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Municipal Law – Assessment – Assessment Appeal Committee – Jurisdiction

The appellant, the Rural Municipality of Corman Park (RM), as represented by the Saskatchewan Assessment Management Agency (SAMA), appealed the decision the Assessment Appeals Committee of the Saskatchewan Municipal Board pursuant to s. 33.1 of The Municipal Board Act. The respondent taxpayer had appealed to the Board of Revision (BOR) against the RM's 2015 assessment of a golf course property. The BOR allowed the appeal and ordered the assessor to use a lower base land rate than had been used in that year's assessment. SAMA appealed the BOR's decision to the committee to reinstate the original land rate. The committee held that the BOR had erred, but was unable to determine what the rate should have been. It set aside the assessment and remitted the matter to the assessor for reassessment. It also ordered the reassessment "be subject to the usual notice and appeal process". By that time, SAMA had confirmed the 2015 assessment roll and published it in the Saskatchewan Gazette. SAMA argued that the committee did not have the power under The Municipalities Act to order an assessor to prepare a new assessment notice or to alter the

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assessment roll so as to make the resulting reassessment subject to the usual appeal processes.
HELD: The appeal was granted. The court reviewed the relevant legislation as it pertained to property assessment and appeals taken therefrom. It found that when s. 241 of The Municipalities Act was read together with s. 305 and its exceptions and alongside s. 256 and s. 257 of the same Act and s. 72 of The Municipal Board Act, it was clear that once SAMA had confirmed an assessment roll, that roll was effectively fixed and was not subject to amendment or alteration. Therefore, the committee had no express authority to order an assessor to revise the assessment roll or to order a new notice of assessment once the roll had been confirmed. The committee had no jurisdiction to grant or to confer a right of appeal on a taxpayer or any other party to an assessment appeal. The court also examined whether the committee has an implied right to grant a right of appeal when it exercises its powers to set aside an assessment and to remit the matter to the assessor. It held that the jurisprudence established that the committee had no jurisdiction to confer a right of appeal, as the right was not found in The Municipalities Act or The Municipal Board Act. Further, the court reviewed the committee's recent practice of issuing "requests for information" or "RFIs". The committee had interpreted provisions in The Municipalities Act, the Municipal Board Act and The Public Inquiries Act, 2013 as empowering it to make the requests during the course of its appeal hearings. The court concluded that the committee did not have authority to issue RFIs in the context of an appeal against a BOR decision.

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R v Pierone, 2018 SKCA 30

Jackson Caldwell Schwann, April 27, 2018 (CA17141)

Regulatory Offence – Wildlife Act – Appeal
Regulatory Offence – Wildlife Act – Unlawful Hunting – Treaty Rights
Aboriginal Law – Hunting and Fishing Rights

The appellant appealed the decision of a summary conviction appeal court judge to substitute a conviction for his acquittal after trial (see: 2017 SKQB 171). The appellant had been charged with unlawfully hunting under s. 25(1)(a) of The Wildlife Act, 1998. The appellant, a status Indian from Treaty 5 territory, shot a moose in a dry slough bottom located on a private farm that was within Treaty 4 territory in Saskatchewan. The slough was

adjacent to a grid road. There were no posted signs nor was there a fence around the slough. No houses or buildings were visible from the slough. At trial the Crown took the position that the appellant was not lawfully entitled to hunt within Treaty 4 territory on unoccupied Crown lands or any other lands to which Treaty 4 Indians have a right of access pursuant to the Natural Resources Transfer Agreement, 1930. It did not make any arguments regarding whether the land had been "taken up" or was being put to a visible use incompatible with hunting as was required in order to displace the appellant's right to hunt as described in R v Badger. The trial judge rejected the Crown's argument that Treaty 5 status precluded the appellant from exercising his treaty right to hunt in Treaty 4 territory and found that the site of the kill was not land that was being put to any visible use incompatible with the appellant's right to hunt. In its summary conviction appeal, the Crown conceded that the appellant was lawfully entitled to hunt within Treaty 4 territory. The appeal judge characterized the appeal as whether or not the trial judge made a palpable and overriding error in rendering the judgment dismissing the charge against the appellant. He concluded that there was no basis in the facts or circumstances for any conclusion other than that the appellant was guilty of the charge and set aside the acquittal.
HELD: The appeal was allowed, the conviction entered by the summary conviction appeal judge quashed and the dismissal of the information against the appellant reinstated. The court found that because of problems with the nature of the Crown's appeal to the summary conviction appeal court and the appeal judge's misidentification of the standards of review that led him to approach the issue before him incorrectly, it would place itself in the position of the appeal judge and determine whether the trial judge's finding that the land in question was not being put to a visible incompatible use was a finding of fact essential to the verdict. The court was satisfied that the trial judge understood that the evidential and persuasive burdens lay with the Crown and that it had not presented any argument regarding the visible incompatible use as it pertained to the land in question. The court found that on the evidence before the trial judge, the Crown had not established beyond a reasonable doubt that the slough was being put to visible use that was incompatible with hunting.

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Saskatchewan (Director of Employment Standards) v North Park Enterprises Inc., 2018 SKCA 31

Whitmore, April 26, 2018 (CA17142)

Civil Procedure – Appeals – Leave to Appeal

The applicant, the Director of Employment Standards, sought leave to appeal the order of the Saskatchewan Labour Relations Board (SLRB) (see: 2018 CanLII 8567). The applicant submitted that the SLRB misinterpreted s. 4-8 and s. 4-10 of The Saskatchewan Employment Act in concluding that the Director must appeal any decision of an adjudicator to the SLRB within the 15-day deadline. The applicant argued that the proposed appeal was of sufficient merit and importance. With regard to the latter requirement, the applicant argued that the appeal would have a direct bearing on the practice of law in the province regarding appeals of wage assessments to adjudicators and this would be the first appeal to the court from an order of the SLRB regarding an appeal of an adjudicator's decision with respect to a wage assessment.
HELD: Leave to appeal was granted. The applicant had established that the proposed appeal had both sufficient merit and importance. The court also granted the applicant's request for a stay of the SLRB's order to prevent the matter from becoming moot.

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Fiesta Barbeques Ltd. v Andros Enterprises Ltd., 2018 SKCA 32

Whitmore, April 27, 2018 (CA17143)

Civil Procedure – Appeals – Leave to Appeal

The applicants and proposed appellants, Fiesta Barbeques and Wolfedale Engineering, sought an extension of time and leave to appeal the first decision of a Queen's Bench judge that had dismissed their application to add Vomar Industries as a defendant under Queen's Bench rule 3-84 (see: 2017 SKQB 234) and sought leave to appeal a subsequent decision (the second decision) of another Queen's Bench judge that dismissed their application to add Vomar as a third party under Queen's Bench rule 3-31 and rule 3-32 and s. 7 of The Contributory Negligence Act (see: 2018 SKQB 67).
HELD: The court dismissed the application to extend the time to appeal of the first decision made by one Queen's Bench judge, but granted the application for leave to appeal the second decision. With respect to the application to extend the time to appeal, the court reviewed the factors set out in Bank of Nova Scotia v Saskatoon Salvage Company and found that it could not

grant an extension for the following reasons: Vomar would be prejudiced; the proposed appellant had not intended to appeal the first decision within the appeal period; and the proposed appellants did not have an arguable case because they sought to appeal the reasons of the first decision, not the judgment, which was that Vomar should not be added as a defendant. With respect to the application to grant leave to appeal the second decision, the court found that the proposed appeal had sufficient merit because the proposed appellants' grounds included that the second decision was based upon a misapprehension of evidence or improperly found based on the findings of the judge in the first decision that could lead to appellate intervention. The appeal was of significance because it raised issues regarding the relationship between the tests for adding a defendant as opposed to adding a third party.

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Century 21 Dome Realty Inc. v Brittner, 2018 SKPC 24

Rybchuk, April 26, 2018 (PC17116)

Contracts – Breach – Damages

The plaintiffs, a real estate company and one of their agents, sought payment of the real estate commission owing to them by the plaintiffs. The agent had successfully sold the defendants' residence whereupon the defendants agreed to employ and exclusively use the services of the plaintiffs to find a new home during the period from June 27 to August 31, 2016. In return the plaintiffs would receive a commission of 2 percent on any home that the defendant might purchase during that time. The parties met on June 27 to sign various documents, including a contract between them. It was a standard form contract developed for use only by members of the Association of Saskatchewan Realtors and included the provision for the commission and the percentage. The contract was filled out, signed and dated by the parties. The agent testified that she showed the defendants at least 20 houses that required her to preview them and arrange the viewings. After drafting two different offers to purchase on behalf of the defendants, the second one was conditionally accepted by the vendors. The agent remained involved in the transaction while she was on holidays and when she returned on July 5, she learned that the defendants had decided not to proceed with the purchase. The defendants then made another offer to purchase through a different realtor on July 9 and the offer of $475,000 was accepted. The defendants claimed that they

did not remember signing the exclusive brokerage contract and denied signing it or owing any commissions to the plaintiffs, whom they argued had not done an adequate job for them as their real estate agents.
HELD: The plaintiffs were given judgment. The damages payable to them were calculated as two percent of the purchase price of the house plus GST, which equaled the amount of $8,967. The plaintiffs were awarded pre-judgment interest on that amount. The court found that there was a contract. The defendants were careless in ascertaining which documents they signed and could not rely on the defence of non est factum. The defendants breached the contract when they retained another realtor and entered into an enforceable contract of purchase of a home during the term of the contract with the plaintiffs. The court dismissed the defendants' allegations that the plaintiffs had not performed their duties properly because they had not provided evidence to support the allegations.

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R v Noltcho, 2018 SKPC 26

Martinez, April 13, 2018 (PC17117)

Constitutional Law – Charter of Rights, Section 11(b)

The accused made application for a stay of proceedings on two sets of charges against him on the grounds that he had been deprived of his right to be tried within a reasonable time contrary to s. 11(b) of the Charter. The first set of charges set out in one Information dated June 26, 2016 included assault, assault with a weapon and unlawful confinement. As at the time of the application, the trial date was set for July 2018. Initially, a Legal Aid lawyer had been appointed to represent the accused, who appeared in court with him when he pled not guilty in mid-August 2016, and the trial was scheduled for January 2017. Just before the trial, the lawyer advised that he could not represent the accused because of a conflict of interest as Legal Aid had represented the complainant many times. The Crown and the accused wanted to proceed, but the trial judge adjourned the matter to February so that the local Legal Aid Office could appoint outside counsel to represent the accused. In February, the case was adjourned to March because no new counsel had been appointed. Finally, in April, the accused retained his present counsel who asked for an adjournment to May 2017 to prepare and the trial was scheduled for December 2017. At that time, the complainant did not appear and the Crown applied for

an adjournment which was opposed by defence counsel, who put on record that delay was becoming an issue. The case was adjourned and the trial set for June 2018. The defence filed an affidavit sworn by the accused's original Legal Aid lawyer that alleged that the local Legal Aid Office's Director had failed to act when he requested that conflict counsel be appointed. The defence argued that this delay was foreseeable by the Crown because it was widely-known that the office was having problems. The Crown submitted that failure of the Legal Aid Director to obtain conflict counsel for the accused was an exceptional circumstance because it was an unforeseen discrete event. The second Information was dated June 27, 2016 and involved charges of impaired driving, refusal to undergo a drug impairment evaluation and breach of an undertaking. As with the first set of charges, the Legal Aid lawyer withdrew in January 2017, no conflict counsel was appointed and present defence counsel began representing the accused in April 2017. The trial was to be held in December 2017. In October, the Crown applied for an RCMP witness to testify by closed-circuit TV. The defence said that it was awaiting disclosure from the Crown and when it was received, they would consider the Crown's application. As the defence did not receive disclosure, the application was adjourned a number of times and by December, the trial was rescheduled to May 2018. The total delay was just under the presumptive 18-month ceiling. The defence argued that the delay was unreasonable because it had taken meaningful steps that demonstrated an effort to expedite the matter and the case took markedly longer than it should have.

HELD: The application for stays of proceedings with respect to both Informations was granted because the accused's s. 11(b) Charter rights had been infringed. The court held that for the purpose of calculating delay, it would adopt the dictionary meaning of the word "month" to mean the period from one day in a month to the corresponding day of the next month. Therefore, in the case of the first Information, the delay was 24 months. None of the delays were waived by the defendant. The delay caused when conflict counsel was not assigned was a discrete event which the Crown could not have foreseen, as it did not learn that Legal Aid counsel was withdrawing until January 2017. However, since the presiding judge denied the accused the right to represent himself and Crown counsel acceded without comment, the court deducted three months (January 2017 to April 2017) from the total delay. As the remaining delay of 21 months was above the 18-month presumptive ceiling, the court directed a stay of proceedings. With respect to the second Information, the court found that the accused had not caused any of the delay and deducted the three

months' discrete event delay caused by the Legal Aid office, leaving a remaining delay of 15 months. The defence had demonstrated that it made sufficient effort to expedite the case. The case was not complex and should not have taken 15 months even in the circumstances in Dillon, where the court only sat twice every month. The norm was six to ten months. Finally, the Crown's failure to respond to the defence's request for disclosure showed that it was not diligent in bringing the case to trial. The court directed a stay of proceedings.

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Tsang v Realty Executives Saskatoon, 2018 SKPC 30

Scott, April 26, 2018 (PC17118)

Torts – Negligent Misrepresentation – Damages
Professions and Occupations – Realtor
Real Estate – Sale of House – Negligent Misrepresentation
Civil Procedure – Limitation Period

The plaintiff purchased a house, took possession on March 30, 2014, and afterwards found a number of defects. He claimed that the defendant realtor, Singler, made negligent or fraudulent representations regarding the condition of the residence and the costs associated with its repair and renovation. The plaintiff alleged that he and Singler were in a fiduciary relationship and that the latter breached his fiduciary duty. The plaintiff requested judgment in the amount of $25,000 which he said represented the excess costs to repair deficiencies along with aggravated and punitive damages. The plaintiff also brought the action against the defendant, Realty Executives, on the ground that it was vicariously liable for Singler's conduct. The plaintiff was a first-time home buyer and, being from Hong Kong, was unfamiliar with Canadian home construction. After engaging Singler's services, he was shown the property in question on two occasions before making an offer conditional upon the completion of a satisfactory home inspection. The conditions were to be removed by midnight of the day that the home inspection occurred. Singler arranged for the home inspection and provided the report to the plaintiff at 7 p.m. The plaintiff had not been present during the inspection and after reviewing the report, raised a number of concerns with Singler about the condition of the basement floor. He also noted that as there was no access to view the foundation, he was nervous about whether it had problems. He also asked Singler to estimate the total cost of repairing the floor. Singler replied that repairs in the

basement would cost no more than $10,000 and that the foundation would not require work because the home inspector had looked at it with an infrared camera and observed no problems. He also told the plaintiff that the vendors would not reduce their price. Just before the deadline, Singler urged the plaintiff to make his decision and advised him that the house was underpriced and that he would have bought it himself as he had formerly been a house inspector. The plaintiff then agreed to remove the conditions. On April 1, he commenced repairs on the basement and learned that there was only a dirt floor and no footings. The additional work would cost more than the $10,000 that Singler had estimated. After applying for a building permit in April 2014, the plaintiff learned on May 13, 2014 that the foundation wall was bowed. There was evidence at trial that the home inspection report had not included any camera investigation of the foundation. The work to repair the foundation also exceeded the estimate. The plaintiff commenced his action on May 13, 2016. The issues were: 1) whether the plaintiff's claim was statute-barred under The Limitations Act; 2) whether Singler was fraudulent or negligent in his representations; 3) whether there was a fiduciary relationship and if so, whether Singler had breached his duty; 4) whether Realty Executives was vicariously liable for Singler's conduct; 5) whether the plaintiff was contributorily negligent; 6) if the defendants were liable, what the appropriate damages were; and 7) whether an award of aggravated or punitive damages was appropriate.

HELD: The plaintiff was given judgment and damages in the amount of $9,000 were awarded. The court found with respect to each issue that: 1) the plaintiff discovered the problem with the basement floor on April 1, 2014 and his claim was statute-barred by s. 5 of the Act. His claim regarding the foundation was permitted. Under s. 5, the two-year limitation period commenced from the day on which the claim was discovered. Under s. 24(7) of The Interpretation Act, the date on which the plaintiff discovered the foundation problem was not included in calculating the time limit and thus it was filed in time; 2) Singler did not have knowledge of the condition of the foundation and his statements were not fraudulent. However, in accordance with the requirements set out in Queen v Cognos for finding liability based on negligent misrepresentation and based on the evidence, the court concluded that Singler was negligent in his representations to the plaintiff with respect to the foundation and the costs associated with repairs and improvements. The parties had a special relationship. Singler made representations that were inaccurate and misleading. He did so without being careful, knowing that the plaintiff relied on him, and damages resulted; 3) there was a fiduciary relationship and Singler

breached his duty. Damages from such breaches are based upon restitution and the Small Claims Court does not have jurisdiction to grant equitable relief; 4) the evidence showed that Singler was an independent contractor and thus Realty Executives was not vicariously liable; 5) the plaintiff was not contributorily negligent. He raised his concerns regarding the results of the home inspection but as a first time home buyer relied upon Singler's advice; 6) the amount of damages was difficult to quantify because the plaintiff's invoices were related to both the basement floor and the foundation wall repairs. The costs over Singler's estimate of $10,000 were estimated by the court at $9,500; and 7) it declined to award aggravated or punitive damages in the circumstances.

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Matrenga v Input Capital Corp., 2018 SKPC 31

Green, April 19, 2018 (PC17114)

Torts – Conversion

The plaintiff brought a claim against the defendant in the tort of conversion for the value of equipment that the defendant sold at an auction. The plaintiff, a farmer, loaned three pieces of agricultural equipment to his neighbour, another farmer. The plaintiff had often helped his neighbour in the past and the loans were made without any payment or consideration. In this case, the equipment included: a grain cart, a grain dryer, and a 1,750-litre propane tank. The neighbour confirmed the plaintiff's description of their past practice and the loan of the equipment described. The neighbour operated his farm through a corporation. It entered into a canola streaming contract with the defendant. The farm went into receivership and the defendant, as one of its secured creditors, seized the grain cart and dryer and prepared to sell them by auction. The plaintiff learned of the seizure and through his lawyer advised the defendant that he owned these items and had loaned them on a non-commercial basis to the farmer. Despite the notice, the defendant proceeded to sell the cart for $20,600 and the dryer for $210 at auction. As the plaintiff received no compensation from the defendant, he brought this action. The defendant defended by saying that it was the neighbour through his corporation and not the plaintiff who owed the equipment when it was seized and it denied seizing the propane tank.

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HELD: The plaintiff was granted judgment in the amount of $20,810, representing the value of the cart and dryer obtained at

auction. The court accepted the plaintiff's evidence and found that there had been a gratuitous bailment of the grain cart and dryer to the neighbour and the defendant seized and then disposed of the equipment with the effect of denying the title of the plaintiff to these chattels. The defendant had thereby committed the wrongful act that constituted the tort of conversion. The plaintiff's claim regarding the propane tank was dismissed for lack of evidence.

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R v Baht, 2018 SKPC 32

Hinds, April 20, 2018 (PC17119)

Criminal Law – Kidnapping – Sentencing
Criminal Law – Assault – Assault with a Weapon – Sentencing

The accused was found guilty of assault contrary to s. 266 of the Criminal Code, assault with a weapon contrary to s. 267(a) of the Code, kidnapping contrary to s. 279(1) of the Code, and having a weapon for a purpose dangerous to the public peace contrary to s. 88 of the Code. These offences were committed on the same day against the complainant, the accused's former girlfriend. He had also pled guilty to disobeying a non-contact order regarding the complainant under s. 516(2) of the Code by communicating directly or indirectly with her contrary to s. 127 of the Code. In addition the accused had pled guilty to unlawful possession of morphine contrary to s. 4(1) of the Controlled Drugs and Substances Act. The first set of offences had occurred after the relationship between the accused and the complainant had ended. He hid in the complainant's vehicle and forced her to drive it some distance out of Regina. He held a knife to her, punched her and banged her head against the window. He eventually became less violent and allowed the complainant to return to the city. The complainant suffered physical and psychological harm and developed anxiety and depression. The accused had committed 16 offences as a youth, a number of which involved violent assaults. He had committed nine previous offences as an adult and at the time of this sentencing hearing was only 25 years old. The previous offences included robbery, carrying a concealed weapon and arson. The Crown submitted that a sentence of five years would be appropriate for all of the offences committed against the complainant, plus a six-month consecutive sentence for disobeying the non-contact order and 15 days concurrent for possession. When given remand credit at the rate of 1.5 days for the 252 days, the

accused's sentence would be 53 months. The defence argued that a sentence of three years' imprisonment for the offences against the complainant was suitable with an additional six-month consecutive sentence for disobeying the non-contract order. Taking into account remand credit, the accused should serve a 30-month sentence.
HELD: The accused was sentenced to 48 months' imprisonment and after his remand credit was deducted, his sentence would be 36 months. He received a sentence of 42 months for kidnapping, 18 months concurrent for assault, 36 months concurrent for assault with a weapon, 12 months concurrent for having a weapon and 15 days concurrent for possession. For disobeying the non-contact order, the court imposed a six-month consecutive sentence.

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Baker v Hall, 2018 SKPC 33

Demong, April 18, 2018 (PC17115)

Motor Vehicles – Ownership

The plaintiff brought an action against the defendant seeking indemnification for past payments made by the plaintiff on a vehicle and for all payments into the future or, alternatively, an order that the vehicle be sold and the proceeds applied to the remaining balance. The plaintiff had entered into a credit financing agreement in May 2015 to assist the defendant with the purchase of a used Jeep. The plaintiff had paid $143 bi-weekly since 2015 and still owed $11,600. The plaintiff claimed that he had an ownership interest in the vehicle and was allowing the defendant to use it, or that his payments were conditional on an agreement that the defendant would have custody of their daughter and responsibility for the financial cost of her care. After a brief relationship, the parties had a daughter born in 2003 and thereafter the defendant had exclusive custody of her until April 2017, when she moved in with the plaintiff. As a result of this change in the daughter's residence, the plaintiff asserted that he should have no further obligation with respect to the credit agreement he signed. The defendant submitted that she was the registered owner of the vehicle and had paid for fuel and maintenance. The plaintiff decided to enter into the financing agreement and make payments on the vehicle as a gift to her. There were no conditions attached to the gift at the time that the vehicle was purchased and the plaintiff was now trying to attach conditions

to the gift retroactively.
HELD: The action was dismissed. The court preferred the evidence of the defendant. Her version of how the plaintiff had given the vehicle to her as a gift had been corroborated by her step-father. Her use of the vehicle supported her position that it had been a gift. The court found that the plaintiff undertook to pay some portion of the purchase price of the vehicle and any ownership interest he may have acquired was given to the defendant as a gift. The presumption of resulting trust was rebutted because the plaintiff told the defendant and her step-father that it was a gift and the defendant had not signed the financing agreement nor had she made any payments on the loan. The vehicle was transferred into her exclusive possession and registered in her name.

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R v Desjarlais, 2018 SKPC 35

Martinez, April 27, 2018 (PC17120)

Constitutional Law – Charter of Rights, Section 11(b)

The accused was charged on July 28, 2015 with several criminal driving offences that injured two people. Her trial was scheduled for July 18, 2018. In March 2018, the accused brought an application for a stay of proceedings, alleging that contrary to s. 11(b) of the Charter, she had been denied her right to be tried within a reasonable time. The first period of delay occurred after the accused's first appearance in court in August 2015. She asked for and was granted an adjournment so that she could apply for a Legal Aid lawyer. She appeared in September and October without counsel. She missed her next court date in November. In February, her grandmother appeared on her behalf and said that she was unable to come due to illness. After adjourning to March, the accused appeared with a Legal Aid lawyer who requested disclosure from the Crown. Two more adjournments occurred and in May 2016 the accused elected trial in Queen's Bench and a preliminary inquiry. The latter was scheduled in November 2016, but had to be adjourned because the accused's lawyer had had no contact with her. She then re-elected to be tried by a Provincial Court judge in December. The court offered a trial date in April 2017 but as the accused's baby was due then, her request to adjourn until May was granted. The trial was scheduled then but the Crown did not request that the court schedule no other cases for trial that day. The trial did not proceed in May because Crown counsel was aware that the

trial judge was due to retire in a few weeks and the trial might not be finished before his retirement, and thus requested an adjournment. The trial was rescheduled for November 2017. At that time the Crown was ready to proceed, but as the defence had not yet received disclosure, it applied to the court regarding the disclosure. The trial was rescheduled for July 2018. The defence also applied for a stay of proceedings. The application was heard in March 2018.
HELD: The application was granted and the court granted a stay of proceedings because the accused's s. 11(b) Charter right had been violated. It found that the total delay was almost 36 months from the time the Information was sworn until the scheduled trial date. The court attributed 14 months' delay to the defence based upon the accused's lack of diligence in acquiring counsel (seven months), six months to waiver by the defence, and one month for the time between the accused's elections. As the remaining delay of 22 months was above the 18-month presumptive ceiling, the court reviewed the Crown's submission that the judge's retirement was a discrete event qualifying as an exceptional circumstance that justified the delay, and found that it did not. The court held that the retirement was reasonably foreseeable well before the trial date and the Crown could have, but failed to, take a number of different steps to avoid further delay in the accused's case, and therefore the retirement was not an exceptional circumstance that justified the unreasonable delay.

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Karcha v R, 2018 SKQB 101

Krogan, March 29, 2018 (QB17498)

Criminal Law – Motor Vehicle Offences – Driving with Blood Alcohol Exceeding .08 – Conviction – Summary Conviction Appeal

The appellant was convicted of driving while her blood alcohol content exceeded the legal limit contrary to s. 253(1)(c) of the Criminal Code. She appealed the conviction. The RCMP had received a complaint regarding a situation at the appellant's residence and when they arrived, she was in a vehicle and pulling out of the garage onto the driveway. The officer made an ASD demand and after the appellant provided a breath sample, the device registered a fail. A breath demand was made and the appellant was taken to the nearest detachment where she provided samples. The two readings indicated 150 mg of alcohol

in 100 milliliters of blood. During the trial in Provincial Court, the officer testified that during the 15-minute observation period, he had not watched the appellant consistently, but had not heard her burp, although he acknowledged that she may have done so silently. The RCMP Manual provided that continuous watching was required during the observation period because a wet burp could contaminate the mouth with alcohol. The probability of a wet burp occurring twice at least 15 minutes apart and producing two falsely high results that agreed within 20 percent was extremely low. The qualified breath technician testified that the Intoxilyzer she used to take the appellant's breath samples possessed electro-chemical and infrared systems that would detect mouth alcohol and if it was present, the machine would abort the test and an error message identifying mouth alcohol would appear. The technician said that in this case, the machine was functioning properly, no error message had appeared, and the samples were reliable. The trial judge concluded that, given the evidence of the technician and the breathalyzer readings, despite a lack of continuous 15-minute observation periods, the Crown had met the burden to save the presumption of accuracy. As it had not been rebutted, the judge accepted the readings as reliable and accurate and convicted the appellant. The grounds of appeal were that the trial judge: 1) erred in law by mistakenly considering the results of the ASD in considering the accuracy of the evidentiary breath samples; and 2) erred in fact and law when he determined that the Crown had met the onus of establishing that the samples were accurate.

HELD: The appeal was dismissed. The court found that the trial judge: 1) had not erred. In his decision, the judge relied on the evidence of the breath technician regarding the ability of the Intoxilyzer to detect mouth alcohol that arises from regurgitation or burping, and no mouth alcohol was detected in this case. He made no reference to the ASD result in his analysis as to whether the presumption was rebutted; and 2) had not erred in determination that the presumption of accuracy was not rebutted. The failure to watch the appellant consistently was a procedural irregularity and it had not raised a reasonable doubt about the accuracy of the test results.

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R v Meroniuk, 2018 SKQB 104

Brown, April 4, 2018 (QB17490)

Criminal Law – Motor Vehicle Offences – Driving with Blood

Alcohol Exceeding .08 – Conviction – Summary Conviction Appeal

The appellant appealed from his conviction, apparently for driving while his blood alcohol content exceeded .08. The background to the case was that an RCMP officer had received a report of mischief. The complainant said that a truck had ruined his driveway by making doughnuts. The officer saw a truck being driven erratically on the highway. He followed it, suspecting the driver was impaired, into the accused's farmyard. When the accused exited it, the officer approached him and asked him if he was OK. The accused said that he had just finished a hunting trip and the officer told him that he was investigating a complaint about damage done to a property by a vehicle which prompted the accused to reply that "they pissed him off" and he "did something stupid". The officer noted that the accused had glassy eyes and that he smelled of alcohol, so he made an ASD demand, saying that he had a reasonable suspicion that the accused had alcohol in his body. The accused was non-compliant and looked aggressive. The officer repeated the demand and the accused walked to the police vehicle. He did not demonstrate any signs of impairment. Once in the police vehicle, the officer made the formal ASD demand at 11:10 p.m. After another period of non-compliance, the accused took the test and failed. He was then advised that he was under arrest for impaired driving and advised of his right to counsel, but he did not request to speak to a lawyer. A formal breath demand was made at 11:33 p.m. The accused provided his breath sample at 12:52 a.m. Among the grounds of appeal were that the Provincial Court trial judge erred: 1) in finding that the Crown met the burden in s. 258(1)(c)(ii) of the Criminal Code that the first breath test be taken within two hours. The defence argued that the two-hour window to take breath samples commenced at 10:52 p.m. and in order to apply the presumption in s. 253(1)(c) of the Code, the trial judge would need to have evidence that the accused was driving at that time. The officer testified that he turned his emergency lights on at 10:38, but the judge determined that the sample was taken within the two hours because there was evidence that the complaint report had been made earlier and the officer was mistaken. The Crown argued that the ASD demand was made at 11:10 and that was the starting point; and 2) in relying on a statement by the accused to connect him to evidence of earlier driving which the judge used to establish proof of impairment.
HELD: The appeal was dismissed. The court found that the trial judge had not erred in: 1) drawing the inference that the officer erred in his testimony regarding the time he turned on his emergency lights. The notation and description of events working backward from the time noted of the ASD demand was

sufficient evidence for the judge's conclusion; and 2) in finding that there had not been an unlawful arrest and use of the appellant's statements. The judge relied upon R v Anderson to conclude that the officer formed the intention to stop the vehicle when it was on a public highway and was thus permitted to follow the vehicle onto private property to perform a stop. The officer had reasonable grounds to form the opinion that the appellant might be impaired prior to the events in the farmyard. The judge was not required to find that the officer was acting exclusively in relation to the information received in the complaint. Further, the officer informed the appellant immediately of why he was approaching him and the appellant was not yet detained when he gave his response.

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The Bank of Nova Scotia v Radoux, 2018 SKQB 111

Dovell, April 12, 2018 (QB17499)

Civil Procedure – Queen's Bench Rules, Part 8
Civil Procedure – Queen's Bench Rules, Rule 7-5
Civil Procedure – Costs – Solicitor – Client Costs
Debtor and Creditor – Credit Card

The plaintiff, the Bank of Nova Scotia, brought an application pursuant to Queen's Bench rules 7-2 and rule 7-5 for summary judgment allowing its claim against the defendant with regard to his debt to the plaintiff. The defendant had applied for and been granted a VISA credit card by the plaintiff in 2014. The card had a limit of $20,000. The balance owing on the card as at March 2017 was $23,000 and the interest charged was at 24.99 percent. The last payment made by the defendant was in September 2016 and the plaintiff demanded payment of the total balance in March 2017. The plaintiff issued its statement of claim in June 2017 under the expedited procedure set out in Part 8 of The Queen's Bench Rules. The affidavits it submitted to support its application included the account statements it rendered to the defendant and their correspondence with him. The defendant raised pseudo-legal objections to the plaintiff's claim.
HELD: The plaintiff's application for summary judgment was granted. The court found that it was an appropriate case for summary judgment that was not precluded by the commencement of the action under Part 8 of The Queen's Bench Rules, as permitted specifically by rule 8-6(2)(c). The case was based upon documents and the evidence was not contested. There was no genuine issue requiring a trial and the defendant

had not raised a valid defence. The plaintiff was awarded judgment in the amount of $28,700. The court found that it was entitled to solicitor-client costs as the defendant had received notice from the plaintiff that if the VISA debt was not paid, it would seek such costs.

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Canadian Imperial Bank of Commerce v Radoux, 2018 SKQB 112

Dovell, April 12, 2018 (QB17500)

Civil Procedure – Queen's Bench Rules, Part 8
Civil Procedure – Queen's Bench Rules, Rule 7-5
Civil Procedure – Costs – Solicitor – Client Costs
Debtor and Creditor – Credit Card

The plaintiff, the Canadian Imperial Bank of Commerce, applied for summary judgment pursuant to Queen's Bench rule 7-2 and rule 7-5. In its statement of claim issued under the expedited procedure as set out in Part 8 of The Queen's Bench Rules, the plaintiff claimed against the defendant regarding debts owed to it by her on two VISA credit cards and for solicitor-client costs. The defendant had applied for and been granted the first credit card in 2006 with a credit limit of $39,000. The plaintiff defaulted on her payments August 2016 and the balance owing as at December 2017 was $51,750 and interest charged at $29.58 per diem. The plaintiff demanded payment of the total balance in March 2017. In the demand letter the plaintiff informed the defendant that it would seek solicitor-client costs if it was necessary to commence a claim to collect the debt. The second card was acquired by the plaintiff in 2007 and it had a credit limit of $5,500. The plaintiff defaulted on her payments after March 2017. The balance owing as April 2017 was $5,550 with interest charged at $3.00 per diem. The plaintiff demanded payment of the total balance in May 2017 and the demand letter contained the same information regarding its intent to seek solicitor-client costs. The affidavits it submitted to support its application included as exhibits account statements rendered to, and correspondence with, the defendant. The defendant raised pseudo-legal objections to the plaintiff's claim.
HELD: The plaintiff's application for summary judgment was granted. The court found that it was an appropriate case for summary judgment that was not precluded by the commencement of the action under Part 8 of The Queen's Bench Rules, as permitted specifically by rule 8-6(2)(c). The case was based upon documents and the evidence was not contested.

There was no genuine issue for trial and the defendant had not raised a valid defence. It gave judgment in the amount of $61,900 against the defendant which represented the total of two credit card balances as well as the interest charges. The plaintiff was entitled to solicitor-client costs, to be assessed. The defendant had been notified by both the cardholder agreement and the demand letter that it would seek them if it was necessary to commence a claim.

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Saskatchewan (Director under The Seizure of Criminal Property Act, 2009) v Celestin, 2018 SKQB 113

Kalmakoff, April 12, 2018 (QB17496)

Criminal Law - Drug Offences - Forfeiture

The Director under The Seizure of Criminal Property Act, 2009 applied for an order forfeiting $1,990 in cash to the province. The money was seized from the defendant when he was arrested. The Director asserted that the money was proceeds of unlawful activity as defined by s. 2 of the Act and the defendant argued that the Director had failed to prove that the money was proceeds of unlawful activity and that the evidence showed that it was derived from gambling, a lawful activity. The police had been investigating several individuals for drug trafficking and an informer said that the defendant was involved. The police followed another of the suspected individuals in his vehicle and when they stopped it, they found 16 half-gram bags of cocaine in it. Afterwards the police continued their surveillance of that individual's residence and saw the defendant leave it. After an officer approached him, the defendant fled the scene. The police then searched the house and found various amounts of various drugs and associated trafficking paraphernalia, including multiple cell phones, baggies, scales and scoresheets. In one room certain items belonging to the defendant were found. When the police eventually found the defendant, he was in the company of the other individual. The search of the defendant revealed $900 in one jacket pocket and in the other, the sum of $1,000. When arrested, the defendant told the police that the money was his winnings from gambling at the casino. The police reviewed the security footage from the casino and it showed the defendant playing there the previous day and that he won $900. The Director argued that the court should infer that the money the defendant used to purchase his initial $200 gambling stake must have come from proceeds of unlawful

activity, and therefore, any winnings resulting from that "stake" money was proceeds as well.

HELD: The Director's application was granted in part. The court found that some but not all of the money seized from the defendant was the proceeds of unlawful activity. While there was no direct evidence that the defendant was trafficking in drugs, there was strong circumstantial evidence that he was and he had not provided a credible and reasonable explanation to counter the circumstantial evidence. He had not provided any credible explanation for the $1,000 found in his pocket in denominations that were consistent with drug trafficking. The court was satisfied on the balance of probabilities that the $1,000 was proceeds of unlawful activity within the meaning of s. 2 of the Act and it was in the interests of justice that an order of forfeiture be made. However, the court found that the $900 in the defendant's other pocket was not proceeds of unlawful activity. The evidence showed that he had won that amount at the casino and the court was unwilling to infer that the money he used to purchase his initial stake must have come from proceeds of unlawful activity and therefore any winnings resulting from the stake money would be proceeds as well. The court ordered the sum to be returned to the defendant.

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