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The Crown applied pursuant to s. 680 of the Criminal Code regarding the stay of a driving prohibition pending the resolution of the respondent's appeal. The respondent pled guilty to impaired driving and was denied a curative discharge pursuant to s. 255(5) of the Criminal Code. He was sentenced to 10 months of imprisonment and a three-year driving prohibition. When the respondent appealed the conviction, he also applied for interim release and a stay of his driving prohibition pending the disposition of his appeal. The chambers judge held that he would make a decision regarding the respondent's requested relief once he received the trial transcripts. The Crown argued that the respondent was appealing against sentence, not conviction; therefore, the chambers judge had no jurisdiction to stay the driving prohibition. The Crown argued that the chambers judge did not have jurisdiction to consider the respondent's application pursuant to s. 261 of the Criminal Code.
HELD: The application was dismissed. The appeal court concluded that it did not have jurisdiction to consider the Crown's application or grant the relief it sought. The chambers judge did nothing more than decide he could deal with the respondent's application for a stay. Section 680 refers to reviewing of a decision. In this matter, the chambers judge had not yet made a decision. The appeal court found that it would be more

efficient and expeditious if the chambers judge made his decision first on the respondent's application and then the Crown could appeal under s. 680 if it decided to.

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Civil Procedure – Appeal
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The appellant appealed a decision of the chambers judge that dismissed his appeal of an assessment by the local registrar of legal accounts rendered to the respondent. The appellant acted for the respondent commencing an action against an insurance company claiming that it had prematurely terminated the respondent's disability benefits. Against the appellant's advice, the respondent agreed to a settlement at a pre-trial conference. The value of the settlement totaled $466,382 in addition to a $35,000 lump sum payment. The respondent applied for an assessment to determine whether the appellant's accounts were fair and reasonable. The solicitor-client relationship between the appellant and respondent had deteriorated approximately one year prior to the pre-trial conference. The local registrar concluded that the appellant was competent and knowledgeable with respect to the applicable issues. The appellant had provided the respondent with detailed and itemized hourly billing information. The parties agreed that the hourly rate to be charged was $400. The local registrar determined that the first account was fair and reasonable. The local registrar reduced the second account from $15,397.82 to $10,557.81 because there were errors in adding the number of hours for legal services and the number of hours billed for research was excessive. The third account was for work leading up to the pre-trial settlement. The appellant indicated that the actual time was $31,835.46. He had reduced the account to $25,000 as a courtesy reduction. The local registrar concluded that the time required to put together the pre-trial brief would have been minimal. The third account was reduced to $23,035.46. The appellant was directed to refund the respondent $13,640.01. On appeal, the chambers judge noted that considerable deference must be shown to the local registrar's decision given he considered the legal and factual issues as required. The chambers judge concluded that the local registrar did not make a mistake in principle or fail to exercise his discretion in a reasonable manner with respect to the second account. The chambers judge agreed with the local registrar that the appellant's reduction of the third account was not conditional on the respondent not applying for assessment of the bill. He agreed that the account reduction was

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binding on the appellant. The local registrar did not make a mistake in principle with respect to the third account, nor did he exercise his discretion unreasonably. The chambers judge dismissed the appeal and assessed costs against the appellant of $200. The appellant argued on appeal to the Court of Appeal that the chambers judge erred in law by disregarding relevant facts and misinterpreting facts in determining whether the accounts were fair and reasonable. He argued that the mandatory factors as set out in the commentary to Rule 2.06(1) of the Code of Professional Conduct, referenced in Rule 11-23 of the Queen's Bench Rules, were not taken into account by the local registrar. According to the appellant, the local registrar only considered the time required and spent and did not consider the respondent's knowledge of and consent to the fee. The appellant said that the respondent had signed a direction to pay his account out of settlement proceeds.
HELD: The appeal was dismissed. The onus of proving that an account is fair and reasonable is always on the solicitor. The chambers judge was correct to use a deferential standard of review. The local registrar took into account all appropriate factors. The appeal court concluded that the chambers judge did not err in determining that the local registrar's certificate must stand. The respondent was given his costs in the usual manner.

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Morgan, October 4, 2018 (PC18046)

Criminal Law – Motor Vehicle Offences – Impaired Driving – Refusal to Provide Breath Sample
Constitutional Law – Charter of Rights, Section 7, Section 8, Section 9, Section 24(2)

The accused was charged with failing or refusing to provide an ASD sample. The defence brought a Charter application alleging that the accused's ss. 7, 8, 9, 10(a) and 10(b) rights were violated and sought the exclusion of the evidence. A voir dire was held with respect to the evidence to be applied to the trial. The accused was waiting in his vehicle at the Saskatoon airport for the arrival of a flight and queried a commissionaire about it. The commissionaire noticed that the accused's speech was slurred and he volunteered to him that he should not have been driving. Later, the commissionaire noticed the accused was asleep in his vehicle with the motor running. The police were called and when they wakened the accused, one officer noticed the smell of alcohol in the vehicle and suspecting that the accused had alcohol in his body based on his observation and the information in the dispatch call, he read the ASD demand to the accused, had him get out of his vehicle

and handcuffed with his hands behind his back and escorted him to the back seat of the police cruiser. The officer testified that the accused had been polite and cooperative, but that he routinely handcuffed people in these circumstances for his own safety. He could not remember whether he had performed a pat-down search to determine whether the accused was carrying a weapon. The ASD test was administered three times without success possibly due to the cold temperature that night. When the officer retrieved another machine, the accused refused to blow. After advising the accused of the consequences of refusing, the accused refused a second demand and was then arrested. He had been handcuffed for 16 minutes before the arrest was made. The defence argued that the accused was arrested when he was handcuffed during the period when only investigative detention was justified.
HELD: The Charter application was granted. The court found that breaches of ss. 7, 8 and 9 had occurred. Following R v Vulic, the court found that there were no facts that would justify the handcuffing of the accused in the interests of the officer or public safety. Conducting a Grant analysis, the court found that the breaches were serious and had a serious impact on the Charter-protected interests of the accused. Allowing this kind of police conduct would have a negative impact on the administration of justice. The evidence of the accused's refusal was excluded and he was found not guilty.

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R v Fahlman, 2018 SKPC 66

Green, November 9, 2018 (PC18061)

Criminal Law – Peace Bond – Application

The Crown applied for a peace bond under s. 810(1) of the Criminal Code. An RCMP officer swore an information claiming that the defendant had given his wife reasonable grounds to fear that he would cause personal injury to her. The RCMP officer had dealt with a 2016 incident between the parties wherein the defendant had assaulted his wife while he was intoxicated and, afterwards, he had gone outside their home on a farm and discharged a rifle. The defendant was charged with assault and careless use of a firearm. He pled guilty to the assault and the Crown stayed the second charge and he received a conditional discharge. In 2018, the RCMP officer was again called to the home of the parties because they alleged each was assaulting the other. Although no charges were laid, the officer removed nine firearms from the house. The wife testified that she and the defendant separated in 2018 but they both remained in the family home. She had commenced family law proceedings for divorce and custody of their two young children because of the defendant's violent behaviour over many years.

She stated that he had threatened her a number of times, saying that he would kill her. The defendant's abuse increased when he was under stress and used alcohol. He was angry about the court applications. The defendant testified and denied many of his wife's claims.
HELD: The application was granted. The defendant was ordered to enter into a recognizance to keep the peace and be of good behaviour for not more than 12 months. The content and length of the recognizance would be determined. The court found that it was satisfied on a balance of probabilities that the Crown had proven that the defendant's wife feared that he would cause personal injury to her and that the fear was reasonable.

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Home Equity Mortgage Corp. v Matycio, 2018 SKQB 283

Elson, October 23, 2018 (QB18274)

Mortgages – Foreclosure – Leave to Commence Action

The proposed plaintiff in each of the three applications sought leave to commence foreclosure actions under The Land Contracts (Actions) Act for the purpose of seeking foreclosure of the proposed defendants' redemption rights under mortgages registered against the respective properties. The mortgages were reverse mortgages and they provided that default could occur in one or more of six possible events. In the case of two of the mortgages, the applicant asserted that the mortgagors failed to pay both the property taxes and the required insurance premiums. In the third mortgage, the applicant said that the mortgagor failed to pay the required property taxes. The mortgages stipulated that in the event of a default, the "total amount owing" became due and payable. The mortgage defined the individual components of the total amount owing including such default expenses being those charges that might be required if the mortgagor defaulted as well as any additional expenses that the mortgagee may cover irrespective of any agreement to cover such expenses. The affidavits of default provided by the plaintiff for each mortgage stated the total amount of arrears in each case included prepayment penalties as related expenses and NSF charges as part of the total amount owing.
HELD: The applications were adjourned to permit the proposed plaintiff to submit revised affidavits presenting a clearer and more correct position of the equity position of the mortgaged premises. The court found that there was a lack of clarity regarding the terms of the mortgages including the definition of "total amount owing" because it included costs and charges that could not be added to the mortgage debt and "default expenses" including NSF charges that are clearly prohibited by s. 8 of The Limitation of Civil Rights Act. The statements

of arrears exhibited to the affidavits of default identified charges and fees that did not correspond to the component charges identified in the mortgage.

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Golden Band Resources Inc., Re (Bankruptcy), 2018 SKQB 284

Meschishnick, October 23, 2018 (QB18275)

Bankruptcy and Insolvency – Bankruptcy and Insolvency Act, Section 81
Bankruptcy and Insolvency – Dispute over Ownership of Assets
Bankruptcy and Insolvency – Proposal – Division I – Proof of Claim

The respondent commenced insolvency proceedings on April 15, 2016. A proposal was accepted by the respondent's creditors on July 22, 2016. An asset shown on the respondent's balance sheet was an interest held in a joint venture with M. which was governed by a joint venture agreement (JVA). M. argued that prior to the insolvency proceedings, the respondent owed it for its share of expenditures made under the JVA and that, by operation of the provisions in the JVA, the respondent had assigned and conveyed its interest in the asset to M. M. served the respondent with a notice to arbitrate more than a year after the proposal had been approved. The notice to arbitrate sought a declaration that the respondent had conveyed its interest in the asset prior to the commencement of the insolvency proceeding and sought an order directing the respondent to sign an assignment and transfer agreement to allow title to the asset to be registered in M.'s name. The respondent was owned and controlled by P. at the time of M.'s application. P. argued that M. should have advanced its arguments in the insolvency proceeding and, since it did not, its claim was barred. Alternatively, the respondent argued that its interest in the asset was not transferred to M. The respondent asked for an order that the arbitration proceeding be stayed. M. admitted that it received notice that the respondent had initiated insolvency proceedings not later than June 21, 2016. It was clear that M. was alerted to the fact that the respondent was changing ownership in its assets either by way of sale or share transfer and that one of the assets was the asset pursuant to the JVA. M. argued that at the time the insolvency proceeding began, it no longer had a claim against the respondent because the asset was already owned by it.
HELD: the court found that M.'s claim to the asset was extinguished by the claims bar clause in the sanction order. M. should have been aware of the asset being included in the restructuring of the respondent and it should have raised its assertion prior to the court making the sanction order that included the claims bar clause. A proposal trustee must

know with certainty what the assets are on a restructured balance sheet in order to perform its statutory duty under s. 59(1) of the Bankruptcy and Insolvency Act (BIA). Therefore, to assert their claim, M. should have participated in the bankruptcy proceedings. The claims bar provision was clear that claims would be barred and forever discharged by the sanction order upon implementation of the proposal. M. did not appear at the hearing of the application for the sanction order. M never alerted the respondent or the proposal trustee by filing a proof of claim of any type. M. claimed that it did not have to file a proof of property claim under s. 81 because the respondent was not the owner of the asset at the commencement of the insolvency proceedings. The court found that s. 81 can apply in proposals with necessary substitutions of the appropriate terms to fit the circumstances. It was clear that the respondent was asserting it was the owner of the asset and it was still the registered holder of the interest. The court concluded that the respondent remained in physical possession of the asset and had control of it. M.'s rights and claims had been barred and extinguished by the proposal and sanction order. The proceedings under the notice to arbitrate were stayed. Any claim that M. had regarding indebtedness under the JVA was not affected.

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Toronto-Dominion Bank v Tellez, 2018 SKQB 285

Danyliuk, October 25, 2018 (QB18276)

Foreclosure – Payments by Defendant
Foreclosure – Procedure – Final Order
Foreclosure – Registered Interest Holders

The plaintiff applied for a final order for foreclosure. The plaintiff was granted leave to commence in June 2017 and the statement of claim was issued July 6, 2017. An order for substitutional service was made in October 2017. The defendant was noted for default of defence on November 28, 2017 and the plaintiff filed an application without notice on October 15, 2018 seeking a final order for foreclosure. There were payments of $22,800 made after the order nisi. The property was appraised at between $350,000 and $360,000 in April 2017. There was no updated evidence of value before the court. After the order nisi for foreclosure was granted, the Maintenance Enforcement Office (MEO) registered a judgment for arrears of maintenance based on a judgment dated November 7, 2016.
HELD: The court took four issues with the application: 1) there was no proof of service of the order nisi for foreclosure on the court file. Therefore, there was no way to tell if the redemption period in the order Nisi expired; 2) notice should have be given to MEO. Rule 10-41

of the Queen's Bench Rules requires that interested parties be served on an application for order nisi. The court commented that an intervening creditor should also be given notice even though the matter was at the final order stage. MEO registered its interest after the statement of claim and order nisi for foreclosure had been issued, therefore, the court did not find that MEO should have been added as a party defendant. The court directed that notice be given prior to considering the final order application; 3) the defendant made substantial payments after the order nisi was granted but before final order was sought. Because the mortgage status changed after the order nisi was granted rule 10-43 requires a certain process to be followed. Rule 10-43(6) allows a new redemption period to be set if the account status changed prior to the expiration of the original redemption period. The plaintiff did not follow the rule; and 4) the interplay between rule 10-43(7) and (8). The court did not know if all of the defendant's payments were made before the expiry of the period of redemption. It was known that there was, however, $6,000 paid prior to the expiry of the redemption period so Rule 10-43(7) applied; the payments changed the mortgage account. If the plaintiff had given the defendant notice that credit was given for his payment along with an explanation of the amount now due under the terms of the order nisi, there could have been of final order granted as a matter of course and there would not have been a need to fix a new period of redemption. The court was unaware of what the plaintiff did in applying the payments, or how the defendant would have known the amount required to redeem the property from time to time. It was also not known when the payments were received or how they were applied. The court ordered that: 1) notice in writing be given to MEO; 2) the defendant and MEO be given notice in writing of the amounts presently required to redeem the mortgage; and 3) the matter was adjourned to a special chambers date.

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Langlois v WDC Lawyers P.C. Inc., 2018 SKQB 287

Popescul, October 26, 2018 (QB18282)

Civil Procedure – Application to Dismiss – Want of Prosecution
Civil Procedure – Queen's Bench Rules, Rule 4-44

The applicants brought an application to dismiss the claim of the respondents for want of prosecution. After serving the application, the respondents were granted a two-month adjournment to take further steps to advance their claim and/or file affidavit material with respect to statements made in a court appearance. Neither the respondents nor anyone on their behalf appeared in court on the adjourned date. The statement of claim was issued January 2009. The respondents sued the

applicants based on negligence, negligent misrepresentation, and breach of contract relating to the representation of the respondents in connection with property damage. The statement of defence was filed in May 2011. Mediation, which was the last advancement of the action, was held in October 2011. The respondents' lawyer withdrew in October 2016.
HELD: An application to dismiss for want of prosecution requires a three-step approach: 1) establishing that the delay was inordinate; 2) determining whether the delay was inexcusable; and 3) determining whether the interests of justice require the case to proceed to trial notwithstanding the delay. The court applied the three steps as follows: 1) the action was commenced almost 10 years ago, and it had been seven years since the mediation session. There was inordinate delay; 2) the action was not particularly complex, and the respondents did not file any affidavit material outlining reasons for the delay. The delay was inexcusable; and 3) all of the relevant circumstances, including the eight factors set forth by the Court of Appeal, had to be considered. The court concluded that the applicants satisfied step three. The court ordered that the respondents' claim should be struck for want of prosecution. The applicants were entitled to their taxable costs.

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Palen v Dagenais, 2018 SKQB 288

Popescul, October 26, 2018 (QB18283)

Civil Procedure – Queen's Bench Rules, Rule 12-1
Civil Procedure – Service Requirements
Statutes – Interpretation – Enforcement of Money Judgments Act

The plaintiff applied pursuant to s. 67(1) of The Enforcement of Money Judgments Act (EMJA) for an order that judgment against the defendant, W., issue because he allegedly failed to respond to a notice of seizure of account (notice) after being served with it. The plaintiff had not collected anything on the judgment of $13,065.76 plus 5 percent interest against D. A notice was served on W. because the plaintiff believed that W. owed D. money. After being served with the notice, W. should have either paid the money he owed to D. to the sheriff or filed a signed statement within 15 days outlining the reasons why he did not have to make the payment. W. did not appear. D. appeared but did not file any material.
HELD: The court determined that there was a problem with the service of the notice on W. Section 58(1) of the EMJA requires personal service of the Notice. W. was served by registered mail without authorization of the court. The Queen's Bench Rules empower the court with discretion to validate irregular service, but this was found not to extend

to non-compliance with statutory requirements, such as the EMJA. The plaintiff was not granted the remedy he sought.

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Registrar of Titles v Great West Life Assurance Co., 2018 SKQB 290

Kovach, October 31, 2018 (QB18278)

Land Titles Act – Registrar's Correction
Land Titles Act – Registrar's Caveat
Real Property – Land Titles Act – Mistake on Transfer of Title
Statutes – Interpretation – Land Titles Act, 2000

The registrar of titles (registrar) applied under s. 108 of The Land Titles Act, 2000 (LTA, 2000) to determine issues surrounding the operation of Saskatchewan's land title regime. The registrar also sought a determination of the ownership of a quarter interest in minerals associated with a quarter section. In 1923, the respondent, G., became the owner of the quarter section, including minerals. In 1947, G. transferred the surface title but reserved its mineral interest. A mistake was made on the certificate of title because it indicated that ownership of the minerals passed with the surface title. The mineral interest was then divided into quarters and passed between various owners. In 1973, the registrar discovered the mistake and filed a registrar's caveat against the certificate of title for the minerals. The caveat warned that the minerals belonged to G. and were transferred by mistake. The registrar's caveat was never discharged. The respondent, P., purchased the quarter interest in question in the minerals in 1993. They acquired title in 2006. The acquisition of the minerals was subject to the registrar's caveat. The registrar submitted a reference of five questions: 1) does an acquirer of mineral title take it subject to the notice in the registrar's caveat; 2) does an acquirer of the surface title take it subject to the notice in the registrar's caveat; 3) if the answer to question one is affirmed, does the registrar have authority under s. 97 of LTA, 2000 to correct an error or omission related to a mineral title issued after the registration of the registrar's caveat that provided notice of that error or omission without consent of the new title owner; 4) if the answer to question two is affirmed, does the registrar have authority under s. 97 of LTA, 2000 to correct an error or omission related to a surface title issued after the registration of the registrar's caveat that provided notice of that error or omission without consent of the new title owner; and 5) what is the court's determination of the proper ownership of the subject quarter interest in the minerals?
HELD: The court answered questions one, two, three, and four in the affirmative and found that G. was the owner of the subject quarter interest in the minerals. The court discussed the five questions as

follows: 1) even though the registrar's caveat was a caveat on a paper certificate of title, it was converted into an electronic registered interest under the LTA, 2000. Section 54 indicates that a registered interest gives notice of that interest to third parties and gives the interest holder priority over third parties. Further, all titles are subject to registered interests pursuant to s. 14 of the LTA, 2000. The acquirer of a mineral interest acquired it subject to the registrar's caveat; 2) the same principles applied in question two as in question one; 3) the registrar has power to make corrections pursuant to s. 97 of the LTA, 2000, which has not yet been considered by the court. The approach by courts considering previous versions of the legislation required the determination of two issues: a) the type and extent of error; and b) the prejudice to a subsequent acquirer in good faith and for value. The court found the issue in this matter to be whether effecting a correction would be prejudicial to the purchaser. The court found the answer depended on whether the registrar's caveat sufficiently described the error so that a potential purchaser could assess the impact and reach an informed decision. The court determined that it was permissible for the registrar to make corrections because to do so would not be prejudicial to the after acquired purchaser where the registrar's caveat provided sufficient detail; 4) the same principles applied in question four as in question three; and 5) section 109 of the LTA, 2000 allows the court to make any order it considers appropriate. The court was satisfied that G. was the owner of the subject quarter interest in the minerals and P. was not a bona fide purchaser for value without notice when it purchased the subject quarter interest or when it registered it on title. P. took title subject to the registrar's caveat.

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Kaiser v R.M. of Baildon No. 131, 2018 SKQB 292

Kalmakoff, November 1, 2018 (QB18279)

Civil Procedure – Application to Strike Statement of Claim – Abuse of Process
Civil Procedure – Application to Strike Statement of Claim – No Reasonable Cause of Action
Civil Procedure – Application to Strike Statement of Claim – Scandalous, Frivolous, or Vexatious
Civil Procedure – Costs – Fixed Costs
Civil Procedure – Costs – Solicitor-Client Costs
Civil Procedure – Queen's Bench Rules, Rule 7-9(2)(a), (b), and (e)
Civil Procedure – Queen's Bench Rules, Rule 11-1

The Rural Municipality (RM) applied pursuant to Rule 7-9(2) of The Queen's Bench Rules to strike the plaintiff's two statements of claim for failing to disclose a reasonable cause of action and for being scandalous,

frivolous, vexatious, and an abuse of the court's process. The RM also sought enhanced costs. The plaintiff sought to strike the RM's applications. The dispute between the parties involved the plaintiff's property in the RM, namely: a garage; a monument; and a former church hall building. In 2014, the RM a passed a building bylaw that required individuals to obtain a permit prior to building or altering certain buildings within the RM. The building bylaw refers to The Uniform Building and Accessibility Standards Act (UBASA). The building bylaw exempts farm shops and farm buildings used exclusively for certain farm operations. Other farm buildings, such as residences, were not exempt from the permit requirement, but were exempt from the fee. The plaintiff built a garage with a painted image on it and he also constructed a monument. He argued that these structures were art installations and therefore should be exempt from the building bylaw. The plaintiff argued that his s. 15 Charter rights were breached because he was unfairly discriminated against as a small land holder. He also argued that his s. 2 Charter rights, rights to freedom of expression, were violated. He also objected to the tax assessment of a church hall in which he resided. The plaintiff did originally apply for a building permit for the garage; however, it was missing certain necessary supporting documentation and he indicated that he would not pay the fee. The permit was not granted, but the defendant commenced construction anyway. The RM issued a stop work order. The plaintiff continued to build and appealed the stop work order. The appeal was dismissed. A further appeal was also dismissed by the Saskatchewan Municipal Board. The plaintiff filed his first statement of claim (QBG 84) in June 2016. He requested the court overrule the RM's order requiring him to obtain a permit on the basis that the garage was a farm building. He also claimed that the building bylaw was discriminatory, contrary to the Charter, and a form of censorship. In 2017, the plaintiff's hall and garage were classified as residential property for tax assessment purposes. The plaintiff was given another stop work order requiring him to obtain the necessary permits to continue to use the church as a residence. The RM argued that the use of the church as a residence violated the zoning bylaw. A stop work order was also issued with respect to the monument. The plaintiff's appeals that have been heard have been dismissed. He has also applied to the Court of Appeal for leave to appeal, and that matter remains under reserve. In 2018, the plaintiff filed another statement of claim (QBG 88) against the RM. He alleged that the RM systematically denied his rights under the Charter, using harassment and intimidation. The issues were as follows: 1) should the defendant's claims be struck in whole or in part, and if so, should he be given leave to amend the claims; and 2) should costs the awarded and, if so, on what basis?

HELD: The RM was successful on its application; the plaintiff's claims were struck. The issues were analyzed as follows: 1) the test for striking of a claim for disclosing no reasonable cause of action pursuant to Rule

7-9 is a stringent one. The test to be applied to strike a claim alleging a Charter violation is similar. The court can consider evidence other than the pleadings in applications to strike a claim pursuant to Rule 7-9(2)(b) and (e). The plaintiff's first claim was found to fail to disclose any reasonable cause of action, and it amounted to an abuse of process. It was struck in its entirety. The question of whether the plaintiff's garage should be exempt from the permit requirement was already determined by a statutory tribunal with the authority to make the determination. The Charter is not breached every time the law applies differently to some persons than others. The court concluded that "small land holdings" was not an enumerated ground in s. 15 of the Charter, nor was it an analogous ground. The plaintiff's first claim also appeared to assert that the building bylaw infringed upon his right to freedom of expression, as guaranteed by ss. 2(b) of the Charter. The court determined that, even if the plaintiff proved everything in that portion of his claim, he could not succeed because he did not demonstrate how the potential requirement of a building permit would amount to a violation of his Charter rights. The second statement of claim alleged that the RM infringed upon the plaintiff's right to freedom of expression and right to equal treatment and benefit of law. Again, "small land holdings" is not a ground in s. 15(1) of the Charter and had no chance of success. The court also found that some of the paragraphs in the second statement of claim were frivolous and vexatious. The court could not grant relief of censure and prosecution as requested by the plaintiff. Courts will not award damages for harm suffered as a result of the mere enactment or application of a law, as argued by the plaintiff. The court found that the Planning Appeals Committee (PAC) is a court of competent jurisdiction with respect to considering Charter violations. The PAC found that the plaintiff failed to establish a violation of his rights under the Charter. The second claim sought to re-litigate matters already decided. The court found that the plaintiff's repeated requests for the same forms of relief constituted vexatious conduct. The plaintiff's statements of claim were struck in their entirety, without leave to amend; and 2) the RM argued that solicitor-client costs were warranted for a number of reasons. The court found that the plaintiff's conduct did not rise to the level of scandalous, outrageous, or reprehensible so as to justify an award for solicitor-client costs. The plaintiff's conduct did, however, call for costs substantially above the tariff to express the court's disapproval of his conduct. The court found it appropriate to fix costs rather than order that they be assessed. The costs were fixed at $8,000, payable within 60 days.

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Moore v Moore, 2018 SKQB 294

McIntyre, November 1, 2018 (QB18281)

Family Law – Division of Property – Costs
Family Law – Division of Family Property – Exemption
Family Law – Division of Family Property – Unequal Division
Family Law – Division of Family Property – Valuation

The dispute involved the division of family property. The parties were married in February 2015 and separated in April 2016. The petition was issued May 2016. The parties initially resided in a condo that had been the petitioner's family home during her first marriage. The condo was sold in the fall of 2015 for net sale proceeds of $52,107. The proceeds were used to pay off a vehicle loan of $46,000 and the remaining funds were used for a down payment on a new home. The appraised value of the home was $355,000. The equity in the home at the date of petition was $17,923. The petitioner argued that the distribution of the family home should be unequal. The respondent was in possession of the truck; however, it was registered in the petitioner's name. She sought the truck as well as payment for various repairs. The truck was valued at between $24,000 and $26,000 in May 2016. The respondent valued the truck at $14,500, but there was no date on that valuation. The petitioner purchased a vehicle in May 2013, prior to her relationship with the respondent. She claimed an exemption for the vehicle and provided a black book average asking price in 2017 of $19,505. There were also Skidoos, a trailer, ATVs, a boat, and an RV owned by the parties, some of which were purchased prior to the relationship between the parties. The respondent also had a 2004 truck that he purchased during the marriage. The parties also had firearms, some of which were purchased prior to marriage. The petitioner argued that she should retain both dogs, one purchased prior to marriage one purchased after marriage, whereas the respondent argued that they should each retain a dog. HELD: The parties were self-represented and failed to appreciate the underlying principles of The Family Property Act. The court indicated that, generally speaking, property will be valued as of the date of petition unless its value has changed solely as a result of market forces. The marriage lasted 14 months. The family home that the parties resided in for five months was acquired using proceeds of sale from the petitioner's family home during her first marriage. The proceeds of sale from that home were also used to pay for the respondent's truck. The respondent retained possession of the debt-free truck after separation. The petitioner also assumed non-mortgage family debt amounting to $55,000. The respondent did not assume any family debt. The court found that there were extraordinary circumstances making an equal distribution of the family home unfair and inequitable. The equity in the family home was not divided. The truck was acquired prior to the date of marriage; however, there was no exemption because it was a household good. The truck was valued at $24,000 as at the petition date. The petitioner was ordered to provide a transfer of the vehicle registration to the respondent. There was similarly no exemption for it the petitioner's vehicle, given it was a household good. The court

valued the vehicle at $19,000. The recreational vehicles and firearms purchased prior to marriage were also not exempt from distribution because they were household goods. Where the fair market value of the assets could not be determined, the court assigned a reasonable value to the asset. The court determined that the 2004 truck had no value because it was transferred to a third party in satisfaction of the debt owing for repairs. The only other household good that was given value was the shed that the respondent had from the matrimonial home. The court concluded that the petitioner had satisfied it that she had appropriate accommodation and arrangements in place to care for both dogs. The petitioner had (-$15,259.89) in non-taxable assets and the respondent had $41,020 in non-taxable assets. The total value of pension benefits acquired during marriage was $12,148.63. Considering the taxable and non-taxable assets, the court ordered the respondent to make an equalization payment of $24,000.56 to the petitioner. The petitioner was awarded costs of $2,000.

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Atrium Mortgage Investment Corp. v King Edward Apartments Inc., 2018 SKQB 296

Layh, October 12, 2018 (QB18285)

Bankruptcy and Insolvency – Receiver – Sale Process
Civil Procedure – Service

The receiver of the assets of the defendant applied for approval of the purchase and sale of the defendant's property by the plaintiff. The plaintiff was the original mortgagee of the property. A previous order of the court had approved the sale process proposed by the receiver that led to the purchase and sale agreement (PSA). During that court attendance, two creditors of the defendant did not appear. They did provide affidavits and briefs of law after the order. They questioned the manner of service of the notice of application, stating that they were not aware of the proposed method of sale. They also argued that the property should have been marketed as the sale of condominium units. The receiver followed the court-approved sale process and received two written expressions of interest. The plaintiff was willing to pay over twice the amount contemplated in the other expression of interest. The PSA was entered into and the receiver then sought approval. The seven guarantors all opposed the sale of the property and requested that the court order a public sale of the property. They were all concerned with the projected shortfall that the guarantors would be jointly and severally liable for.
HELD: All of the parties agreed that the four principles from the Soundair test should be considered: 1) whether the receiver made

sufficient effort to get the best price and did not act improvidently; 2) the interests of all parties; 3) the efficacy and integrity of the process by which the offers were obtained; and 4) whether there was unfairness in the process. The two creditors were served regarding the process for sale by service upon their former lawyer. The receiver had received correspondence from the previous lawyer indicating that he was no longer representing the creditors. The lawyer did not, however, comply with The Queen's Bench Rules regarding lawyer withdrawal. The creditors also could have made sure that they gave notice that they were no longer represented by that lawyer. The court concluded that the service issue did not have a material bearing on the court's determination because: the receivership order did not require the receiver to seek the court's approval respecting the method of marketing the property; the creditors' argument did not differ as a result of the service issue; they had the same argument as the other guarantors; they wanted the current PSA to be set aside and a new method of sale explored; and the court allowed the two creditors to make representations respecting a preferred method of sale. The Soundair test was satisfied with the court making numerous findings: the guarantors had an opportunity to participate in the manner of sale; the guarantors did not show that the receiver did something illegal or in non-compliance with the procedures ordered by the court; the guarantors were found to be trying to make one last effort, with little chance of success, to negotiate a settlement of their guarantees; there was no alternate proposed sale method made when the court considered the order for sale process; the question of who would bear the costs for a new sale process was also a concern of the court; the risk of delay in confirming a new sale would be borne by the plaintiffs not the guarantors; an alternate method of sale would not realize an increased net sale price; predictability and certainty are required for a receiver to deal with assets; and the sale price more than doubled the other bid and was above the appraised price. The draft order of sale approval and vesting order was approved to be issued in the form filed by the receiver.

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Fahlman v Fahlman, 2018 SKQB 297

Layh, October 22, 2018 (QB18286)

Professions and Occupations – Lawyers – Code of Professional Conduct
Professions and Occupations – Lawyers – Conflict of Interest

The petitioner sought an order that a law firm be removed as counsel for the respondent and that costs be awarded against the law firm. The petitioner and respondent married in 2010 and they separated in

August 2018. In 2016, the petitioner was arrested and charged after an altercation with the respondent that involved a firearm. He was released under a peace bond. The lawyer represented the petitioner to have the conditions of the peace bond removed. He also negotiated a plea to common assault with a joint submission for a conditional discharge for the petitioner. The petitioner indicated that he met with the lawyer personally and they spoke about all facets of his relationship with the respondent. The lawyer said that his notes did not indicate a discussion about the plaintiff's relationship with his spouse. The lawyer said that if there had been discussions about the spousal relationship, he would have made notes for the file. The separation of the petitioner and respondent required police involvement again and the petitioner entered into another peace bond. The issues were whether the current conflict between the petitioner and respondent was a "fresh and independent matter wholly unrelated to any work the lawyer had previously done for the petitioner" and, if so, whether any "previously obtained confidential information was irrelevant to the matter".
HELD: The law firm was found to be in a conflict of interest with the petitioner for having previously represented him on a matter bearing resemblance to this litigation. It is a long-standing principle of The Code of Professional Conduct of lawyers that once a lawyer is retained by a client, he or she cannot act in a later matter if such acting is contrary to the interests of the client. The current issues were not independent nor irrelevant. The respondent's affidavit relied on the 2016 incident for her position on custody of the children. The lawyer must have viewed the incident as relevant to have included it in the affidavit. The commentary to Rule 34.1 of the Code requires that there be more than a "mere possibility of risk" to a former client of the lawyer acting against him or her. The court found that the petitioner discharged his obligation to show that the lawyer's continued representation and duties toward the respondent necessarily raised a genuine and serious risk of the duty of loyalty toward him. The lawyer negotiated removal of conditions of the peace bond and received letters of reference from people on behalf of the petitioner, which would have contained opinions of the petitioner and his character. The lawyer also negotiated a plea and sentence. The lawyer would have had to obtain some information from the petitioner to resolve the matter. The three-step test from International Corp. was accepted: 1) whether there was a solicitor-client relationship; 2) whether the previous relationship was sufficiently related to the retainer that is sought to remove the solicitor; and 3) whether the lawyer received confidential information through the previous relationship. The applicant had to prove the first two factors and once met, the third factor is presumed as a rebuttable presumption that no information was given that could be relevant. The court disagreed with the lawyer that the second step was not met. The court also considered that the respondent has an interest in retaining her lawyer of choice. It was determined that a reasonable member of the public would conclude that if the respondent believed the events of

2016 were significant in the family law proceedings, then the petitioner's disclosure of those events to the lawyer should not be available to the lawyer representing the respondent. The court did not require the petitioner to outline the confidential information he shared with the lawyer. The first two steps were met by the petitioner. The lawyer was found not to have discharged the burden imparted in the third step. Costs in the amount of $500 were awarded to the petitioner.

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Fuiten, Re (Bankrupt), 2018 SKQB 299

Thompson, November 7, 2018 (QB18288)

Bankruptcy – Discharge – Personal Income Tax Debt

The bankrupt sought discharge from bankruptcy. A hearing was required pursuant to s. 172.1 of the Bankruptcy and Insolvency Act (BIA) prior to discharge because the bankrupt had personal income tax debt exceeding $200,000, which made up 75 percent or more of the proven unsecured claims in the bankruptcy. The Trustee opposed the discharge because the bankrupt owed $2,525 under the voluntary payment terms of the bankruptcy. The total income tax debt was $270,852. The debt was accumulated over several years of income tax assessments and it was comprised of principal, penalties, and interest. The income tax made up 96.7 percent of the total proven unsecured claims. The bankrupt provided the following reasons for his bankruptcy: a previous marriage; an assessment of his current spouse under the Income Tax Act; a downturn in the economy; and his decision to resort to alcohol as a means of coping with the financial stress. The bankrupt was a carpenter. The first income tax return that caused the bankrupt problems was his 1998 income tax return that had not been filed for 15 years. In 2015, the bankrupt made a proposal to his creditors regarding $18,000 in consumer debt. The four factors that the court had to consider were: 1) the bankrupt's circumstances at the time the personal income tax debt was incurred; 2) the bankrupt's efforts to pay the personal income tax debt; 3) whether the bankrupt made a payment in respect of other debts while failing to make reasonable efforts to pay the personal income tax debt; and 4) the bankrupt's financial prospects for the future.
HELD: The factors were considered as follows: 1) the bankrupt has a reverse onus to demonstrate that he was honest but unfortunate regarding his circumstances at the time the personal income tax debt was incurred. The registrar found that the bankrupt knew he had outstanding returns and chose not to take measures to mitigate the damage going forward. The registrar determined that the bankrupt's conduct was not reasonably justifiable under the circumstances; 2) the

bankrupt's spouse was assessed to be responsible for $130,000 of the bankrupt's tax debt; 3) the bankrupt's spouse did complete a consumer proposal, however, that does not go to the bankrupt's conduct at paying his personal income tax debt; and 4) the bankrupt did not have any available surplus income at the time of the hearing. He continued to work as a finishing carpenter for his wife's company. There was evidence that he was taking steps towards financial rehabilitation. The Minister of National Revenue argued that the bankrupt should be discharged conditionally with an order requiring him to pay $40,000. The bankrupt chose to avoid his tax obligation for 15 years and he benefited during that time. The registrar ordered that the bankrupt be discharged once he paid $40,000 to the trustee or once the registrar was satisfied that he had paid an amount equal to the amount he would have been required to pay if he had been in bankruptcy with the requirement to pay for seven years from the date of the decision. The bankrupt was also required to file all returns of income tax required by law.

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Orenchuk, Re (Bankrupt), 2018 SKQB 300

Thompson, November 7, 2018 (QB18289)

Bankruptcy – Discharge – Insurance Proceeds
Bankruptcy – Discharge – Monthly Surplus

The bankrupt filed an assignment in bankruptcy in July 2016 and the trustee objected to a discharge. The discharge was opposed because: the bankrupt owed the estate $19,370 for surplus income; and the bankrupt owed the estate $10,000 of insurance proceeds he received over six months ago from a vehicle collision. The issues were: 1) the unique circumstances of this bankruptcy; and 2) considering the unique circumstances of this bankruptcy, what was the appropriate disposition.
HELD: The issues were determined as follows: 1) this was the bankrupt's first bankruptcy. He had a spouse and child. His unsecured debts were estimated at $47,000. The bankrupt attributed his financial difficulties to an over extension of credit and business startup costs. He was a real estate agent. At the time of his bankruptcy, the bankrupt agreed to pay $255 per month for surplus income. In March 2017, the trustee advised the bankrupt that his surplus income amount had been increased to $420 per month. The monthly amount was later increased to over $1,000 per month. During his bankruptcy, the bankrupt received insurance proceeds for property damage to his truck. He paid the trustee the amount in excess of his exemption entitlement and then he used the $10,000 in exempt proceeds to assist his wife in purchasing a

vehicle. The bankrupt's mother entered into an agreement to lease the bankrupt a truck for a year; and 2) the registrar was satisfied that the bankrupt should be required to pay the outstanding surplus income of $19,370. The registrar did not reduce the surplus income obligation by the amount the bankrupt indicated he paid for his wife's bills. There was no evidence that the payment of his wife's bills ought to be factored into the surplus income calculation. The trustee sought payment of the exempt insurance proceeds because the bankrupt did not use them to purchase a new vehicle for himself. The exemptions legislation stipulates that a similar item of property must fulfill the function of the item lost in a minimally reasonable manner. The bankrupt assisted his wife to purchase a family vehicle to replace his former vehicle. The trustee did not find that the bankrupt acted in bad faith regarding the use of the insurance proceeds. Further, there was no evidence that the bankrupt owned the truck that he was leasing from his mother. The registrar had no statutory authority to declare ownership of the truck or to order that it be transferred to the bankrupt. If the trustee sought a declaration of ownership or transfer of the truck the matter had to be heard by a judge of the Court of Queen's Bench. Upon payment of $19,370 the bankrupt was entitled to an order of discharge of bankruptcy.

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