daughter, and her father advised in a letter that he would employ his daughter if she was granted bail.
HELD: The application was granted. The court found that there had been a substantial and material change in the accused's circumstances since they were addressed by the Provincial Court judge in the initial bail hearing. She had shown cause warranting the granting of her release application and the exercise of the court's power to vacate the previous order. The court ordered the release of the accused upon her entering into a recognizance subject to multiple strict conditions.
ADDENDUM dated June 3, 2016 (2016 SKQB 199): [1] Counsel for the Crown and defence have exchanged communications with respect to the court's ordered conditions for the release of Anita Favreau set out at pps. 9-13 as contained in its Bail Review Judgment dated May 25, 2016 (2016 SKQB 189).
[2] As a result of agreements reached, and with the consent of counsel for Ms. Favreau, the court adds the following provisions to the bail conditions:
>>>1. There shall be added to condition number one the following:
>>>>>a. Thereafter, Anita Favreau will continue to report to a probation officer at the time and with the frequency directed by the probation officer.
>>>2. Added to condition four is the following:
>>>>>b. After completion of the electronic monitoring period, Anita Favreau will continue to observe a curfew and be present in her approved residence from and after 10:00 p.m. until 5:00 a.m.
>>>[3] Except as modified by this addendum, the remainder of the Bail Review Judgment shall continue in full force and effect.

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R. v. Necroche, 2016 SKQB 211

Maher, June 17, 2016 (QB16205)

Evidence – Expert Witness – Qualification

The Crown called two witnesses and sought to qualify them as experts. A voir dire was held. The Crown submitted the curriculum vitae of each witness indicating that they were a qualified neurologist and neurosurgeon respectively. The neurologist treated the victim for several days and reviewed the medical records of his treatment from the time of his

admission to the hospital until his death six months later. The neurosurgeon treated the victim on several occasions and reviewed his medical records for the same period.
HELD: The witnesses were qualified as expert witnesses. The court found that the Crown had established the four requirements set out in R. v. Mohan and White v. Abbott and was satisfied the experts would be able to fulfill their duties to be fair, objective and non-partisan. Their evidence would be reliable and necessary for the court to determine the cause of death of the victim. There was no exclusionary rule preventing the experts from expressing their opinion.

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W. (M.A.J.), Re, 2016 SKQB 340

Zuk, October 19, 2016 (QB16327)

Family Law – Child in Need of Protection – Permanent Order

The appellant mother appealed a Provincial Court judge's order under The Child and Family Services Act that permanently committed the appellant's three children into the care of the Ministry of Social Services (see: 2015 SKPC 89). The judge found that the children were need of protection and that the appellant, a single parent, was incapable of providing proper care to the children. The Ministry had supplied parent aides to assist the appellant in learning proper parenting and housekeeping skills for two years without the appellant showing any improvement. The appellant's grounds of appeal were that the trial judge: 1) made errors of fact leading to an incorrect finding that the children were in need of protection; 2) failed to consider the purpose of the Act to promote the well-being of children by offering services designed to support the family in the least disruptive manner; 3) failed to consider the children's best interests as enumerated in s. 4 of the Act; and 4) erred in making a permanent order under s. 37(2) of the Act.
The lawyer for the appellant argued with respect to the first ground that it had been the appellant's untreated depression that caused her problems caring for her children as opposed to her low cognitive abilities as found by the judge. A psychiatric report was submitted that stated that she had a history of depression, which was exacerbated by her mother's death in 2011.
HELD: The appeal was dismissed. The court reviewed the evidence and the judgment and found that the judge had not erred in her findings. With respect to each ground it found that:

1) the appellant had only been able to parent her children when she had the direct assistance of her mother. After her death, the appellant could no longer cope with the responsibility. The evidence provided during the hearing amply supported the judge's findings. Evidence provided by the Ministry of the state of the appellant's home two years after the children were apprehended showed that it was still in disarray and full of clutter; 2) the judge referred to s. 3 of the Act and noted the efforts made by the Ministry to assist the appellant to manage her home and her children. The judge found that the appellant was unable to internalize any of the skills that the parent aides were attempting to teach her because of her cognitive disabilities; 3) the judge carefully reviewed each of the factors listed in s. 4 of the Act; and 4) there was no evidence that the appellant would be able to care for any of the children and as there were no adults willing and capable of helping her, the judge appropriately made the permanent order.

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R. v. Bear, 2016 SKQB 358

Turcotte, October 31, 2016 (QB16353)

Criminal Law – Evidence – Admissibility of Statement
Constitutional Law – Charter of Rights, Section 10

The accused was charged with sexual assault contrary to s. 271 of the Criminal Code. The alleged offence took place in 2009. The accused pled not guilty. At the start of the trial, the Crown entered into a voir dire to determine the admissibility of a statement made by the accused in 2013 to an RCMP officer. At that time, the accused was on parole from an unrelated criminal offence. The officer was investigating the alleged historical sexual assault and served a DNA warrant on the accused. The parties met at the office of the accused's parole officer. Prior to obtaining the DNA sample, the officer provided the accused with the standard police caution, including the entitlement to contact a lawyer. The accused declined to do so and the DNA sample was obtained. The officer then asked the accused whether he would be willing to provide a statement. The accused said that he was willing because he wanted to tell his side of the story. The officer wanted to take the statement at the RCMP detachment, which was some distance from where the accused was living, so offered to pick him up and take him to the detachment. He and another officer picked up the accused and took him there. He told the accused that he was

being asked to provide a voluntary statement related to the 2009 assault and that he was a suspect. He was told that he was not required to give it, he could leave at any time, and he would be driven to wherever he wanted. The accused indicated that he understood and gave a statement which was recorded. The accused argued that he felt compelled to give the statement as his probation officer had told him to cooperate with the police. He testified that he thought that if he did not, he could be sent back to the penitentiary. The defence also argued that the statement should not be admitted on the basis that because the accused was detained either physically or psychologically at the time he gave the statement, the officer should have read the standard police caution, including his right to retain counsel, prior to giving it. The accused's s. 10 Charter rights had been violated.
HELD: The statement was admissible as evidence during the trial. The court found that it was voluntary because the officer did not threaten the accused and there was no evidence that his parole officer said that he had to give it or risk being in breach of the conditions of his parole. He confirmed on cross-examination that he gave the statement voluntarily so that the truth would come out. The court found that the accused had not been detained with the meaning of s. 10(b) of the Charter at the time that he provided his statement.

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N. (D.), Re, 2016 SKQB 395

Tholl, December 7, 2016 (QB16382)

Family Law – Child in Need of Protection

The Ministry of Social Services applied for an order finding three children to be in need of protection pursuant to s. 11 of The Child and Family Services Act (CFSA) and to have each of them placed in the custody of the Minister of Social Services until age 18, pursuant to s. 37(3) of the Act. The father of the children, S.A., opposed the application. He submitted that the children were no longer in need of protection and proposed that they be returned to his care under a supervision order pursuant to ss. 37(1)(a) and 37(5) of the Act. Their mother, K.N., did not participate in the proceedings. At the time of the application, the siblings were aged eleven, ten and eight years old respectively. They had resided with their parents from birth until September 2010 when they were apprehended by the Ministry because their parents were neglecting them. The

court found that they were in need of protection then and each of them were placed in foster homes. At that time, both parents were using drugs. They were required to provide drug screens but failed to do so. There was a lot of conflict in their relationship primarily because K.N. was often aggressive and irrational. In 2013 the Ministry referred the family to the Family Treatment Plan offered by Ranch Ehrlo Society. Over the course of the following year, the parents received intensive in-home counselling and the parents improved their parenting capabilities. The children were returned to their parents' home on a full-time basis in March 2014 under a further order from the court finding them in need of protection and placing them in the care of their parents under the supervision of the Ministry for four months, pursuant to s. 37(1)(a) of the Act. During the next period, the social workers observed that the parents were continuing to have problems. Although S.A. was assessed as having good parenting abilities, the social worker was concerned that he spent long hours away from the home because of his work during the period following the return of the children to the family home. K.N. continued to show irrational anger. Then the children's school reported that the family had been evicted from their home and the children appeared to be homeless. The social workers suspected that the parents were abusing drugs. The children were apprehended in May 2015 and placed in foster homes. The parents frequently missed scheduled visits with their children. Two of the children had special needs and showed improvement during the time subsequent to their apprehension. The foster parents testified that they intended to keep the children in their homes indefinitely and treated them as part of their families. The social worker who had had the longest relation with the parents and the children recommended the children become long-term wards until age 18, pursuant to ss. 37(3) of the Act. She testified a permanent order was not recommended because of the high needs of the children, and adoption was not an option because they did not meet the ideal criteria. In addition, a long-term order would also permit S.A. to visit his children. The social worker commended S.A. for his parenting ability but noted that he was unable to attend to the special needs of his sons on a consistent basis. Further, he had not dealt with his addiction issues. Although he knew that his relationship with K.N. created problems for the children and her inability to parent them was obvious, the social worker testified that she did not believe that S.A. would be able to separate from her permanently.

HELD: The application was granted. The court found that the children were in need of protection and that it was in their best interests to commit them to the permanent care of the Minister

until they were 18. The court found that the factors that existed during the previous six years were the same factors as currently existed. S.A. had not addressed his addictions. Although he had the desire to be a good parent, he did not have the current capacity to provide the stable, consistent care and routine that the children needed and were receiving in their current placements.

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R. v. Mamchur, 2016 SKQB 402

Barrington-Foote, December 15, 2016 (QB16391)

Criminal Law – Judicial Interim Release – Application for Review

The accused applied pursuant to s. 520 of the Criminal Code for a review of the decision of a Queen's Bench judge to refuse to release him on a recognizance. The judge had refused to grant bail on the basis that the alleged offence was serious, the accused's criminal record was short but serious, and that his bail verification report indicated the accused had not acknowledged his problem with alcohol and had denied drinking too much on the night of the offence despite evidence to the contrary. The accused applied for the review on the ground that the decision was clearly inappropriate. DNA analysis of items that had been found near the scene of the crime had been completed and the accused's DNA had not been found. The accused now offered to increase the amount of bail and identified a suitable residence for electronic monitoring in a town different from his initial bail application. HELD: The application was denied. The accused had not shown cause why the order should be varied. The court found that hearing judge's weighing of the evidence and his decision was not clearly inappropriate. He had not committed an error in law and the results of the DNA analysis did not constitute a material change in the circumstances of the case, nor did the increase in the amount of cash bail or the identification of a residence in a different town.

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R. v. Lerat, 2016 SKQB 404

McMurtry, December 13, 2016 (QB16393)

Criminal Law – Judicial Interim Release Pending Trial – Appeal

The Crown applied to overturn a bail judge's decision to release the accused from custody before trial. The accused was charged with aggravated assault, choking, forcible confinement and kidnapping. The complainant and the accused lived on the same reserve and the accused was his uncle. The bail verification report did not recommend the accused's release since his attitude on probation and reporting on probation was poor in the past, he had not been employed since April 2006, and that he minimized his substance abuse problem. The Crown argued that the bail judge had not given sufficient consideration to the complainant's safety in the circumstances, the seriousness of the offence or the accused's previous history of poor compliance with court orders. The bail judge erred in following R. v. Blind rather than the Supreme Court's recent decision in R. v. St.-Cloud. The Crown submitted that the accused's detention was necessary for the safety and protection of the public and to maintain confidence in the administration of justice.
HELD: The application was denied. The court found that the Crown had not met the onus of demonstrating that the accused ought to be detained prior to trial under ss. 515(10)(b) or (c) although the bail judge had erred in applying Blind. St.-Cloud stated that a court must not order detention automatically even where the four listed circumstances support such a result. The court noted that the Crown was justified in its concern regarding the violence of the offence and that the complainant and the accused lived on the same reserve. However, the court found that balanced against those concerns was that the accused's criminal record was minimal and dated. He had complied with the strict terms of his release. The problems with compliance with court orders identified in the bail verification report were dated and there was no information regarding the accused's possible substance abuse.

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Skyline Agriculture Financial Corp. v Farm Land Security Board, 2017 SKCA 26

Lane Jackson Ottenbreit, March 31, 2017 (CA17026)

Statutes – Interpretation – Saskatchewan Farm Security Act, Section 76(e)
Administrative Law – Standard of Review – Reasonableness – Appeal

Administrative Law – Judicial Review – Farm Land Security Board – Appeal

The appellant corporations appealed the decision of a Queen's Bench judge in chambers, dismissing their appeal from the Farm Land Security Board (see: 2015 SKQB 82). The appellants had brought a test case before the board. The board determined that the appellants had contravened s. 77 of The Saskatchewan Farm Security Act (SFSA) that prohibits non-Canadian entities from acquiring a land holding (as defined in s. 76(e)(iii)(C) of the Act) with an assessed value for municipal taxation purposes in excess of $15,000. Pursuant to s. 97 of the Act, the appellants appealed to the Court of Queen's Bench. The chambers judge found that the standard of review was reasonableness and, applying it, found the board's decision to be reasonable. Before the appeal was heard, the SFSA and the Saskatchewan Farm Security Regulation were amended and proclaimed in force effective January 4, 2016. As the amendments may have expanded the definition of "land holding" in the Act, the court sought submissions from the parties. They made joint submissions to the court that the appeal was not moot and the amendments were not retroactive, and that they requested an opinion from the court on the state of the law as it existed at the time of appeal to Queen's Bench. In addition to deciding the preliminary point, the court was asked to decide whether the chambers judge: 1) erred by finding the standard of review of the board's decision was reasonableness; and 2) correctly applied that standard. HELD: The appeal was dismissed. On the preliminary point, the court decided to hear the appeal on the basis of the law at the time of the appeal to Queen's Bench. The court found with respect to each issue that the chambers judge had not erred: 1) in finding the standard of review to be reasonableness. He correctly reviewed the Dunsmuir factors to determine the standard and the court agreed with his analysis that: i) the board's interpretation of "land holding" was not a question of central importance to the legal system as a whole. The board had confined its analysis to its home statute; ii) the Legislature intended an appeal from a board decision to be governed by the standard of reasonableness. Although the Act provided for two different review routes (i.e., appeal and judicial review) that did not indicate that the Legislature intended that the standard was one of correctness for the board's decisions; and iii) the presumption of reasonableness was not rebutted. The chambers judge determined that the expertise of the board was founded upon its members' experience with the farming industry and they were able to assess what the Legislature intended in its definition of "land holding"; and 2) by finding the board's decision to be reasonable. The court found that the

board's approach of using legislative history to help it determine the meaning of "land holding" was consistent with the modern principle of statutory purpose. Its reasons for finding the meaning were intelligible, transparent and justified. The court rejected the appellants' argument that the chambers judge had failed to provide adequate reasons and analysis for his conclusion that the board's decision met the reasonableness standard. The court found that the chambers judge correctly concluded that the board's decision was reasonable, based on the evidence presented, that the appellants' complex corporate relationship with the farmer conferred rights or controls ordinarily accruing to the owner of farm land in contravention of s. 76(e)(iii)(C).

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McNabb v Cyr, 2017 SKCA 27

Jackson Caldwell Whitmore, April 7, 2017 (CA17027)

Elections
Statutes – Interpretation – First Nations Election Act, Section 31
Statutes – Interpretation – Court of Appeal Act, 2000, Section 7(2)

The appellants appealed the decision of a Queen's Bench judge that annulled the election of the chief and eight councillors of the Gordon First Nation on the grounds that a number of ballots cast by electors were improperly handled by electoral officers (see: 2016 SKQB 357). At the appeal, a number of preliminary matters were raised by the respondent, Cyr, the elector who challenged the election results in Queen's Bench. He applied to 1) remove counsel for the appellants because he had represented the Gordon First Nation in other matters and therefore was acting for clients with adverse interests, contrary to the "bright line rule"; and 2) challenge the court's jurisdiction to hear the appeal on constitutional grounds. The appellants' grounds of appeal were whether the chambers judge erred in the following ways: 3) misinterpreting the presumption of regularity; 4) by finding that ballots were unaccounted for or that the results of the election were likely affected thereby; and 5) annulling the election of either chief or council.
HELD: The appeal was allowed in part. The order annulling the election of council was allowed and the order set aside, and the election of the eight elected candidates was restored. The court found the following with respect to the preliminary

matters: 1) it declined to remove the appellants' counsel because of the consequences of further delay for the governance of the Gordon First Nation. It also questioned whether the respondent had brought the motion for tactical advantage as the court was aware that he had had concerns about a conflict of interest well before the appeal; and 2) it dismissed the challenge to its jurisdiction as it could hear the appeal pursuant to s. 7(2) of The Court of Appeal Act, 2000 (CAA) and the Court of Appeal Rules. The First Nations Elections Act (FNEA) does not confer a specific right of appeal from a decision made pursuant to s. 33 of the FNEA. That section provides that to contest an election, application could be made to either the Federal Court of Canada or the superior court of a province. As the application was made to Court of Queen's Bench as the superior court, the appeal of its decisions fell within s. 7(2) of the CAA and the appeal did not impinge on the federal government's power under s. 91(24) of the Constitution Act, 1867. The court found the following with respect to the grounds of appeal: 3) the chambers judge identified the presumption and tied it to the onus and burden of proof under s. 31 of the FNEA and her reasons demonstrated that the she understood the principle; 4) she had not erred regarding the number of unaccounted votes. Her findings were reasonable and supported by the evidence; and 5) she had not erred in her application of the magic number test to the election of chief. However, regarding the election of council, her decision to assess whether the contravention had affected the plurality of the elected candidates with the most number of votes was a misapplication of the test and an error in principle. The ballots unaccounted for could not have affected the council election because, on the evidence, the number of possible votes that they represented did not exceed the plurality of any elected candidate. There was no other basis on which the chambers judge could have annulled the election and therefore her decision was set aside and the election results restored.

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Phillips Legal Professional Corp. v Mercredi, 2017 SKPC 30

Demong, March 28, 2017 (PC17020)

Civil Procedure – Default Judgment – Setting Aside
Civil Procedure – Substitutional Service

A judgment debtor applied pursuant to ss. 37(1) of The Small

Claims Act, 1997 to set aside a default judgment entered against them in December 2015. The plaintiff brought an action against several defendants seeking recovery of monies due and owing for legal services rendered to the defendants. The defendant who applied to set aside the default judgment was not a signatory to the retainer agreement with the plaintiff. The plaintiff was granted a substitutional service order allowing service of the defendant by facsimile, and an affidavit of that service was filed. The plaintiff said that the CEO of the defendant received the original summons and supporting claim, but the CEO did not confirm the same. The defendant indicated that even if the documents had been served by facsimile, they may not have been received by the person of authority due to a lack of sophistication by the defendant. The people in authority also did not use English as their first language.
HELD: The defendant met the first requirement set out under s. 37 of the Act because there was a defence worthy of investigation. The court did not find any reason to suggest that the defendant was aware of the claim and chose to ignore it. The judgment was set aside. The court considered costs pursuant to ss. 37(4) of the Act. The plaintiff requested its entire claim, principal, and interest be paid into court. The court ordered payment into court of one-fifth of the existing judgment, noting that there were other defendants who would be jointly and severally responsible for paying the judgment. The judgment was ordered to be stayed until May 26, 2017. If the defendant paid the one-fifth into court by May 26, 2017, the judgment would be vacated in its entirety. Costs in the cause were ordered.

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Keck v Balgonie Early Learning Centre Inc., 2017 SKPC 39

Demong, April 17, 2017 May 3, 2017 (addendum) (PC17023)

Contract – Breach – Damages
Statutes – Interpretation – Non-Profit Corporations Act, Section 2, Section 119, Section 225
Courts and Judges – Provincial Court – Jurisdiction

The plaintiffs entered into a child services agreement with the defendant, the Balgonie Early Learning Centre Inc. (BELCI), a non-profit corporation, in January 2012 when they enrolled their son in the defendant's daycare centre. They also became members of the defendant and the plaintiff, Darren Keck,

became a director of BELCI. The agreement referred to the policies of the child care facility. The policies included a parent manual, which incorporated a code of conduct that stated certain behaviours would not be tolerated, such as using obscene or demeaning language, aggressive and loud voice tones, threats and intimidation or physical force, inappropriate conversations and inappropriate demands that conflicted with the defendant's policies or programs. In May 2013, a witness testified that she observed Darren Keck confront another parent, in the presence of children, using a loud voice and obscene language. When testifying, Mr. Keck stated that he had had a disagreement with the person. The incident was investigated and the board was advised that Mr. Keck had been in breach of the code. The board sent a letter to Mr. Keck informing him that it was its final warning to him regarding his breach of the code. If another incident occurred, further disciplinary action up to and including termination of his child care services would occur. In November 2013, the director of the defendant witnessed Mr. Keck engage in another loud and obscene confrontation with a parent. The incident was reported to the board and it held a special meeting at which it concluded that it would terminate the plaintiffs' child care contract. The plaintiffs were notified of the decision on November 25, 2013. In consequence of the termination, the plaintiffs argued that they incurred damages, which they identified as the difference between what they would have paid for day care services had the contract not been terminated and their actual out of pocket expenses spent in mitigation. They submitted the claim to be in the amount of $6,300. The issues were as follows: 1) were the plaintiffs out of time to bring the action; 2) was the defendant's decision to terminate the contract a form of discipline or termination of the plaintiffs' membership interest as those terms are set forth pursuant to s. 119 and s. 120 of the Act. As the Act specifies that the Court of Queen's Bench has the jurisdiction to grant relief under s. 225 of the Act, did the Provincial Court have jurisdiction to grant relief; 3) if the only issue was breach of contract, was the defendant in breach when it terminated the contract; and 4) if the defendant breached the contract, what was the proper measure of damages.
HELD: The action was dismissed. The court found the following with respect to each issue: 1) the plaintiffs had paid to issue their summons in the proceedings on November 24, 2015, but had to have a new summons issued in February 2016 because they failed to serve the first summons. Regardless, the limitation period is considered to commence from the time that a fee is paid to issue a claim, so the plaintiffs were not out of time; 2) the Provincial Court did not have jurisdiction to decide this question; 3) the code of conduct was an essential term of

the contract. Mr. Keck violated its policies twice and thereby breached the contract. The defendant had not breached the contract when it terminated the agreement; and 4) if it was wrong in finding that it did not have jurisdiction under the Act, it would have awarded the plaintiffs damages in the sum of $3,700. If it was wrong in concluding that the defendant had not breached the contract, the plaintiffs would not be entitled to any damages, as the defendant had paid the plaintiffs the cost of one month of day care as a fee in lieu of notice under the agreement.

ADDENDUM dated May 3, 2017: Introduction

>>>[1] Judgment in this action was given on April 17, 2017. The defendant was successful in defending the action and I invited the defendant to submit its claim for costs in accordance with my direction as set forth in paragraph 48 of that judgment. That submission has been presented to the Court for its consideration with an affidavit in support. I have reviewed the submission and I am prepared to allow the following costs in accordance with s. 31 of The Small Claims Act, 1997, which authorizes the Court to award costs for, in essence, reasonable out-of-pocket expenses incurred in the prosecution or defence of a claim.

>>>[2] I award witness fees paid pursuant to a subpoena to each of the defence witnesses Amanda Haas, Crystal Sommer, John Winter, Raeanne Skihar and Shanna Ramm which equates to the sum of $75.00. As some of these witnesses had to travel to Court from a distance of in excess of ten kilometres (each of them are from in and around the Balgonie area), I award their cost of travel at a per kilometre stated rate of 42.83 cents per kilometre as set forth in The Saskatchewan Public Service Commission regulations (Travel Allowances). I award $76.68 for Michelle Gendron, $68.70 to Sandra Lloyd, which includes a $14.00 dinner per diem, $40.70 to Shanna Ramm, which sum is also inclusive of a $14.00 per diem for dinner, and $109.10 for Kevin Belitski's travel and parking costs while at trial.

>>>[3] The only other disbursement sought is for photocopying and paper expenses at the stated rate of $0.25 cents per copy, a rate which the Court finds to be reasonable. The amount sought is $1,580.38, which comprises the photocopying done by BELCI directly and that done by its lawyers in assisting with this matter. I note in passing that this trial was paper intensive and the law firm acting for the defendant filed an expansive document book and supplementary document book and these would have had to have been duplicated for both the plaintiff and the defendant. While the number of photocopies appears rather large at first instance, I would note that the document books submitted certainly assisted in the smooth and effective delivery of evidence at trial. Of the amount sought, I would

simply reduce that sum by $150.00, for a total of $1,430.38 – this in light of the fact that the billing document provided by the law firm to its client included, perhaps by oversight, the additional sum of $150.00 for online legal research, something which I am not prepared to consider in making my award. >>>[4] The defendant shall have judgment for its costs in the sum of $1,800.56 which I direct be paid immediately.

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Matsalla v Matsalla, 2017 SKQB 77

Goebel, March 20, 2017 (QB17072)

Family Law – Custody and Access – Best Interests of Child
Family Law – Custody and Access – Interim Custody – Primary Residence
Family Law – Division of Family Property – Interim – Exclusive Possession of Family Home
Family Law – Division of Family Property – Interim – Expenses of Family Home

The parties separated in October 2016. They had two children, ages six and three. The petitioner mother applied for primary care of the children and exclusive possession of the family home and its contents. The petitioner essentially requested that she primarily care for the children as she had been since separation. The respondent indicated that the parenting arrangement after separation was forced upon him and that it did not reflect his actual involvement in parenting prior to separation. The respondent sought equal parenting. He consented to an order providing the petitioner with exclusive possession of the family home, but he proposed she assume responsibility for the expenses relating to the home. The issues were as follows: 1) a parenting schedule that was in the best interests of the children taking into account the uncontroverted evidence respecting each child's needs and each parent's ability to meet those needs; 2) whether the petitioner should have interim exclusive possession of the household contents remaining at the family home; and 3) whether the court should require the petitioner to assume sole responsibility for the household expenses.
HELD: The issues were determined as follows: 1) the court found that it would be in the children's best interests to remain in the primary care of the petitioner and to increase the time they spend with the respondent. The children were thriving in the arrangement since separation. The petitioner was the parent managing the children's social, medical and daycare schedules.

The respondent's involvement in parenting was more focused on supporting the children in activities outside of the home. The court also accepted that the respondent was proactive in pursuing treatment and following recommendations to manage his mental illnesses, but found it reasonable to expect that having and managing the conditions required a significant amount of his energy, time, and attention. The court did not find that the petitioner was arbitrarily denying nor restricting the respondent's parenting time; 2) the petitioner was granted exclusive possession of the family home and the respondent was not granted the opportunity to return to the home to determine if there were further items he required. The respondent had already fully furnished a new residence. The matter was best left to be determined with the remaining family property issues; and 3) the court did not order that the petitioner be responsible for all of the expenses of the family home, but made the decision without prejudice to either party's position in a future court application. No order for costs was made.

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I.D.H. Diamonds NV v Embee Diamond Technologies Inc., 2017 SKQB 79

Layh, March 23, 2017 (QB17074)

Civil Procedure – Limitation Period
Limitation of Actions – Acknowledgment of Debt
Statutes – Interpretation – Electronic Information and Documents Act, 2000
Statutes – Interpretation – Limitations Act

The plaintiff sought summary judgment to recover payment for the sale of diamonds to the defendant and the defendant applied to have the plaintiff's claim dismissed as being statute-barred under s. 19 of The Limitations Act. In February 2011, the defendant purchased $944,917.26 USD worth of diamonds from the plaintiff. The amount $472,458.57 was payable upon delivery with late payments being subject to 12 percent interest per year (and 10 percent penalty on any late payment). The remainder of the purchase price was due within 30 days of delivery. The initial payment was not made until March 23, 2011, but no interest was paid. Another $25,000 was paid on March 8, 2012, but no further payments were made. A formal demand of payment was made on May 29, 2015. A statement of claim was issued on September 11, 2015. The defendant argued

that two years had passed since it had either tendered partial payment or otherwise acknowledged the indebtedness. The plaintiff argued that the limitation period was continually reset by the defendant's employees repeatedly acknowledging its indebtedness for unpaid amounts in email correspondence. The defendant said that the only email with electronic signature was the June 28, 2015 one and therefore no other emails had an electronic signature for the purpose of establishing a signed acknowledgment of the indebtedness. The issues were as follows: 1) whether the defendant's emails acknowledged the existence of the debt as required by s. 11(1) of The Limitations Act; and 2) whether the acknowledgment was in writing and signed as required by s. 11(2)(a) of The Limitations Act.
HELD: The issues were analyzed as follows: 1) the court reviewed the various email correspondences between the parties and concluded that the defendant repeatedly acknowledged the existence of the debt. The court did not find a need for the defendant to acknowledge a specific quantum of debt. The series of emails never left more than two years between each acknowledgment; and 2) The Limitations Act does not define "writing" or "signed". The Electronic Information and Documents Act, 2000 (EIDA) applied because emails were found to fall within the definition of "electronic". The court concluded that the emails met the "in writing" requirement of s. 11(2) of The Limitations Act. The court looked at the EIDA and the common law to determine whether the "signed" requirement was met. The court found that the EIDA intended to ensure that electronic signatures were sufficient. The court found that the series of emails between the parties met the requirement of an "electronic signature" as defined in the EIDA because a) there was some type of "information" on the emails; b) the information can be in electronic form; c) the information was created or adopted by the person; and d) the information was attached to or associated with the document. The court did not accept that only the emails with the electronic signatures established authenticity or that emails without electronic signatures established an intention to disavow the contents of the email. The emails satisfied s. 11 of the Act. The plaintiff's action was not statute-barred. The defendant's application was dismissed.

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Harvard Developments Inc. v Park Manor Condominium Corp., 2017 SKQB 83

Kalmakoff, March 23, 2017 (QB17078)

Civil Procedure – Costs – Solicitor-client
Condominiums – Condominium Fees
Condominiums – Condominium Property Act – Bylaws – Amendment

The applicants applied by originating notice for an order prohibiting the respondent from amending its bylaws to implement a new scheme of apportionment for assessing a unit owner's contribution to common reserve fund fees (condo fees). The respondent was a condominium corporation and the applicants owned units within the condominium. The respondent was unsuccessful in obtaining the consents required by s. 14 of The Condominium Property Act, 1993 to amend the condominium plan to change the unit factors assigned to each unit. Therefore, the respondent decided to amend the building's bylaws, pursuant to s. 48 of The Condominium Property Regulations. In December 2016, a resolution was passed to amend the bylaws to provide for apportionment based on the square footage of each individual unit. The new scheme would result in an increase to one of the applicant's fees and a decrease to the other's. The applicants argued that the amendment to the bylaw was oppressive, unfairly prejudicial, and that it fairly disregarded their interests.
HELD: Section 49 of the Regulations grants broad discretion to the court on an application to object to a scheme of apportionment implemented by a condominium corporation in this fashion. The evidence indicated that a quorum was present when the motion was passed, and therefore, for the court to interfere with the bylaw it must be satisfied that its conduct in amending the bylaw was oppressive or unfairly prejudicial towards, or that it unfairly disregarded, the interests of the applicants as set out in s. 99.2 of the Act. The court adopted a two-step test from other jurisdictions that required a claimant to demonstrate the following: 1) there was a breach of its reasonable expectations; and 2) the conduct complained of amounted to oppression, unfair prejudice, or unfair disregard. There was nothing ensuring the applicants that the scheme for determining condo fees would never change. The applicants did not meet the first branch of the test so the application failed. They would also not have met the second branch of the test because the evidence did not demonstrate that the respondent's conduct was oppressive, unfairly prejudicial, or that it unfairly disregarded their interests. The court did not grant solicitor-client costs to the respondent.

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Haug v Loran, 2017 SKQB 92

Scherman, March 29, 2017 (QB17086)

Civil Procedure – Application to Strike Statement of Claim – Abuse of Process – No Reasonable Cause of Action – Scandalous and Vexatious
Civil Procedure – Costs – Solicitor and Client Costs
Civil Procedure – Queen's Bench Rules, Rule 7-9, Rule 11-28, Rule 13-8
Civil Procedure – Vexatious Litigant

The deceased was the father of the plaintiff and L.H. The plaintiff claimed against the lawyer acting for L.H., the administrator of the deceased's estate (QBG 1232). The claim was for storage locker fees and the value of goods the plaintiff said he lost when the storage company sold the goods by auction. The plaintiff did acknowledge that he authorized the sale because he could not pay for the storage fees, which he said was caused by the wrongful actions of the lawyer. He also commenced a similar action against L.H. on the grounds that L.H.'s refusal to pay the storage fees, as administrator of the estate, caused his loss and damages (QBG 1075). In a third action (QBG 181), the plaintiff brought an action against the lawyer, L.H., and a second lawyer, who represented the plaintiff's mother's estate. L.H. was also the administrator of the mother's estate. In QBG 181, the plaintiff alleged that the defendants were guilty of deceit and fraud, had made false representations to him and the court, owed him a duty of care, negligently breached that duty of care, were guilty of abuses of process, defrauded him of funds and committed fraud in inducement when obtaining a February 17, 2010 decision of the court. The plaintiff said that he was entitled to $88,843 from the estates, which he did not receive nor was he aware of until 2014. The plaintiff brought 22 previous motions or applications challenging the actions or decisions of L.H. as administrator with respect to the estates. The plaintiff appealed one of the decisions and the appeal grounds covered much of the same claims for damages as alleged in QBG 1232 and 181. The defendants argued that QBG 1232 and 181 should be dismissed pursuant to rule 7-9 of The Queen's Bench Rules or because they were an abuse of process that could be dismissed pursuant to the inherent jurisdiction of the court. They also claimed that the plaintiff was a vexatious litigant.
HELD: The plaintiff's claims were an abuse of process, and the court found the plaintiff to be a vexatious litigant. The plaintiff's claims ignored the direction in rule 13-8 that pleadings contain a statement in summary form, only of the

material facts relied on, for the party's claim and that it be as brief as the nature of the case will permit. The plaintiff's grounds of appeal were concise and understandable, thereby demonstrating his ability to draft concisely and with focus. Previous court decisions found that the administration of the estates had been conducted appropriately. The court dealt with the defendants' applications pursuant to the concept of abuse of process under the inherent jurisdiction of the court and concluded that the plaintiff's proceedings were an abuse of process on multiple grounds that both individually and by virtue of the cumulative weight thereof justified the plaintiff's claims being struck out. There was a previous court decision, which was not appealed, that determined that the plaintiff's entitlement should be deducted by costs of the estates due to his applications. The plaintiff's theory of liability was found to have no reasonable prospect of success. In QBG 181, the plaintiff's theory of liability was based on the premise that the administrators and lawyers owed personal duties of care to him independent of, and separate and apart from, the duties of care they owed to the estate itself. The court already dealt with the issues of the accounts and the storage lockers. The court also previously decided that the plaintiff did not have a claim regarding not knowing there were still monies owing to him from the estates. The claims were an improper and vexatious attempt to retry prior decisions of the court and constituted an aggravated abuse of process. The court held that QBG 181 should also be struck as against L.H. on the basis that it constituted a multiplicity of actions because the same issues were dealt with in QB 1075. The court also found the pleadings were scandalous and vexatious, and therefore an abuse of process. In the interest of efficiency, the court declined to determine whether the claims could also be struck for not having a reasonable cause of action. The court did, nonetheless, list numerous claims that it easily found had no reasonable prospect of succeeding. The defendants were successful in their vexatious litigant application. The court ordered that the plaintiff be restrained from instituting further proceedings in the court without prior leave of the court. The court did not find solicitor and client costs to be appropriate partly because it would lead to further proceedings before the court for a taxation of the costs. The court made a fixed cost award to reflect the significant amount of work involved and the findings of abuse of process and a vexatious litigant. Total costs awarded were $17,000. If the costs were not paid within 30 days, any funds in the estates payable to the plaintiff could be used to pay the costs.

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Lindquist v Palliser Regional Park Authority, 2017 SKQB 96

Barrignton-Foote, April 7, 2017 (QB17089)

Contracts – Unjust Enrichment
Damages
Lease – Commercial Lease

The plaintiffs, a husband and wife, operated a marina and campground from 2006 to 2009 on land leased from a regional park. The plaintiffs' lease was terminated effective December 31, 2009. The plaintiffs claimed restitution in an amount equal to the amount spent for labour and material to carry out improvements on the leased land. They also claimed for improvements made by the plaintiffs' predecessors to build 26 campsites. The park agreed that they were unjustly enriched due to the improvements done by the plaintiffs and, therefore, the plaintiffs were entitled to restitution. The park did not agree that the plaintiffs were entitled to restitution for any of the improvements done by the plaintiffs' predecessors. The park claimed reimbursement for a power bill. Both parties claimed some campsite rental fees they said they were entitled to receive pursuant to the lease. The plaintiffs purchased the business from their predecessors for $340,000. The plaintiffs paid a total of $180,000 before their lease was terminated. The plaintiffs claimed on a quantum meruit basis. The park took issue with the reliability and completeness of the plaintiffs' evidence as to the cost to the plaintiffs or value of the improvements, and the extent of the benefit to the park.
HELD: The court had some issue with the husband plaintiff's reliability but not with his credibility. The court found that the plaintiffs installed all services for some campsites, replaced the electrical in some campsites, and planted shrubs in the area. The plaintiffs also improved and added on to the store as well as made some smaller improvements to the leased land. There was no evidence of the number of hours or the market value of the unpaid labour provided by or on behalf of the plaintiffs. The court found that the plaintiffs were entitled to $43,890, which was 70 percent of the revenue of a campground. The plaintiffs owed the park $31,600 for fees collected in 2009 for the 2010 season. The court found that the value of the labour and materials supplied by the plaintiffs for various service installations and improvements to campsites was $69,249. The plaintiffs' claim for compensation for the improvements of their predecessors was not proved, for two reasons: there was no evidence as to when or how the predecessors installed the services or the dealings between them and the park in that

regard; and the plaintiffs failed to prove that they suffered a corresponding deprivation even if the predecessors could have claimed against the park. With respect to the store improvements, there were no particulars of the hours or value of unpaid labour. The court found that the value of labour and materials supplied by the plaintiffs to improve the store building was $62,000. The court also awarded the plaintiffs $18,143 for miscellaneous improvements. The court did not require the plaintiffs to pay the power account that the defendants sought recovery for because it was not clear when the charges were incurred. In the end, the court awarded the plaintiffs judgment of $193,282 and the defendant was awarded judgment of $31,600. The defendant's amount was set off against the amount awarded to the plaintiffs, resulting in the defendants having to pay the plaintiffs $161,682.

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Peace Hills Trust Co. v Kocsis Transport Ltd., 2017 SKQB 101

Gabrielson, April 10, 2017 (QB17096)

Mortgages – Foreclosure – Redemption

The defendant mortgagor applied for an order extending the redemption period found in the order nisi for foreclosure for an additional six months from January 14, 2017. The plaintiff mortgagee applied for an order confirming the sale of the mortgaged leasehold interest in the land pursuant to an accepted offer to purchase dated January 26, 2017. The defendant had granted a leasehold mortgage to the plaintiff in 1991 for $611,650 with interest at 7.75 percent. The defendant had entered into a ground lease with Aspen Developments as landlord at that time. Aspen consented to the mortgage and the defendant used the mortgage funds to construct a commercial building on the leasehold premises. In 2010, the defendant defaulted on the terms of the mortgage, and the plaintiff commenced its foreclosure action. The defendants brought a number of actions against Aspen and another party. The court ordered that the foreclosure action be consolidated with the defendant's actions. At trial in June 2015, the judge severed the defendant's action and issued an order nisi for sale. A 30-day redemption period was granted. The defendant appealed but the order was upheld. By another order, the court directed that the redemption period in the order nisi be extended subject to conditions for another six months from July 2016. When that period expired, the defendant made this application on the

grounds that if granted, it would very likely be able to satisfy the mortgage in its entirety and that it would pay and compensate the plaintiff for the requested extension. The plaintiff opposed the application and brought its application to confirm the sale. The offer price was $1,825,000 and was in excess of the upset price of $1,750,000 set in the order nisi. The defendant argued that the order nisi required that the best price be obtained and that the offer was far less than the current value of the property, but the defendant did not provide a new appraisal. The offer price had been based upon the appraisal submitted by the plaintiff at the time of the original order nisi in 2015.
HELD: The defendant's application was dismissed. The court found that the equities in favour of an extension were not outweighed by those against it. The arrears of interest and charges exceeded the amount of the original mortgage. The application was made on the same grounds as that made by the defendant in July 2016, and it had made no progress in resolving the related actions so as to allow it to redeem the mortgage. The plaintiff's application was granted. The only appraisal available was that filed in 2015. The sale was approved as the price obtained in the offer was in excess of the upset price set out in the order nisi and no other offers had been made.

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Service Employees International Union - West v Heartland Regional Health Authority, 2017 SKQB 103

Scherman, April 11, 2017 (QB17098)

Administrative Law – Appeal – Arbitration – Judicial Review
Administrative Law – Judicial Review – Procedural Fairness
Labour Law – Appeal
Labour Law – Arbitration – Judicial Review

The union sought judicial review of a decision of the arbitrator dismissing grievances by employees. The grounds for judicial review were as follows: 1) there was a breach of the arbitrator's duty of procedural fairness; and 2) the arbitrator's decision was unreasonable. The union said that procedural fairness was breached because the arbitrator decided the grievances on the basis of a line of analysis not raised at the hearing, thereby not affording the union the opportunity to call evidence or make submissions on that line of analysis. The decision was unreasonable, according to the union, because it rendered the

collective agreement meaningless and contradicted an interpretation given to the collective agreement language and Letter of Understanding #11 (LOU #11) in a prior arbitration award. The employees worked at an old health care facility and were moved to a new facility when the old one was closed. The union argued that the movement of the employees was a transfer that triggered operation of LOU #11, therefore, giving access to Article 12(b) of the Collective Agreement. The union said this entitled the employees to the option to terminate their employment, receive a severance package, and begin accessing any pension benefits.
HELD: The court analyzed the union's grounds as follows: 1) the question of whether or not the previous arbitrator's award should be followed was clearly before the arbitrator. The parties made submissions on the question. The determinative issue was whether LOU #11 applied to the circumstances. The court did not find any basis to support the union's argument that the arbitrator raised the issue on his own initiative. The arbitrator concluded that LOU #11 was not applicable to the grievances before him. The arbitrator was not obliged to follow another arbitrator's decision because stare decisis did not operate within labour arbitration. In the alternative, the arbitrator concluded that the previous arbitrator's award was distinguishable; and 2) the union argued that the arbitrator's decision was unreasonable because it did not follow the previous arbitrator's award, it failed to give meaning to all words used by the parties and it rendered significant portions of LOU #11 meaningless. The court found that to argue the decision was unreasonable because it did not follow the previous arbitrator was a non sequitur. The arbitrator justified his conclusion with transparent and intelligible reasons. The union did not convince the court that the decision did not fall within a range of possible acceptable outcomes that were defensible in respect of both the facts and the law. The union's application was dismissed.

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N.D. (Litigation Guardian of) v 101226544 Saskatchewan Inc., 2017 SKQB 107

Smith, April 19, 2017 (QB17102)

Contract – Breach – Damages

The plaintiffs brought an action for breach of contract and damages in the amount of $100,000 against the defendants.

They and the defendant applied for summary judgment pursuant to Queen's Bench rule 7-2. The defendant argued that the claim should be dismissed as it was without merit. The plaintiff, S.B., was the mother of a child with Down syndrome. After his birth, she incorporated a non-profit corporation, AIM, the defendant in the action. AIM created programs to assist children with Down syndrome. S.B. became Chairman of the Board. In order to obtain access to AIM's programs, parents had to pay $100 per year to AIM and agree to its policies. One policy insisted that parents be involved with their child's programming. In 2014, the plaintiff M.B. joined the board to help AIM. M.B. and S.B. were married in 2016. M.B. had divulged to S.B. that prior to their marriage he had been charged with sexual assault against the 12-year-old daughter of his previous partner. He had been convicted but before sentencing, the daughter recanted her testimony. The conviction was vacated and a formal stay of proceeding was filed. S.B. believed M.B. to be innocent and did not raise the matter with the AIM board. In 2015 she received an email from someone unknown to her that described the trial and indicated that M.B.'s presence on AIM's board would be publicized. S.B. informed the board of the contents of the message and it decided that it would be best for AIM if M.B. resigned, and he did so. S.B. offered to step down from her position and the board decided to ask her to resign too. After S.B. had complied, some parents protested against M.B.'s presence at AIM workshops and the board advised him that he could no long attend any programming, therapies or events. S.B. decided that this was in contravention of the policy requiring both parent's participation and so she would not participate alone in the programs with her son. The plaintiffs then sued AIM on the ground that since it accepted the $100 registration fee, there was a contract between them. They claimed damages for the cost of replacing AIM's programming for their son until his tweny-first birthday, such as speech, reading and occupational therapy. AIM's position was that the criminal charges against M.B. constituted a breach of implied conditions in the membership policy. It also argued that it had never precluded S.B. or her son from taking part in it services and therefore the plaintiffs had not mitigated their damages.

HELD: The plaintiffs' application for summary judgment was dismissed. The court found that it could resolve the matter summarily under Queen's Bench rule 7-2. The plaintiffs' claim that a contract had been formed to create an open-ended obligation for AIM to provide programming to their son until his twenty-first birthday was untenable. However, the court noted that the plaintiffs retained the right to bring another application to seek judicial review on the basis of whether a

voluntary organization could exclude a member.

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Good Spirit School Division No. 204 v Christ the Teacher Roman Catholic Separate School Division No. 212, 2017 SKQB 109

Layh, April 20, 2017 (QB17100)

Constitutional Law – Charter of Rights – Education – Separate School Funding
Constitutional Law – Charter of Rights, Section 1, Section 2(a), Section 15
Constitutional Law – Standing

When a community was going to have their public school closed due to low enrollment numbers, a group of Roman Catholics petitioned the Minister of Education to form a Roman Catholic School Division (R.C.S.D.) pursuant to The Education Act, 1995. The R.C.S.D. opened a school in the community. Since its opening in 2003, non-Catholic students also attended the school. The plaintiff public school division argued that non-Catholic students could attend the catholic school, but not receive government funding for those students. The issues for the court were as follows: 1) did the plaintiff have the requisite standing; 2) was the school a legitimate separate school; 3) did ss. 93(1) and 93(3) of the Constitutional Act, 1867 constitutionally protect legislation and government action that funded non-Catholic students at the school; 4) was funding of non-minority faith students at the school a constitutional right under s. 17(2) of the Saskatchewan Act; 5) was the government's funding of non-Catholic students at the school a violation of ss. 2(a) of the Charter or s. 15 of the Charter; 6) did s. 1 of the Charter justify any Charter violations; and 7) was the plaintiff entitled to the declarations it sought. The defendants were the R.C.S.D. and the Government of Saskatchewan. HELD: The issues were determined as follows: 1) the court found that the plaintiff had standing on the basis of public interest; 2) the court found that the school was a legitimate separate school; 3) the court determined that rights under s. 93(3) allowed provincial legislation to augment existing rights or establish new denominational schools, post union. The court gave four reasons why the denominational aspects test applied to s. 93(3). The court found that Catholic separate schools had no constitutional right to admit and receive funding for non-Catholic students; 4) the court concluded that s. 17(2) was not a constitutional guarantee that Catholic schools were

automatically entitled to funding equal to public schools without regard to the faith-affiliation of students enrolled in Catholic schools; 5) the court agreed with the plaintiff that as soon as the defendants were outside of the confines of s. 17 of the Saskatchewan Act, there was a Charter violation. The separate schools for Catholic and Protestant minorities are contrary to the duty of neutrality between religions, but was saved by s. 93 of the Constitution Act, 1867. The court concluded that the advantage to Catholics, which was not protected by s. 93, proved that the government was not acting neutrally between religions and was an infringement of ss. 2(a) of the Charter. The court also concluded that where the state violated its religious neutrality duty under s. 2(a), the state also violated s. 15 Charter rights. The court applied the two-part test from case law to determine whether equality rights had been infringed on their own: the first part of the test was met because the government funded Catholic schools for the attendance of non-Catholic students, while no other religion received the same treatment, which created a distinction on the enumerated ground of religion; and the plaintiffs were found to have established a discriminatory impact. The provisions of The Education Act, 1995 and The Education Funding Regulations that enabled funding to Catholic schools respecting the attendance of non-Catholic students infringed equality rights under s. 15(1) of the Charter; 6) the court found the government action was unrelated to the defendants' alleged pressing objectives of equality in education and parental choice. Also, the funding of non-minority faith students in separate schools did not minimally impair the duty of neutrality. The court concluded that the defendants did not demonstrate a justification under s. 1 for the Charter infringement; and 7) the court declared that those provisions of The Education Act, 1995 and the Education Funding Regulations, that provided funding grants to separate schools respecting students not of the minority faith, are of no force and effect. The declaration was stayed until June 30, 2018.

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