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

Volume 19, No. 16 **August 15, 2017**

Subject Index

R v Allaby, 2017 SKCA 25

Lane Ottenbreit Caldwell, March 27, 2017 (CA17025)

Criminal Law – Breach of Probation – Acquittal – Appeal
Statutes – Interpretation – Criminal Code, Section 161, Section 733.1

The Crown appealed a Provincial Court judge's decision to acquit the respondent of failure to comply with a probation order under s. 733.1(1) of the Criminal Code and failure to comply with a prohibition order under s. 161(4) of the Code (see: 2016 SKPC 14). The respondent had been convicted of various sexual offences with respect to children and was bound by a lifetime prohibition order under s. 161 that he was not to attend at a public park, swimming area, daycare centre, school, playground, or community centre where anyone under the age of 14 was present. Under s. 733.1(1), the respondent was bound by an 18-month probation order prohibiting him from attending at the same places listed under the s. 161(4) order where anyone under the age of 16 was present or reasonably expected to be present. The respondent visited the Regina Public Library's (RPL) main branch every day for a period of two months. A witness reported the respondent's presence there to his supervising police officer. Neither that officer nor the respondent's probation officer had discussed with him whether the library was a "community centre", the term used in his orders. The respondent testified that prior to living in Regina, he had resided in Vancouver subject to parole conditions and the

same s. 161 order, which also prohibited him from attending at "community centres". He was allowed to go into a library there with a parole officer's permission. When he did visit a library that was located inside a building designated a "community centre", he was charged and his parole conditions were revised to include the word "library". Further, after moving to Regina, he was no longer on parole. As a result, the respondent believed that a library and a community centre were different places. After the CEO of the RPL testified regarding the number of programs offered to the public at the main branch, the trial judge determined that the RPL provided recreational and educational activities to the public but found that the evidence did that establish that it was a community centre as defined by the Canadian Oxford Dictionary. He also found that as the term was ambiguous within a penal provision, the meaning should be resolved in a manner most favourable to the respondent. In the event these findings were wrong, the trial judge determined that the respondent had not intended to breach the court orders. The issues on appeal were whether the trial judge erred in the following ways: 1) by concluding that the RPL was not a "community centre"; and 2) in determining the respondent did not have the requisite mens rea.

HELD: The appeal was allowed. A new trial was ordered because the Crown acknowledged that the respondent might have a defence that a mistake of law was caused by officially induced error. The court found with respect to each issue: 1) the trial had failed to properly construe the term "community centre" as used in both of the orders. He understood the purpose of the s. 161(1)(a) order and probation order but did not give effect to it. The term as it applies to orders protecting children must be given an expansive meaning. In this case, there was nothing ambiguous about the term construed in the context of the purpose and intent of the Code provisions; and 2) the trial judge's decision respecting lack of mens rea was based on the respondent's mistaken belief that the library was not a community centre. The court did not have to address whether he erred in his interpretation of the mens rea required to sustain the convictions. It was necessary to determine what the nature of the mistaken belief was and whether such belief was a defence. The trial judge erred in requiring the Crown to prove that the accused knew or was willfully blind to the law. The respondent clearly knew that he was prohibited from attending at a community centre where children under the ages of 14 and 16 would be present. The respondent was mistaken about the ambit of the term and the legal consequences of his actions. Such a mistake was one of law and could not operate as a defence and negate his intention to commit the offences except in the case of officially induced error.

 Back to top

R v Dillom, 2017 SKCA 28

Lane Herauf Whitmore, April 6, 2017 (CA17028)

Criminal Law – Kidnapping – Sentencing – Appeal
Criminal Law – Aboriginal Offender

The appellant appealed his sentence of three years' incarceration imposed after he pled guilty to a charge of kidnapping and two charges of breach of conditions. The Crown withdrew 17 other charges prior to the entry of the guilty plea. The appellant had become involved with members of the Onion Lake First Nation. After attending at a home on the reserve, the appellant's co-accused attacked the victim in the home and then forced him into a vehicle. The appellant drove the vehicle and was present when the victim was beaten and cut with a knife by the co-accused but did not intervene on behalf of the victim. Counsel for the appellant argued that the sentencing judge erred by failing to take into account mitigating factors, to consider the appellant's personal circumstances as an Aboriginal offender, and to consider his moral blameworthiness. These errors resulted in the imposition of a disproportionate sentence. HELD: The appeal was dismissed. The court found that the sentence was not unfit and the sentencing judge had not erred in principle or law in a way that would impact the sentence. Although the sentencing judge was presented with limited information as to the appellant's personal circumstances and was not provided with the Gladue factors, it was clear that what transpired was a plea arrangement. The sentencing judge was knowledgeable about the local area and conditions. The court rejected the appellant's argument that his participation in the kidnapping was very limited.

 Back to top

R v Lavallee, 2017 SKPC 27

Schiefner, March 17, 2017 (PC17018)

Criminal Law – Attempted Murder – Mens Rea
Criminal Law – Defences – Drunkenness
Criminal Law – Defences – Provocation
Criminal Law – Evidence – Credibility

The accused was charged with attempted murder and aggravated assault, contrary to ss. 239(b) and 268(2) of the Criminal Code, respectively. The victim of the attack was the accused's estranged girlfriend and mother of his two children. He pled guilty to aggravated assault. The issue was whether the accused had the intention to kill another human being. The victim and friends were socializing and drinking while the accused had the children at his parents' house. The accused showed up at the house where the victim was and the group eventually went to the victim's house. The victim and accused began arguing about their children. To stop the arguing, a friend offered to go and get the children from the accused's parents' house and take them to the victim's house. The car got stuck on the way to the victim's house so the driver and the accused's child walked to another house. While the accused was gone from her house, the victim and another man had sex. The accused walked into the victim's room as the man was putting his pants on. The accused punched the man a couple of times and then the man left. When the friend got her car unstuck, she took the child to the victim's house where she found the victim bleeding profusely in her bedroom. The accused stabbed the victim 14 times. The victim testified that the accused sat on her stomach and told her that he wanted to watch her die. When she asked him to stop because she said she was going to bleed out the accused said that he didn't care. The accused stabbed the victim three times in the face, three in the neck, three on the left arm, once in the right wrist, once in the chest, once in the epigastrium, once on each ankle, and once in the scalp. One of the stabbing wounds was to the victim's left eye and she was left without sight in that eye. She spent eight days in hospital. The victim indicated that the accused stopped stabbing her when he heard a knock at the door. The accused testified that he was intoxicated and high on acid during the incident and had a limited memory of it. He said that he did not want to kill the victim. The accused argued that the circumstances supported the defence of provocation or, at the very least, raised an air of reality to provocation compelling the Crown to negate it as a defence. Alternatively, the accused argued that the cumulative effect of anger, provocation, and intoxication were relevant in determining whether the requisite intent to kill was proven. HELD: The court concluded that s. 232, provocation, was of no assistance to the accused because: 1) the provision applies to culpable homicide not attempted murder; and 2) s. 232 was amended in 2015 to specify that it only applies if the victim's conduct amounts to an indictable offence punishable by five or more years in prison. The court nonetheless had to take the accused's state of mind into account. There was no air of reality to the accused's assertion that he was in an advanced state of

intoxication and thus was incapable of understanding or foreseeing the natural and probable consequences of his actions. The attack on the victim was extensive and prolonged. The court concluded that the accused had sufficient awareness to recognize the potential for detection and to avoid discovery because he stopped the attack when he heard someone at the door. The court did not find the accused's testimony reliable or credible regarding his intention. The nature of the attack and the words that the accused spoke to the victim during the attack were found unequivocally to indicate a murderous intention on his part. The court concluded that the totality of evidence demonstrated, beyond a reasonable doubt, that the accused intended to kill the victim. The accused was found guilty of attempted murder and the court directed a conditional stay on the aggravated assault charge.

 Back to top

R v Isbister, 2017 SKPC 28

Daunt, March 23, 2017 (PC17019)

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

The accused was charged with possession of marijuana in an amount not exceeding 3 kg for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, and with willfully obstructing a peace officer in the execution of her duty to investigate a criminal offence by providing a false name, contrary to s. 129(2) of the Criminal Code. The defence brought a Charter application alleging that the accused's s. 8, s. 9 and s. 10(b) rights had been violated and requesting that the evidence be excluded pursuant to s. 24(2). A voir dire was held. The charges were laid after two RCMP officers had noticed a parked vehicle on a remote highway at 2:00 am during the winter. Fearing for the occupant's safety, the officers decided to perform a licence, registration and sobriety check pursuant to s. 209.1 of The Traffic Safety Act. When one of the officers approached the vehicle, she encountered the powerful smell of raw marijuana. The driver denied that there was any smell but when the officer shone her flashlight into the back of the vehicle, she saw flecks of suspected marijuana on top of a blanket. The other officer also testified that he smelled marijuana and saw the flecks as well. They agreed that they had grounds to arrest the

driver and his passenger, the accused, for possession of marijuana. The first officer took the accused to the police vehicle where she was formally arrested and read her right to counsel and police warning. The accused gave a false name and advised that she did not want to contact a lawyer. The officers then conducted a search of the vehicle and found two vacuum-sealed bags containing about 1 kg of what appeared to be marijuana. They then re-arrested the driver and the accused for possession for the purpose of trafficking and again read them their rights. The accused advised that she wanted to contact a lawyer. The officer decided that because the accused would not have any privacy in the vehicle, it would be better if the accused consulted a lawyer when they reached the detachment. Their departure from the scene was delayed while they secured the vehicle and arranged to have it towed. At the detachment, the officer placed the accused in an interview room to permit her to call a lawyer, but before allowing her to, the officer discussed with the accused the name that she had given and the accused admitted to lying. Because the officer could still smell marijuana on the accused, she asked her if she had any more in her possession. The accused removed a small burnt roach from her bra and gave it to the officer. The officer decided then that she should strip search the accused. No further evidence was found. The accused then contacted Legal Aid fifty minutes after she requested to contact counsel and an hour after initial detention.

HELD: The Charter application was granted. The court found that the accused's s. 10(b) Charter rights had been infringed when the officer prevented the accused from contacting a lawyer without delay at the detachment when she spoke to the accused about her identity and then decided to conduct a strip search. The court reviewed the evidence obtained, the roach and the admission by the accused and decided it was inadmissible after conducting a Grant analysis. The court found that the accused had not been arbitrarily detained, and therefore, there was no breach of s. 9 of the Charter. The officers were authorized to stop the vehicle pursuant to s. 209.1 of The Traffic Safety Act. Under s. 495 of the Criminal Code, the officer was permitted to arrest the accused based on her belief on reasonable grounds that the accused was committing an indictable offence because of the amount of marijuana exceeded 30 grams. The arrest was reasonable because of the smell and the observation of marijuana flecks and the arrest was necessary to preserve evidence of the offence. Regarding the allegation that the officer had breached s. 8 of the Charter, the court found there had been no violation because a search had not occurred when the officer shone her flashlight into the vehicle. The actual search of the vehicle was authorized by law as incidental to the arrest of the accused and was conducted reasonably. The marijuana seized

from the vehicle was therefore admissible. However, the court found that the strip search of the accused was unreasonable but no evidence was obtained as a result of it.

 Back to top

R v Toutsain, 2017 SKPC 29

Baniak, March 17, 2017 (PC17024)

Criminal Law – Assault – Assault with a Weapon
Criminal Law – Evidence – Circumstantial Evidence

The accused was charged with committing an assault using a weapon, a pellet gun, contrary to s. 267(a) of the Criminal Code. The complainant testified that it was the accused who attacked him and pistol-whipped him. The attack occurred in a shed located on a residential property. The accused described the gun as being black and brown and about 9 inches long. Another person who was present at the time but was high on meth testified that she went with the accused to the shed and heard him and the complainant fighting after the accused entered it. A police officer testified that on the day of the assault he stopped a vehicle after he had kept it under surveillance. He had seen the accused in the vehicle before being dropped off at the house where the assault occurred. A search of the vehicle yielded a Beretta-style pellet gun that was missing the grip on one side. It weighed about four pounds and looked like a real firearm. The gun was not subjected to forensic testing. Another police officer testified that when he searched the shed on a different investigation, he found the grip of a pistol. It fit into the pistol that had been found during the vehicle search.
HELD: The accused was found guilty. The complainant identified the accused. The witness identified the complainant. The gun used in the assault was located. Taking all of the evidence into account, the combined effect of it justified the inference that it was the accused who assaulted the complainant.

 Back to top

R v Montague-Mitchell, 2017 SKPC 32

Jackson, March 31, 2017 (PC17021)

Criminal Law – Controlled Drugs and Substances Act – Possession for the Purpose of Trafficking – Methamphetamine

Criminal Law – Controlled Drugs and Substances Act – Trafficking – Cocaine and Methamphetamine
Criminal Law – Evidence – Credibility
Criminal Law – Proceeds of Crime

The accused was charged with the following: unlawfully trafficking in methamphetamine and/or cocaine, contrary to s. 5(1) of the Controlled Drugs and Substances Act (CDSA); possession of the proceeds of crime not exceeding $5,000, contrary to ss. 354(1) and 355(B) of the Criminal Code; possessing methamphetamine for the purpose of trafficking, contrary to s. 5(2) of the CDSA; and possessing proceeds of crime exceeding $5,000, contrary to ss. 354(1) and 355(B) of the Criminal Code. Counts one and two related to a meeting between the accused and a suspected drug trafficker, W., where the accused was alleged to have sold cocaine to W. He was arrested with $2,770 Canadian and $100 American money. The third and fourth counts related to the search and seizure of an apartment the next day, where 55.2 grams of methamphetamine and $26,650 cash were seized. Cst. B. testified that he and Cst. G. were conducting surveillance on the residence of W. in an unmarked vehicle. The officers observed W. leave and then participate in what they were satisfied was a drug trafficking transaction. A black male was observed to go to the truck and then walk away. The officers had information that W. was being supplied drugs from unknown black males, so the officer took down and arrested the person, the accused. There were three bundles of cash located on the accused, as well as keys to the apartment searched the next day. Drugs and cash were located in the bedroom of the apartment. An ounce of cocaine and two and a half ounces of methamphetamine were found in W.'s vehicle. Cst. F. authored the Expert Opinion Report, which was admitted by consent along with his credentials. Cst. F. considered W. a street-level trafficker and the accused a mid-level trafficker. The accused testified that he had an evening meal with his roommate at his old apartment and then went to his new apartment to go to a movie with his girlfriend. He said he was walking to the theatre to meet his friend when W. rolled down his window and asked for a cigarette, which he gave him. He said he was walking in a circuitous route because he was unfamiliar with the city. The accused said that W. was driving the truck. He said that he had a lot of cash to avoid automatic debits being withdrawn from his account for debts. The accused said that he had the keys to the apartment after a chance meeting with his friend, who gave them to him in case anyone needed into his apartment while he was away in Ontario. The accused said that he never entered the friend's apartment. The issues were as follows: 1) whether the accused conducted a drug sale in the parking lot and is therefore guilty of trafficking and

possessing the proceeds of the crime; and 2) whether the accused, in law, had possession of the drugs and cash found in the apartment the day following his arrest.
HELD: The court assessed the credibility of the accused and applied the principles of W.D. to conclude that the evidence was not believed and the court was not left with any reasonable doubt by it. The court determined the issues as follows: 1) in all the circumstances, the evidence led to no rational conclusion other than that the accused trafficked in methamphetamine and that the monies found in his possession were proceeds of the crime; 2) the apartment was an obvious stash house. The accused would have at least tried to contact his friend after the arrest if he had been unaware of the drugs and cash in the apartment. The court found that the only rational inference to be drawn from all of this evidence was that the accused had the keys for the apartment knowing full well that his friend used it as a stash house. The knowledge of the presence of the drugs and cash therein was not proved beyond a reasonable doubt for various reasons. The accused was found guilty of the first two counts only.

 Back to top

Sabok-Sir v Fleury, 2017 SKPC 38

Martinez, April 11, 2017 (PC17022)

Small Claims – Practice and Procedure – Trials – Adjournments

The plaintiff commenced her action in small claims in May 2015. She alleged that the defendant was negligent because he failed to take reasonable steps to control his dog, and after the dog bit her, she suffered severe hand injuries. Case management conferences were held in September and November 2015. The plaintiff declined a potential trial date in November of 2015 because her visitor's visa was expiring that month and she would not be returning to Canada until March 2016. The case management judge set her action down for trial in April 2016, but the trial did not proceed nor was it heard on the next adjourned date set in August 2016. In both instances, the plaintiff had been barred from entering Canada. The plaintiff had requested and been granted adjournments of those trials because she could not be present, although the defendant opposed the requests. The trial was adjourned to April 2017 and the plaintiff requested another adjournment. She could not explain why she was barred from entering Canada but advised the court that she would be permitted to enter if the court

scheduled another trial date and then provided a letter to the Canada Border Services Agency confirming the date and that it required her presence at it.
HELD: The application was denied and the plaintiff's action dismissed for want of prosecution. A plaintiff in a civil action should attend the trial, but the court could not require such attendance. The purpose of The Small Claims Act is to resolve matters reasonably quickly and inexpensively. In this case it had been two years since the action was commenced and because of the ongoing uncertainty regarding the plaintiff's ability to attend if the trial was rescheduled, the court found that it would be contrary to the Act to permit the action to continue. The defendant had suffered prejudice to his employment prospects during the time the action was pending.

 Back to top

Beckman v Hanna, 2017 SKQB 80

Meschishnick, March 22, 2017 (QB17075)

Family Law – Child Support – Determination of Income
Family Law – Child Support – Enforcement
Statutes – Interpretation – Enforcement of Maintenance Orders Act, 1997

The parties separated in 2000 and divorced in 2002. They had one child, born March 1997. The parties entered into an Interspousal Agreement regarding custody, access, and guardianship. In March 2009, the parties reached an agreement regarding past and future child support at a pre-trial conference. An order reflecting the agreement issued July 2009. The respondent was required to make child support payments of $1,500. The order also set out a formula for calculating the respondent's income for the purposes of determining his child support obligation pursuant to the Federal Child Support Guidelines in future years. In 2015, the amount of child support came into question. The respondent applied to stay enforcement of a notice of seizure commenced by the petitioner and to have any funds seized returned to him. The respondent argued that the enforcement remedies relied on by the petitioner were not enforceable because an exact dollar amount had to be specified in a maintenance order pursuant to The Enforcement of Maintenance Orders Act, 1997. He also argued that the order only stipulated $1,500 per month and that he had paid at least that amount per month. He said he was not obliged to pay child support after July 2015, when the child turned 18. The issues

were as follows: 1) whether the order had to specify the quantum of child support payable in a specific dollar amount to be enforceable as a maintenance order under the Act; and 2) whether the obligation to pay child support expired when the child turned 18 years of age.
HELD: The issues were determined as follows: 1) the court found the definition of maintenance order to require that there is a provision in an order for the payment of support and the order be enforceable in Saskatchewan. The court did not have any difficulty calculating the respondent's obligation to pay child support once the variables from his tax return were known. The court could not find anything in the plain and ordinary meaning of the general words used to define a maintenance order that required a specific amount of child support be set out. The court found that s. 13 of the Guidelines directed that the amount of child support payable pursuant to s. 3 be set out in a child support order, but did not necessarily mean the amount must be specified for the order to be recognized as a maintenance order under the Act. Section 9(1)(d) of the Act allows the director to enforce an order unless "the sum payable under the maintenance order is not readily verifiable". The provision does not require the sum payable to be set out in a specific dollar amount. The court determined that a recipient should be allowed to enforce an order providing for the payment of child support where the amount of the obligation is readily verifiable. The respondent did not meet any of the limited grounds for setting aside a notice of seizure set out in s. 28 of the Act; and 2) the court concluded that it was not for the respondent to declare that the payment of child support ended because the child turned 18. The petitioner had a right to payment until the order was varied or the parties agreed. The respondent's application was dismissed. The stay of proceedings regarding the notice of garnishee and notice of continuing garnishee would be lifted 15 days after the date of the judgment. The respondent was ordered to pay the petitioner costs of $1,500.

 Back to top

Saskatchewan (Director under the Seizure of Criminal Property Act, 2009) v Butler, 2017 SKQB 81

Schwann, March 22, 2017 (QB17076)

Criminal Law – Forfeiture
Forfeiture – Seizure of Criminal Property
Statutes – Interpretation – Seizure of Criminal Property Act, 2009

The applicant applied for an order directing the forfeiture of $10,475 to the Crown. The money was seized by the police from B. in 2008 after executing a search warrant of his residence. On their approach to the residence, the police received information from a person leaving the residence that he had just purchased three grams of cocaine for $140. While searching the residence, the police answered a cell phone in the house where individuals wanted to stop by to pick up product. Three of the callers showed up at the residence with cash and admitted attending to purchase drugs. The police also noticed approximately ten vehicles approach the house and drive off. The money was seized from various places in the residence, including on B.'s person. The $8,500 cash found in the safe was held together in three elasticized bundles of $1,500 and four of $1,000. Samples from the cash were positive for cocaine residue with 17 of 19 samples having a high level of cocaine. The vast majority of the cash was in $20 denominations. A co-worker of B. provided an affidavit that he bought a truck from B. in 2007 for $16,000 with $11,000 of the purchase price being paid in periodic cash payments of $1,000 to $1,500. The issues were as follows: 1) whether the application was statute-barred, and whether it had retroactive effect; 2) whether, on a balance of probabilities, the property was proceeds of unlawful activity; and 3) whether the "interests of justice" exception had been established.
HELD: The issues were determined as follows: 1) the applicant applied pursuant to The Seizure of Criminal Property Act, 2009, as that version of the Act was in place at the time of the seizure. The respondent argued that s. 35.1 did not apply at the time of seizure, because it was not in the Act at the time of seizure. The respondent argued that the two-year limitation period pursuant to The Limitations Act applied to the application with the date of seizure being the date of discoverability. The respondent also argued that the 2009 Act did not have retrospective application. The court found that the applicant applied pursuant to the 2009 Act and therefore the matter was assessed from that perspective. Section 35.1 of the 2009 Act required applications for forfeiture to be made within two years from the director becoming satisfied that the property sought to be forfeited was proceeds of unlawful activity or an instrument of unlawful activity. The court found that the words "Notwithstanding The Limitations Act" at the beginning of s. 35.1 served to provide an intention to prioritize the content of s. 35.1 over The Limitations Act. An affidavit filed by the applicant indicated that the director became satisfied that the property was an instrument of unlawful activity after August 2016. The director's application was brought four months later, well within the two-year limitation period. The court then considered whether the 2009 Act had retrospective application and found that B. had the same legal

position and faced the same jeopardy regardless of the version of the legislation, and therefore, there was no retrospective problem; 2) s. 7 outlined the test to apply. The court accepted the expert's evidence with regards to the significance of the factors evidencing drug trafficking and how common they were to the drug trafficking trade. The applicant's evidence also showed that the person alleging to purchase the truck from the respondent was not the purchaser and the purchase price was $8,000, not $16,000. The court found it more likely than not that the money was proceeds of unlawful activity; and 3) B. did not provide evidence or argument to support the exception that forfeiture would clearly not be in the interests of justice. The property was found to be proceeds of unlawful activity and the forfeiture order was granted.

 Back to top

R v Smythe, 2017 SKQB 86

McMurtry, March 24, 2017 (QB17081)

Criminal Law – Motor Vehicle Offences – Failure to Stop at Scene of Accident
Constitutional Law – Charter of Rights, Section 11(b)

The accused was charged with failure to stop at the scene of an accident under s. 252(1) of the Criminal Code, obstructing justice under s. 139(2), mischief under s. 430(1), and three counts of failure to comply with a condition of an undertaking under s. 145 of the Code. The charges were laid on February 14, 2012. The accused brought a Charter application alleging that his right to be tried within a reasonable time under s. 11(b) had been violated. The delay to trial exceeded 59.2 months. The matter was not unusually complex, nor was there any other reason to find that extraordinary circumstances caused the delay. The defence and the Crown agreed that the delay to trial had been reduced by 21 months to 38.2 months by the defence, but the delay still exceeded the ceiling of 30 months set out in R v Jordan. The Crown relied only on exceptional circumstances to rebut the presumption of unreasonable delay. It argued that the delay was caused by the recanting of its witness and its inability to serve her, which were events that were reasonably unforeseen or reasonably unavoidable.
HELD: The application was granted. The court ordered a stay of proceedings. The court found that as the presumptive ceiling had been exceeded, the burden shifted to the Crown to establish that the delay resulted from extraordinary circumstances. The

court found that the Crown had not provided evidence that addressed its burden that the events relied upon were reasonably unforeseen or reasonably unavoidable. It had failed to provide evidence of any steps it took to address the problems posed by the recanting or unavailable witness or to address how the delay in this case would have been reasonable under R v Morin.

 Back to top

R v O'Brien, 2017 SKQB 88

Dawson, March 27, 2017 (QB17083)

Criminal Law – Assault – Sexual Assault – Sentencing

The accused pled guilty to one charge of sexual assault contrary to s. 271 of the Criminal Code and one count of assault contrary to s. 266 of the Code. The victim and the accused had been in a romantic relationship and during the victim's visit to the accused's home, he attempted to hug and kiss her. She rebuffed him but he later forced her on the bed and tried again to hug and kiss her. She pushed him off and the accused put his hands around her neck for 5 to 10 seconds. He stopped of his own accord and said that he was sorry. The victim said that the she had suffered from fear and anxiety ever since the incident. The 37-year-old accused had had a troubled childhood because he was bullied and beaten at school and did not complete grade 10. As he and his stepfather did not get along, he left home at 15. He abused alcohol. He had been poor and homeless for periods between the times he held sporadic menial employment. Between 1997 and 2013, the accused had been convicted of five assaults and for breaching custody and probation orders. The accused had at one time been diagnosed with schizophrenia, but after he had been in remand, a psychiatrist had reassessed him and diagnosed borderline personality disorder. He had been on medication for it while on remand and his mental state was positive and stable. The prognosis was favourable if he continued to receive psychotherapy and to take his medications. The Crown argued that an appropriate sentence for both offences was two years' imprisonment with credit for nine months in custody set at 1.5:1. The Crown suggested that after pre-sentence credit, a further sentence of ten and one-half months be imposed followed by probation for one year. The defence argued that the appropriate sentence was time served plus probation of 18 to 24 months. The offences were on the low end of the scale for both types of assault.

HELD: The accused's sentence for both offences was the period of time served: nine months with credit calculated at a rate of 1.5:1 for a total credit for 429 days spent on remand, resulting in 14.3 months in custody. Both sentences should be followed by 18 months' probation with conditions. The court found that the aggravating factors were that the accused had a previous record and that he assaulted the complainant with whom he had a relationship. The aggravating factor for the common assault was that the accused choked the complainant. The mitigating circumstances were that the accused pled guilty and immediately apologized. The sexual assault was on the lower end relative to other sexual assaults. His mental health problems were not mitigating circumstances but did lower his moral culpability. One of the conditions of his probation was that he participate in an assessment and programming for personal counseling, sexual offending and mental health as ordered by his probation officer.

 Back to top

Wright v Wilk, 2017 SKQB 90

Megaw, March 28, 2017 (QB17084)

Family Law – Custody and Access – Interim – Application to Vary

The parties separated in 2013. In December 2014, the court granted an interim order regarding custody of the two children of the marriage. Their primary residence was to be with the petitioner, and the respondent was given parenting time every second weekend. The respondent expressed his intention to pursue having the children reside in Moose Jaw with him rather than with the petitioner in another village, but the parties agreed to leave the ultimate resolution of parenting to the pre-trial conference and trial. The arrangement appeared to work well until late January 2017 when the respondent did not return the children to the petitioner because the Ministry of Social Services advised him that they should remain with him until it completed its investigation. The Ministry's involvement was triggered when the respondent's spouse contacted it regarding information disclosed to her by the eldest child. The child said that the petitioner and her partner were fighting and described incidents of domestic violence between them. She said that her younger sister had been spanked for wetting the bed. Following the Ministry's instructions, the children remained with the respondent and were enrolled in school in Moose Jaw. The Ministry's investigation consisted of interviews with the

Back to top

children and the petitioner. The latter entered into a parenting agreement with the Ministry, whereby she undertook to obtain counselling for her mental health issues and she had fulfilled that obligation. The petitioner explained that her mental health problems had been caused by a miscarriage she suffered in August 2016 and additional stressors in her life such as the family's move and her partner's uncertain income. The psychologist who treated her concluded that she was suffering from mild depression and post-partum depression but determined that the petitioner's mental health problems would not interfere with her ability to parent the children. The Ministry provided a letter to the petitioner on March 1, 2017, indicated that the children could safely return to her home and that it would continue to monitor the situation until the parenting agreement expired at the beginning of May.
HELD: The application was dismissed. The court ordered that the children be returned to the petitioner and the previous arrangement reinstated. The court found that the status quo prior to the event in January had been working well and evidence of this was shown by the fact that neither of the parties had taken steps to move the matter forward to a pre-trial conference. The court determined that to vary the interim order, it would have to find that there was either a risk to the children or compelling reason for change. The petitioner had experienced a temporary mental health crisis but had sought counselling and complied with all the Ministry's requirements. The Ministry no longer had any concerns. There was no risk to the children being in the petitioner's care. They were exposed to episodes of domestic violence, apparently instigated by the petitioner, for a short period but she had explained the circumstances. In the absence of demonstrated risk, mental health concerns did not equate to losing the ability to parent children. There were no compelling reason to change the status quo.

 Back to top

R v Langan, 2017 SKQB 91

Megaw, March 29, 2017 (QB17085)

Criminal Law – Controlled Drugs and Substances Act – Trafficking – Hydromorphone

The accused was charged with trafficking in hydromorphone contrary to s. 5(1) of The Controlled Drugs and Substances Act. Police officers had observed a woman, who was known to them because of a previous drug charge, visit the residence of the

accused. The woman had been released on the condition that she submit to a search by a peace officer. After she left the accused's residence, the officers searched her vehicle and found that there were various drug and drug-related paraphernalia in it. She was interviewed and implicated the accused in a transaction involving hydromorphone capsules. She said that she had received two loaded syringes from the accused. On the basis of this information, the RCMP obtained a search warrant to search the accused's residence. They found a preloaded syringe and an injection kit in the accused's bedroom. They also found prescription receipts for the accused for both hydromorphone and dilaudid. The accused testified on her own behalf and in her examination-in-chief, denied trafficking in hydromorphone and further denied that she knew the woman who had implicated her in the drug transaction. She testified that she suffered from serious and permanent health difficulties and chronic pain. The accused said that she did not take her drugs by injection and said that she had gathered the items in her bedroom from the rest of the rooms in the house in order to speak to the landlord about the inappropriate behaviour of her fellow renters.
HELD: The court did not believe the accused. However, it found deficiencies in the evidence presented by the Crown, and the evidence of the Crown's witness was not reliable. Therefore, as a result as the reasonable doubt as to evidence, the accused was acquitted.

 Back to top

R v Lichtenwald, 2017 SKQB 94

Gabrielson, March 30, 2017 (QB17093)

Criminal Law – Application for Court-Appointed Counsel

The accused was charged with possession of various Schedule I controlled substances and trafficking as well as 11 firearm offences. At his preliminary hearing, he was represented by a private lawyer acting under a Legal Aid appointment. At the pre-trial conference, the private lawyer obtained leave to withdraw and advised that a member of the Saskatoon Legal Aid office would be the accused's new counsel. The accused told the Legal Aid lawyer that he did not want him to continue to represent him. Shortly thereafter, Legal Aid advised him that he would be denied their services. The accused gave notice pursuant to s. 8(2) of The Constitutional Questions Act, 2012 that he sought the appointment of a lawyer pursuant to ss. 7 and 11(d) of the Charter because he had been denied Legal Aid

counsel, he did not have money to hire a lawyer, and he did not feel capable of representing himself. The Crown opposed the application and requested leave to cross-examine the accused on his financial circumstances and the reasons why he had been denied Legal Aid. The accused filed a financial statement showing that he had no income and his debts totaled $30,400 and was currently in prison on remand. He explained that he had not been satisfied with the private lawyer's representation and that he had dismissed the lawyer appointed by Legal Aid because he had not contacted him in a timely fashion and had been unprofessional.
HELD: The application was granted. The court was satisfied that the accused had established that legal representation was essential to him receiving a fair trial. The court found with respect to the factors outlined in Rowbotham that the accused had shown the following: 1) he was ineligible for Legal Aid because their letter advising him of Notice of Denial prima facie met the criterion; 2) he was financially unable to retain counsel privately; and 3) he was unable to represent himself. He had no access to the case law and was unfamiliar with the legal process. As well, the number of charges made it unlikely that the trial judge could explain the law regarding that many charges. As his trial would be before a judge and jury, the accused would be at a considerable disadvantage in presenting any defences.

 Back to top

Canada (Attorney General) v Rowan, 2017 SKQB 95

Allbright, April 6, 2017 (QB17088)

Extradition

The applicant, the United States, sought the extradition of the respondent from Canada for the purpose of prosecution in the United States for an offence that if committed in Canada would be contrary to s. 380 of the Criminal Code. Under s. 15 of the Extradition Act, the federal Minister of Justice issued an Authority to Proceed before the Court of Queen's Bench in Saskatchewan. The Canadian offence that corresponded to the alleged conduct was fraud contrary to s. 380 of the Criminal Code. The applicant presented the Record of the Case for Prosecution (RCP). In the summary, the RCP stated that the respondent, a Canadian citizen, served as CEO of Enviro-Energies and claimed that it had developed a commercially viable roof-mounted wind turbine to generate electricity for residential dwellings. The respondent told potential investors,

distributors and customers in the United States that he was near the point of establishing large-scale manufacturing facilities in Canada. He advised potential investors that company's shares would soon be available for sale through an Initial Public Offering (IPO) and persuaded them to purchase shares before the IPO took place. However, the company was never registered, no IPO occurred and the investors never received stock certificates. The applicant provided a number of witness statements describing what the respondent had promised to them. One witness explained that he had sent $25,000 to the respondent as a deposit to purchase a wind turbine. When he didn't receive it, he attempted to reverse the deposit through a credit card chargeback dispute method. The respondent fought the chargeback by falsely claiming that the unit had in fact been delivered to him. The credit card company supported the witness in the disputed transaction. The respondent's counsel argued that the applicant's evidence was inherently unreliable, and it would be dangerous to commit the respondent based upon it.
HELD: An order for committal was granted. The court found that the applicant had met the requirements of s. 29(1) of the Act. The evidence presented, which was presumed to be admissible, satisfied the court that had the respondent's conduct outlined in the RCP taken place in Canada, there would be sufficient evidence to commit him to stand trial on the charge of fraud contrary to s. 380 of the Code. The defence acknowledged that the respondent was in fact the person sought by the extradition partner.

 Back to top

Carlson v Zacharias, 2017 SKQB 97

Scherman, April 7, 2017 (QB17094)

Family Law – Child Support – Application to Vary
Statutes – Interpretation – Family Maintenance Act, 1997, Section 4
Family Law – Child Support – Adult Child

The respondent applied to vary a child support order made in 2010. It was made with the consent of the respondent at the time of his daughter's 18th birthday. It provided that he should pay $550 per month to continue so long as the child was unable to withdraw from the petitioner's charge or obtain the necessities of life by reason of disability or until varied by court order or agreement. The respondent argued that his daughter has not

been a child within the meaning of The Family Maintenance Act, 1997 since May 2010 when she turned 18 years of age. He requested that the court vary his support obligation retroactive to that date. The petitioner testified that their daughter, who suffered from cerebral palsy, had decided that she wanted to move from her mother's home to Saskatoon. Under the Saskatchewan Assured Income Disability Program, funding was obtained that covered the daughter's share of rent in a group home, food and basic toiletries, and a small allowance for clothing, telephone and other expenses. Due to her physical disabilities and delayed cognitive development, the daughter could not live independently nor obtain paid employment. From the respondent's support payment, the petitioner put $300 of it into a registered disability savings plan for her daughter each month and paid the remaining $250 per month to supplement the basic necessities of life. The respondent argued that his child support obligation should end and that he be reimbursed for all payments made since the 2010 order because the petitioner had acted fraudulently in her use of the support payments.
HELD: The application to vary was granted. The court ordered that the respondent's legal obligation to pay support to cease. The application for retroactive reimbursement was dismissed. The court found that under s. 4 of the Act, the child was no longer under the charge of the petitioner and there was no evidence showing a shortfall between the daughter's needs and her resources so that it could be said that the daughter was unable by reason of her disabilities to obtain the necessaries of life. Retroactive relief would not be granted because the petitioner had only received effective notice that reduction was sought in February of 2017. Further, to order repayment would be inequitable after the petitioner had cared for the child all her life and the respondent had contributed only money. It would also cause hardship to the petitioner. The petitioner had used the support payments for the benefit of their daughter and had not acted fraudulently.

 Back to top

Tataquason v Saskatoon Board of Police Commissioners, 2017 SKQB 98

Kalmakoff, April 7, 2017 (QB17095)

Statutes – Interpretation – Criminal Code, Section 25
Statutes – Interpretation – Police Act, Section 10(3)
Statutes – Interpretation – Small Claims Act, 1997, Section 40
Professions and Occupations – Police Officers

Torts – Personal Injury – Scienter

The appellant appealed from the decision of a Provincial Court judge that dismissed her claim against the respondent, Saskatoon Board of Police Commissioners (SBPC) and three of its officers (see: 2016 SKPC 121). The appellant had sued for damages because she had been bitten by a police service dog. After an armed robbery occurred near the appellant's residence, the complainant in the robbery described the offenders and the officer started tracking them and released his service dog. It entered the appellant's back yard and bit her hand and did not release it until commanded to do so by the officer. The grounds of appeal were whether the trial judge erred: 1) in determining that the defence of "good faith" applied to the actions of the officer who handled the service dog. The appellant argued that because the judge's analysis went directly to the "second stage", finding that the good faith defence in s. 10(3) of the Police Act applied, without any analysis of whether the officer's conduct was lawful under s. 25 of the Code, that she must have concluded that the officer's conduct was unlawful; and 2) in determining that in the circumstances of this case if the doctrine of scienter was applicable or not.
HELD: The appeal was dismissed. As an appeal on the record brought under s. 40 of The Small Claims Act, 1997, the court noted the standard of review with respect to questions of fact was deference and questions of law was correctness. Regarding each issue, the court found the following: 1) the trial judge made clear findings of facts that were supported by the evidence and made no error in her application of the law to those facts. Her finding of fact that the circumstances of the search were exigent and there was no bad faith or improper motive was supported by the evidence. The Court of Appeal held in Lang v Burch that questions of whether an officer's actions were lawful and/or justified within the meaning of s. 25 of the Code and whether the officer was acting in good faith under s. 10(3) of The Police Act were separate questions that are answered by applying different criteria and should not be fused. The judge was not required to address both questions or in a particular order. As she chose to address only the good faith defence, and not s. 25 of the Code, that did not lead to the conclusion that she determined that the officer's actions were unlawful under that section. Her conclusion that the s. 10(3) of The Police Act provided a complete defence was well-founded; and 2) the trial judge made no error in determining that s. 10(2) of the Act provided a complete defence to the SBPC. The doctrine of scienter did not apply to this case. The focus is on the reasonableness of police actions and whether the circumstances under which the dog was deployed and the force used fall outside the scope of any statutory immunity or protection. There was no evidence that

there was a lack of good faith on the part of the SBPC in using the service dog and the officer who handles the dog. There was some possibility that liability could be established on the basis of scienter in a case involving a police service dog, but to date, the courts have declined to find defendants liable where the conduct giving rise to the claim falls within the scope of a "good faith" immunity clause or where the officer handling has not exceeded the scope of the authority under s. 25 of the Code.

 Back to top

A.D.Z., Re, 2017 SKQB 100

Brown, April 10, 2017 (QB17091)

Family Law – Adoption – Dispense with Consent
Family Law – Adoption – Dispense with Service

The applicant stepfather applied to dispense with service on and the consent of the biological father of the child he wanted to adopt. The basis of the application was that the biological father had had nothing to do with the child or the biological mother since he learned she was pregnant with the child. The mother did not know the biological father's whereabouts, the identity of any members of the biological father's family or acquaintances, where the biological father lived, how to spell the biological father's name, or what occupation the biological father had. She last spoke to him when he ended the relationship upon finding out she was pregnant. The child was 15 and wanted to be adopted by the applicant. The applicant and the mother married in 2008. The issue was whether the criteria required in ss. 5(2.2) of The Adoption Act, 1998 were met allowing the notice of adoption to be dispensed with.
HELD: The applicant met the requirements of ss. 5(2.2) of the Act. An order dispensing with the notice was not required to protect anyone's mental or physical health or anyone's safety. It was clear to the court that the child's best interests would be served by having the applicant adopt her. The court noted the child was 15 and also wanted the adoption to proceed. There was nothing useful that could be served by requiring some social media notification or newspaper ad because it was unlikely to bring it to the biological father's notice. The applicant met the high standard required for an order to dispense with the biological father's consent.

 Back to top

Underhill (Litigation Guardian of) v Central Aircraft Maintenance Ltd., 2017 SKQB 102

Mills, April 10, 2017 (QB17097)

Civil Procedure – Settlement Agreement – Disclosure

The plaintiff argued that the terms of the settlement agreement, including settlement amounts, should not be disclosed to all the other defendants that were not parties in the settlement agreement. The settlement was a Pierringer-type settlement agreement.
HELD: The court found that the disclosure of the non-financial terms of the settlement agreement directly to the defendants rather than through a court process made eminent sense. Producing the non-financial terms of an agreement also assisted with timeliness in the court process and judicial economy. The plaintiff was ordered to provide a redacted settlement agreement directly to the defendant. The court placed the settlement agreement, which included the settlement amount and allocation of that amount, in a sealed envelope. The envelope was not to be opened by anyone except by further order of the court.

 Back to top

Potzus v Potzus, 2017 SKQB 105

Megaw, April 12, 2017 (QB17092)

Civil Procedure – Forum Conveniens
Family Law – Application to Change Venue

The respondent applied to transfer the venue of the action from Regina to Yorkton, arguing that it would be more convenient for the parties and potential witnesses. The parties both initially retained counsel in Regina and the action was commenced there. After the initial chambers decision, the respondent changed legal counsel to a lawyer that practices out of Melville, which is closer to Yorkton than Regina. The petitioner indicated that the respondent was in significant arrears of child and spousal support. According to her, the respondent had only paid about $100,000 and was in arrears of $700,000. The matter was being enforced by The Maintenance Enforcement Office. The respondent's corporation was subject to being added as a party and it had counsel from Calgary. The issues were as follows: 1) was an "Aalbers order" appropriate; and 2) should the venue of

the action be changed to the Judicial Centre of Yorkton.
HELD: The court determined the issues as follows: 1) in Aalbers, the Court of Appeal did not allow the appellant to proceed with an appeal of a chambers decision because of his flagrant disregard of a long-standing support order. The respondent indicated that he was in considerable arrears because there were errors in the calculation of income in the previous order. The Court of Appeal dismissed the respondent's appeal in that regard. The respondent did not provide a clear reason for not making the ordered payments. The arrears were significant because of the large amount ordered, not because of a lengthy time of non-payment. In Aalbers the period of non-payment was several years and spanned from the interim application to beyond the trial. The court held that it was not appropriate to make an Aalbers order, but the court did not restrict the petitioner's ability to raise the matter again in the future; and 2) the convenience of counsel is not a consideration in change of venue applications. The increased cost and inconvenience to the petitioner, especially with non-payment of support by the respondent, were considerations to take into account. The pre-trial had not even occurred. The children were 10 and 12 at the time of the appeal and, therefore, there may not even be parenting issues by the time the matter proceeded to trial. The respondent's application was not granted at this stage; it was adjourned sine die to be brought back on 14 days' notice. The petitioner was estopped from arguing delay in the event the application of a change of venue was renewed down the road.

 Back to top

R v Lemioer, 2017 SKQB 106

Elson, April 13, 2017 (QB17099)

Criminal Law – Controlled Drugs and Substances
Criminal Law – Firearms Offences
Criminal Law – Defences – Charter of Rights, Section 11(b)
Criminal Law – Possession of Property Obtained by Crime

The accused and S. were jointly charged with numerous offences contrary to the Controlled Drugs and Substances Act and the Criminal Code. He was also charged solely with three Criminal Code offences. The original information was sworn on June 9, 2013, and the trial was scheduled for June 30, 2017. The accused applied for a stay of the charges on the ground that his right to a trial within a reasonable time (s. 11(b) of the Charter) was violated. The court reviewed the delay in four blocks of time:

Block 1 was the period from the date of the arrest on June 9, 2013, to March 5, 2014; Block 2 covered the period from March 5, 2014, to April 30, 2015, when the preliminary inquiry was rescheduled after the co-accused's counsel was granted leave to withdraw and the original dates were vacated; Block 3 covered the period from April 30, 2015, to May 3, 2016, when the preliminary inquiry actually began after it was adjourned again at the request of the defence; and Block 4 covered the period from May 3, 2016, to March 7, 2017, when the delay application was heard. The contentious time period in Block 1 was the period from September 9, 2013, to December 10, 2013, when the accused retained new counsel who was waiting for the disclosure. During the Block 2 time, the co-accused's counsel withdrew, shortly before the preliminary inquiry was scheduled to begin. The Crown argued that the 14 months between the first and second scheduled preliminary inquiries should be subtracted from the total delay due to either defence delay, discrete and exceptional circumstances, or as exceptional circumstances attributable to the complexity of the case. In Block 3, the accused's counsel applied for and was granted leave to withdraw unless there was a successful application for the partial return of monies seized to pay for legal fees. A consent order for the release of funds resulted on November 27, 2015. On December 8, 2015, the accused's counsel and the co-accused's counsel advised that they would be seeking an adjournment of the preliminary inquiry due to the late return of disclosure. The disclosure had been returned to the Crown at their request because there were documents on the original thumb drive that would have violated informer privilege. A new thumb drive was then provided. An adjournment was granted and the judge did not find the accused's counsel's withdrawal as a significant factor contributing to the request for adjournment. The inability to access disclosure for approximately a month was a more significant consideration, particularly given the volume of documents to review and the complexity of the case. The issue in Block 3 was the four months between the second and third scheduled preliminary inquiries. The only delay in Block 4 was between the two trial dates and there did not appear to be any argument that the period should be subtracted from the overall delay.

HELD: The Jordan case identified 30 months from charge to trial in Superior Courts as being the presumptive ceiling, after which delay was seen as presumptively unreasonable. The court considered three periods of delay from the blocks of time: 1) the delay between October 21, 2014, and December 14, 2015, when the co-accused had her counsel withdraw and the Crown wanted to have the accused and S. tried together. The court did not find any merit in the Crown's argument that the delay

should be characterized as defence delay. The period of time was also not found to be a discrete, exceptional event or as a consequence of the case's complexity. The court found that if the Crown had opposed the application, the court likely would not have granted the withdrawal. Furthermore, the Crown should have at least taken time to consider the judge's question of whether they would like to sever the accused's case from that of the co-accused. The Crown also did not present any evidence to show that they were relying on the framework pre-Jordan at the time of the delay; 2) the four-month delay between December 14, 2015, and May 3, 2016, when the defence requested an adjournment. The true cause of the adjournment was that the Crown included improper information in the disclosure packages it initially provided. The brief withdrawal of defence counsel did not have an impact on the circumstances surrounding the delay; and 3) the three-month delay between September 9, 2013, and December 10, 2013. The court found that two months of the delay should be attributed to the accused's change in counsel after his first bail review. The delay, therefore, was only reduced by two months resulting in a total delay of 46 months and 20 days, which was well in excess of the 30-month presumptive ceiling set out in Jordan. The delay was not reasonable. It was not rebutted by the Crown. The court directed a stay be entered in respect of the indictment with respect to the charges against the accused.

 Back to top

D.A. v S.A., 2017 SKQB 108

Chow, April 25, 2017 (QB17103)

Family Law – Child Support – Retroactive
Family Law – Child Support – Determination of Income

The parties separated in 2006 and entered into Minutes of Settlement in 2007 prior to their divorce in October 2007. There were two children of the marriage who were now aged 15 and 13 respectively. The minutes provided that the amount of child support that the respondent would pay. They were to exchange copies of their respective income tax returns each year. At the time of this application, neither of them had done so. However, the petitioner contended that she had tried to obtain information from the respondent through his lawyer in 2013. At issue between the parties was the following: 1) the petitioner's position was that the children were with the respondent only 30 percent of the time. The respondent said that they had shared

parenting and he had the children 40 percent of the time. Consequently, he requested that his support obligation be determined in accordance with s. 9 of the Guidelines; 2) their respective incomes and support obligations. The petitioner had not worked outside the home after the birth of their first child. After the divorce, she attended university and obtained a BA in 2013. She then enrolled in a Master's programme in English, explaining that the qualification would help her marketability. During her studies, she had worked part-time as a writing tutor and earned approximately $40,000 per year but would have to give up the position upon her imminent graduation. She was seeking full-time employment and listed the positions for which she had applied. The respondent argued that the petitioner was intentionally underemployed and that income should be imputed to her. The respondent also raised a number of advertised suitable positions to which the petitioner had not applied. The respondent's income in 2009 was $65,600. He began a new position in 2010 and his annual income from 2012 to 2014 was above $100,000. He testified that he did not recall informing the petitioner of the increases; and 3) the petitioner sought a retroactive award of child support in the amount of $23,000. HELD: The court found the following with respect to each issue: 1) the respondent's evidence established that he parented 40 percent of the time and that the parties had a shared parenting arrangement as contemplated by s. 9 of the Guidelines. The respondent was ordered to pay $782 per month, representing the respondent's Guideline support obligations less that of the petitioner's; 2) the petitioner's income for the last six years was less than $20,000, which included the grants paid. The respondent's income for the six-year period had increased from $65,600 to $107,300. The petitioner was intentionally underemployed because she decided to pursue her education and thus income was imputed to her of $50,000 per year; and 3) it was appropriate to award retroactive support from June 2013 when the petitioner advised the respondent. The court calculated the respondent's retroactive support obligations for the period June 2013 to May 2016 to be $50,600 less all support actually paid during that time.

 Back to top

St. Pierre v Bigstone, 2017 SKQB 111

Megaw, April 20, 2017 (QB17101)

Real Property – Recovery of Possession of Land
Statute – Interpretation – Recovery of Possession of Land Act

The applicants applied pursuant to The Recovery of Possession of Land Act to have the respondent removed from a house that was registered in their names. The respondent did not want to leave and sought payment of the monies she spent on the house. The house originally belonged to the respondent's grandmother. The grandmother was the mother of one of the applicant's, F. The respondent did not pay any rent. Pursuant to the terms of the grandmother's will, F. was bequeathed the house. F. arranged to have the title transferred into his and the other applicant's names. The respondent argued that she had paid the expenses for her grandmother's funeral and the taxes for the house since 2004, and she had made repairs and paid utilities due on the house.
HELD: The respondent conceded that she did not have any colour of right to the property. She therefore sought compensation for payments she made in an amount equal to the value of the house, and argued she should simply be granted title to the house. The limitation period of many, if not all, of the respondent's claims was expired and would have had to be the subject of a separate legal proceeding. The court determined that the respondent did not show any arguable issue with respect to the title to the property so the court ordered possession to the applicants. The respondent was given 60 days to vacate the property.

 Back to top

Gordon Estate v Regina Qu'Appelle Regional Health Authority, 2017 SKQB 118

McMurtry, April 27, 2017 (QB17105)

Civil Procedure – Queen's Bench Rules, Rule 5-32(1)

The defendants applied for an order compelling the plaintiffs to do the following: to provide better written answers to questions posed pursuant to Queen's Bench rule 5-32(1); to strike irrelevant and/or argumentative portions of the plaintiff's affidavits; to compel the plaintiffs to amend schedules of their affidavit of documents to comply with rules 5-6(2) and 5-8. In the alternative, the defendant sought an order compelling the plaintiffs to attend oral questioning. The plaintiffs agreed to comply with the alternative relief but opposed the other relief sought because it was inappropriate.
HELD: The application was granted. The court reviewed the written answers provided by the plaintiffs and found that their answers in the affidavits were not responsive to the written

questions. The court directed each plaintiff to identify the question they were answering. The court struck certain paragraphs of the affidavits that were irrelevant or argumentative pursuant to Queen's Bench rule 13-30. The court found that the plaintiffs had not met their obligation to disclose documents properly as required by Queen's Bench rules 5-6(2) and 5-8.

 Back to top

Z.K., Re, 2017 SKQB 120

Brown, April 26, 2017 (QB17106)

Family Law – Children in Need of Protection – Permanent Order

The Ministry of Social Services sought a permanent order regarding three children in its care. The oldest child, five years old, had been in care off and on beginning in November 2012 and continuously since July 2014. The second child, four years old, had been in care continuously since 2014. The youngest child, 18 months old, had been in care since a few months after his birth. The mother of the children, S.J., 21 years old, and her mother, L.A., opposed the application and sought to have the children returned to S.J. or requested that at least the youngest child not be made a permanent ward at this time. The Ministry had been involved with S.J. and her children from the time of the birth of the first child because of her alcohol addiction and the physical abuse inflicted on her by the children's father. The Ministry had advised S.J. that she must end the abusive relationship, but she had been unable to do so. The Ministry had entered into eight parental agreements with S.J. and there were three court orders, all of which tried to implement conditions that S.J. would address her addiction and follow through with treatment, find proper housing, and with assistance establish her skills as a parent. Although S.J. had been placed in treatment programs by the Ministry, she had not been able to successfully complete any of them. S.J. took the position that she did not believe that there were addiction, domestic violence, parenting and mental health issues but was prepared to undertake programming because the Ministry required it of her.
HELD: The application was granted. The court found that the children were in need of protection pursuant to s. 11 of The Child and Family Services Act and made a permanent order under s. 37(2) of the Act. The foster parents caring for the two oldest children were willing to adopt them and they were able to provide a stable and happy home for them. The Ministry

advised that there were nine families who were interested in adopting the youngest child. The court found that despite S.J.'s claim that she had quit drinking, it did not accept that as an accurate prediction of the future.

 Back to top