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The prospective appellant, the City, applied for leave to appeal the Assessment Appeals Committee (committee) decision on the bases that the committee erred by: 1) using an incorrect standard of proof and reaching a decision in the absence of evidence; 2) breaching procedural fairness by: a) upholding the board's decision to accept new evidence in the appellant's response submission served and filed five days before the hearing (five-day material) without allowing the City a remedy; b) denying the City an opportunity to enter evidence pursuant to s. 223(1)(a) of The Cities Act; and c) deciding the appeal on a ground of appeal that was not pleaded in the notice of appeal; 3) overturning assessor discretion in developing the model; and 4) deciding the appeal based on methods that do not accord with the standard appraisal methods pursuant to subsections 163(f.1) and (f.3) and s. 165(1) of The Cities Act. The ratepayers, comprised of ten properties that appealed their 2017 property assessment, filed an application seeking a declaration that the leave application was out of time for failing to obtain an order within 30 days of the decision. Their appeal to the Board of Revision (board decision) was dismissed. The committee allowed the

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ratepayers' appeal of the board decision. The committee found that the board erred by upholding the assessor's decision to exclude semi-gross and gross rents in the property value analysis and erred by upholding the manner in which the assessor adjusted the property value for second-floor rental space. The City appealed the committee decision pursuant to s. 33.1 of The Municipal Board Act. HELD: The application for leave was allowed on each ground. The ratepayers' application was dismissed. The court concluded that ss. 33.1 and 33.2 of The Municipal Board Act only required that the application for leave be filed within 30 days. The court found that it would be difficult, if not impossible, for any proposed appellant to set a return date within 30 days of the date of the decision in Regina or Saskatoon. The ratepayers' application was dismissed with costs fixed at $500. The grounds of appeal were dealt with as follows: 1) the standard of proof required to be used by a decision-maker and the assertion that the decision was reached in the absence of evidence appeared to the court to be questions of law. The City argued that the committee never concluded that the model used by the assessor did not achieve equity. Further, the City argued that the committee relied on mere assertions by the ratepayers in finding that a ratio or percentage may provide a more equitable adjustment for the second-floor factor. According the City, this reversed the onus and put the burden on it to disprove allegations. The ground was found to be of sufficient merit. It was not prima facie frivolous or vexatious, nor was it prima facie destined to fail. The ground was also of sufficient importance; 2) the board and the committee must adhere to procedural fairness. The City argued before the board that the semi-gross and gross rent material contained in the five-day material was new material and should have been included in the ratepayers' material filed 20 days before the hearing. The City was successful in front of the board even though the board did not reject the material. The City again raised the five-day material in front of the committee. Their application for an adjournment to provide additional evidence was denied. The semi-gross and gross rent applicability played a significant role in the committee's decision. The issue was not found to be moot in this case, as it had been in previous matters. The first two sub-grounds of procedural fairness argued by the City were found to be of sufficient importance. In the last sub-ground of the procedural fairness ground, the City argued that the committee decided the appeal on a basis not raised in the ratepayers' notice of appeal to the committee. The court found that the notice of appeal filed by the ratepayers with the committee was of sufficient merit to warrant attention from the Court of Appeal. The court granted leave to appeal on all three sub-grounds regarding procedural fairness; 3) The City argued that the board and committee both undermined the discretion required to be afforded to assessors. They also argued that the committee relied on inappropriate evidence to evaluate the reasonableness of the assessor's discretion. The ground of appeal was found to have sufficient merit; and 4) the court had difficulty in determining whether this ground of appeal was a question of law but found it

M.K.F.B., Re

M.S., Re

Parfitt v R

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was intertwined with the third ground of appeal, so granted leave. The costs of the leave application were reserved to the panel hearing the appeal.

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Johannson v Saskatchewan Government Insurance, 2019 SKCA 52

Whitmore Ryan-Froslie Leurer, June 13, 2019 (CA19051)

Administrative Law – Judicial Review – Automobile Injury Appeal Commission – Reduction of Benefits
Automobile Accident Insurance Act – Appeal
Automobile Accident Insurance Act – Income Replacement Benefits

The appellant appealed a decision of the Automobile Injury Appeal Commission (commission) regarding her entitlement to benefits after a motor vehicle accident. The appellant was struck from behind on February 2, 2007 when driving her car. Her pre-existing conditions were connective tissue arthritis in her neck and shoulders and depression for which she had been prescribed an anti-depressant. The appellant was diagnosed with neck/trapezius sprain on February 5, 2007 after visiting her family physician. The appellant applied to the respondent insurer for injury benefits on March 6, 2007 indicating that she suffered new injuries after the motor vehicle accident. In May 2008, the appellant wrote the respondent and asked them to close her file, noting that she would continue with massage and chiropractic treatments on her own. She continued to work full-time in the education sector until June 2008. The appellant reduced her work to: 80 percent in September 2008; 70 percent in August 2009; 50 percent in September 2010; and 40 percent at the time of the commission hearing. By September 2010, she contacted the respondent seeking further assistance indicating that her condition had steadily worsened and she required treatment. There were various specialists who examined the appellant to determine the nature of her injuries and entitlement to benefits. The respondent made several decisions including one that awarded the appellant income replacement benefits (IRB) of $43,395.05 for the period through to the end of June 2011. The respondent also decided not to make any further IRB on September 1, 2011. On November 19, 2014, the appellant appealed the decision letter dated September 1, 2011, to the commission on the basis that the respondent had erred in interpreting evidence that led it to prefer the wrong accounts of her condition. The commission dismissed the appeal because most of the practitioners were of the opinion that the appellant was capable of returning to work full-time as of June 2011. The majority of the commission concluded that the appellant's symptoms were caused by a pre-existing chronic pain condition and not to the MVA. The appellant's grounds of

appeal were as follows: 1) did the commission err in law by accepting the evidence of the second respondent medical consultant and the rehabilitation specialist over the first respondent medical consultant and the chiropractor; 2) did the commission err in law by relying on expert opinion evidence as being determinative of causation; 3) did the commission err in law by failing to consider and apply the correct legal test for causation; and 4) did the commission err in law by misinterpreting s. 112 of the Automobile Accident Insurance Act (AAIA) and thereby depriving the appellant of the benefits she was entitled to?
HELD: The appeal was dismissed. The court determined the appellant's ground of appeal as follows: 1) the appellant was attacking the reasonableness of the commission's findings of fact but did not identify a question of law. The court found that the appellant's real complaint was that the commission should not have relied on the reports that it did. The argument was regarding the sufficiency or weight of the evidence relied upon by the majority to support its conclusions. The court did not agree that there was no evidence to support the opinions of the medical professionals that the commission preferred. The commission did not commit an error of law in relying on the reports that it did. The first ground of appeal failed; 2) the commission did not err by relying on the expert evidence that it did, nor was it an error to mention case law; 3) the appellant argued that she was a thin skull claimant, not a crumbling skull claimant. The appellant did not point to an error in principle that was a possible error in law. The ground failed; and 4) the appellant argued that s. 112 of the AAIA allows the respondent to pay benefits where "logic" dictates benefits should be paid. She indicated that the commission erred in law by not exercising its discretion to require payment of benefits to her. The ground was also found to fail, again for not raising a question of law.

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C2 Ventures Inc. v Saskatchewan (Financial and Consumer Affairs Authority), 2019 SKCA 53

Ottenbreit Caldwell Schwann, June 14, 2019 (CA19052)

Administrative Law – Judicial Review – Financial and Consumer Affairs Authority of Saskatchewan – Natural Justice/Procedural Fairness
Securities – Compensation to Investors – Causation
Statutes – Interpretation – Securities Act

A hearing panel (panel) of the Financial and Consumer Affairs Authority of Saskatchewan (FCAA) awarded compensation (compensation orders) to four investors (claimants) after finding that they suffered financial losses caused in whole or in part by the appellants' breaches of The Securities Act (Act). The appellants

appealed on the grounds that: 1) the panel lacked jurisdiction; 2) the claimants' claims were statute barred; 3) the losses were not caused by the appellants' statutory breaches; and 4) the decision was unreasonable because the panel misapplied the securities exemptions to two claimants. Eleven people invested approximately $900,000 in the appellants project to "condo-ise" apartment buildings. The investors were told they would receive their principal investment plus a share of the net profit realized from the project upon its completion. They were also told that they co-owned the project and that their investments were safe and secure. Seven months later, in December 2009, the appellants advised investors that the project had failed, they were not co-owners, and their investments were not secured. On November 24, 2011, the director of the FCAA (director) issued a notice of hearing. A consent order was issued that included: the appellants acknowledging that they had not been registered to trade or advise in securities in Saskatchewan, thereby contravening s. 27 of the Act; the appellants acknowledging that the director had not issued a receipt for a prospectus for the securities sold that thereby contravened s. 58 of the Act; and the appellants agreeing that they made potentially inaccurate statements. The consent order did not set a date by which the director must apply for financial compensation for all claimants. The appellants argued that since no date had been set as outlined in Policy 12-602, the panel lacked jurisdiction to hear the matter of compensation. The panel concluded that the director had met the onus and the burden of proof under s. 135.6(4) and ordered compensation to the four claimants. The FCAA argued that a date did not have to be set because there was no contravention hearing. Also, it argued that Policy 12-602 does not carry the force of law. HELD: The appeal was allowed because the panel had no jurisdiction to proceed with the compensation hearing and because the FCAA failed to prove causation. The compensation orders were set aside. The court found that it was only necessary to consider the first and the third grounds of appeal. The appellants argued that the panel had no jurisdiction for two reasons: the failure to comply with the policy was a breach of natural justice or procedural fairness and also that the consent order resolved all issues between the parties, leaving no jurisdiction for the panel. The court agreed that the jurisdictional issue did invoke procedural fairness or natural justice concerns. To step outside the policy, the court said that the panel would have had to consider the public interest and the nature of the matters in issue in the consent order, which it did not. The appellants had a legitimate expectation that the panel would follow the procedure set out in the policy. The appellants did not have to show that they suffered prejudice in a procedural fairness claim. The appellants' right to procedural fairness was breached; the panel erred in law when it determined it had jurisdiction to proceed with the compensation hearing in the circumstances. The remedy would normally be to remit the matter so FCAA could comply with the policy; however, there was the matter of the consent order. The court found that the consent order should have reflected the

director's intention to request compensation orders. The failure to do so was found to be an implicit recognition that the consent order resolved all statutory claims against the appellants. Either the FCAA breached the duty of fairness it owed to the appellants or the consent order ended all matters between the parties. The court next considered causation. The court found that the panel's decision did not fall within the range of possible outcomes defensible by the facts and law because there was no evidence that it could find the appellant's contraventions caused the claimants' losses. The finding also gave rise to an error of law. Causation was a mandatory precondition to the issuance of a compensation order. A breach of s. 55 was not even listed in the notice of hearing. A breach of s. 55 was not before the panel. There was evidence that the appellants failed to register or to file a prospectus, but not that that could cause the business venture to fail. The court set aside the compensation orders because they were made without proof of causation. The matter was put to an end. The appellants were awarded costs in the compensation hearing and the appeal.

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Piche v R, 2019 SKCA 54

Jackson Whitmore Ryan-Froslie, June 17, 2019 (CA19053)

Criminal Law – Evidence – Admissibility – Hearsay – Principled Exception – Appeal
Criminal Law – Assault – Assault Causing Bodily Harm – Sentencing – Dangerous Offender – Appeal

The appellant was convicted of three offences, arising from three incidents involving his common-law spouse: assault with a weapon, contrary to s. 267(a) of the Criminal Code; assault causing bodily harm, contrary to s. 267(b) of the Code; and uttering a threat to kill her, contrary to s. 264.1 (1)(a) of the Code. Following his conviction of these offences and a sentencing hearing, the trial judge declared the appellant a dangerous offender (DO) and sentenced him to an indeterminate sentence. The appellant appealed the conviction, designation and sentence. The key piece of evidence against the appellant that led to his conviction was a video-recorded statement made by the complainant to an RCMP officer in which she made allegations on which the charges had been based. At trial, the complainant testified that she could not remember making the statement, nor could she explain the circumstances of each incident, but she said that she had been telling the truth when she made the statement. It was admitted under the principled exception to the hearsay rule. The grounds of appeal regarding the conviction were: 1) the trial judge's reasons for admitting the statement were insufficient; 2) if they were, he erred in law by admitting it because it was unreasonable and unsupported by the evidence; 3) the trial

judge's reasons for conviction did not permit meaningful appellate review; 4) he erred or misapprehended the evidence when he made his findings regarding credibility; and 5) his approach to the trial, including the emphasis on deciding the case quickly, the brevity of his reasons and his aggressive treatment of trial counsel, amounted to a miscarriage of justice; and 6) the decision in Boutilier entitled the appellant to a new trial on the question of being designated and sentenced as a DO.

HELD: The conviction appeal was dismissed and the sentencing appeal was allowed. The court found with respect to each ground that the trial judge: 1) had provided reasons sufficient to permit appellate review. Applying the principles set out in Sheppard, it noted that his reasons clearly responded to and adopted the Crown's submissions that the statement met the required necessity and reliability criteria without objection from the appellant's trial counsel; 2) had not made any error in principle that would permit intervention and thus, his decision regarding admissibility must be accorded deference; 3) had shown in his reasons that his decision was based on his rejection of the appellant's evidence and his belief that the complainant was telling the truth in her out-of-court statement and he was not left with a reasonable doubt on the whole of the evidence. The fact that some parts of the evidence, potentially relevant to credibility, were not expressly resolved in his reasons did not prevent appellate review; 4) had not erred in assessing the complainant's truthfulness in her video statement, and that made this case straightforward and overwhelming because all of the allegations were proven by the statement. The convictions could be sustained on a reasonable view of the evidence and they were neither unreasonable nor unsupported by the evidence under s. 686(1)(a)(i) of the Code; 5) had not conducted the trial in a way that would shake the confidence of the public in the administration of justice and thus no miscarriage of justice occurred; and 6) committed four errors that, taken together, merited an order for a new hearing. The first three errors related to Boutilier: the judge's statement of the law did not accord with Boutilier; he treated the finding of dangerousness and the imposition of the sentence as two separate events so that after having designated the appellant as dangerous, he heard further evidence and appeared to have found him not to be manageable in the community because he found him to be a DO. The fourth error related to the reasonableness of the judge's assessment of where the appellant would be permitted to live following a determinate sentence and the kind of supervision that would be required.

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Parfitt v R, 2019 SKCA 55

Jackson Ottenbreit Whitmore, June 17, 2019 (CA19054)

Criminal Law – Assault – Assault Causing Bodily Harm – Conviction – Appeal
Criminal Law – Assault – Assault Causing Bodily Harm – Sentencing – Dangerous Offender – Appeal

The appellant appealed his conviction for breaking and entering, committing an assault and assault causing bodily harm, uttering threats, and mischief. He also appealed the ten-year determinate sentence he received after he was designated a dangerous offender (DO). The appeal regarding his convictions was based on the recantation of a Crown witness. He applied to admit fresh evidence pertaining to those recantations. The Crown opposed the admission of the evidence and applied to admit its own evidence. An aspect of the fresh evidence was that the witness denied that she recanted, but the forensic evidence suggested that she had. This evidence was in the form of handwritten letters the witness sent to the appellant before and during his sentencing hearing in which she indicated that she had lied when she testified at trial. The appellant submitted an affidavit from a forensic document examiner attesting that the handwriting was that of the witness. During the criminal proceedings against the appellant, this witness had recanted. She initially gave a sworn statement to the police that the appellant had committed the offences but then testified at the preliminary hearing that she could not remember what had happened. At trial, she stated that she had lied during the hearing and repeated what she had said in her statement. The trial judge found her to be a credible witness and did not believe the appellant's testimony. On the appeal the defence and Crown counsel agreed that if the fresh evidence were not admitted, there was no basis to challenge the appellant's convictions. The sentence appeal was based on the ground that the accused in R v Boutilier was released after he was sentenced as a DO. The appellant further argued that the trial judge incorrectly believed that his trial counsel had agreed to the designation but, regardless, he should not be bound by such a concession in light of Boutilier.
HELD: The appellant's appeal of his convictions was dismissed. The sentence appeal was allowed. The court quashed the DO designation and ordered a new sentencing hearing. With respect to the application to admit fresh evidence, it found that the fresh evidence should not be admitted, relying upon the fourth factor set out in Palmer and finding that the proposed evidence could not have affected the result. With respect to the sentencing appeal, the court found that, regardless of whether the appellant's counsel agreed to the designation, the sentencing judge erred in principle by designating the appellant a DO as, without the benefit of Boutilier, he failed to consider his treatment prospects at the designation stage and failed to determine whether his behaviour was intractable.

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Horse v R, 2019 SKCA 56

Schwann Leurer Tholl, June 18, 2019 (CA19055)

Criminal Law – Appeal – Conviction
Criminal Law – Defences – Colour of Right
Criminal Law – Theft

The appellant was convicted of theft under $5,000 contrary to s. 334(b) of the Criminal Code by the Provincial Court. His appeal to the Court of Queen's Bench was dismissed. He appealed that decision, arguing that both lower courts failed to consider the effect of intoxication on the specific intent required to form the mens rea of theft. The appellant also argued that the lower courts erred in law by treating colour of right as a pure defence to be raised by the accused, rather than as an essential element of the offence to be proven by the Crown. The appellant asked to borrow a cellphone and then ran away with it in his hand. He discarded the phone in the neighbour's yard. He was arrested a short time later. The complainant testified that he was in his garage when the appellant came up and asked to borrow the complainant's phone because he had lost his dog and needed to call his girlfriend. According to the complainant, the appellant apologized as he ran away with the phone. Two weeks later, the appellant attended at the complainant's home again and apologized for taking the cellphone, saying he had been highly intoxicated. The arresting officer testified that the appellant was intoxicated. The appellant testified and denied apologizing to the complainant for taking the cellphone and he also denied having a motive to steal the cellphone. The trial judge rejected the evidence of the appellant when he said that he did not intend to steal the phone. The ground of appeal to the Court of Appeal was that the trial judge erred by treating colour of right as a positive defence, rather than as a necessary element of an offence under s. 322, thereby inappropriately relieving the Crown of its burden of proof. The appeal court found that the trial judge properly considered the principle of colour of right. Further, the appeal court found that the appellant could not have held the belief that he had the phone with the consent of the complainant at the point that he left the complainant's property. The issues were: 1) did the appeal court err in law in its treatment of the defence of intoxication; and 2) did the appeal court err in law by failing to find that the trial judge placed an impermissible burden of proof on the appellant.
HELD: The court dismissed the appeal after granting leave to appeal. The issues were determined as follows: 1) neither party suggested before the trial judge that the accused's level of intoxication affected his ability to form the required intent to commit theft. The trial judge, therefore, did not deal with intoxication as an issue pertaining to the elements of the offence. At the appeal to the Queen's Bench Court, the accused did not raise an issue regarding the trial judge's treatment of intoxication. The appeal court could not, then, have erred in law in relation to an

issue relating to intoxication; 2) the accused argued that the lower courts both placed a burden on him to disprove an essential element of the offence by treating colour of right as a positive defence to the offence of theft. The theft offence indicates that it is the conversion of something "fraudulently and without colour of right", so the accused argued that the Crown had to prove the absence of a colour of right. The court interpreted case law as finding the colour of right only needed to be disproved by the Crown if there was evidence that disclosed an air of reality to a colour of right. The trial judge did not find the accused's actions to be part of the offence of theft until he left the complainant's presence and at that time, he did not have an honest belief that he had a right to the cellphone. The trial judge concluded that the accused intentionally took the cellphone with the intent to keep it. The evidence of the accused was found to show that he knew he had no right to the phone. He said that when he realized he had the phone in his hand, he apologized to the complainant and dropped the phone. The colour of right assertion must be made by the evidence. If the mens rea of the theft is proved by the Crown, it is entitled to say that it has met its burden of proving absence of colour of right when it did not arise in the evidence. It did not matter whether the absence of colour of right was viewed as an element of the mens rea of theft or as a positive defence.

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R v Bellegarde, 2019 SKPC 22

Lang, April 4, 2019 (PC19018)

Criminal Law – Manslaughter – Sentencing
Criminal Law – Aboriginal Offender – Sentencing

The accused pled guilty to unlawfully causing the death of the victim, his spouse, thereby committing manslaughter contrary to s. 236 of the Criminal Code. The accused, 37 years of age and his spouse, 33 years of age, lived with the accused's parents on the Little Black Bear First Nation with their three-year-old son. On the night of the offence, after drinking heavily, the spouse drove away in their truck and got stuck off the road. The accused followed on foot and when he arrived at the truck, the parties began arguing. The accused testified that he remembered that his spouse was on the ground and he kicked her in the face. Although injured, she was conscious but was unable to get to her feet. The accused stayed with her but then returned to his parents' residence but revisited his spouse two more times without getting help and eventually his sister called the RCMP. The autopsy revealed that the victim had died of blunt force trauma to the head within 10 minutes to one hour after being injured. It could not be determined how many blows had been inflicted on her. The accused had two prior convictions for assaults

against his spouse in 2011 and 2014 and at the time of the offence was on a probation order not to consume alcohol stemming from the last conviction, although he had been sober for the previous two years. The accused had a record of domestic violence linked to his alcohol abuse from a previous relationship. He entered his plea early in the proceedings and expressed genuine remorse. The Pre-Sentence Report (PSR) indicated that during the accused's childhood he had witnessed his parents' substance abuse and domestic violence. His father had been physically abused by nuns when he was in a residential school and his mother had been adopted at birth and raised away from her family, although she was raised on a variety of First Nations. The accused started drinking when he was 14. The PSR assessed the accused's risk of re-offending as medium and that the risk could be reduced if his substance abuse was targeted. His parents and his siblings provided letters to the court that said that the accused had their support and that he was a kind man who had been a good provider to his children.
HELD: The accused was sentenced to nine years' imprisonment reduced by 1262 days of remand credit. The court found that that accused's conduct approached the middle to higher end of the LaBerge continuum. The aggravating factors included his record of prior convictions against the same victim and that the manslaughter occurred within the context of a spousal relationship. His moral culpability was mitigated by his significant Gladue factors that included inter-generational violence, his exposure to violence and alcohol abuse growing up. The court acknowledged the accused's high level of remorse and early guilty plea were mitigating factors. It did not regard his post-offence conduct as mitigating or aggravating.

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R v Saddleback, 2019 SKPC 42

Agnew, July 5, 2019 (PC19032)

Criminal Law – Intimidation of Justice System Participant in Administration of Justice – Sentencing
Criminal Law – Aboriginal Offender – Sentencing

The accused was convicted of committing the offence of engaging in conduct with the intention of provoking a state of fear in a justice system participant, contrary to s. 423.1(b) of the Criminal Code. During a trial, the accused had entered the courtroom while the complainant was testifying about an assault made upon her during a forcible confinement. The accused mouthed words to the complainant that she was a liar and then made a slashing motion across her throat. The accused did not know the complainant nor the accused in that proceeding and had not explained her conduct. The Crown submitted that a 20-month incarceral sentence followed

by 18 months' probation would be appropriate. The defence suggested a better sentence would involve a much shorter period of imprisonment and three years' probation. The author of a pre-sentence report (PSR) advised that the accused's circumstances contained significant Gladue factors. The accused was a 42-year-old Aboriginal woman who was a member of the Maskwacis First Nation in Alberta. Her childhood had included attending residential school and being placed in more than 20 foster homes where she had been both physically and sexually abused. Her mother, also a survivor of residential school, worked as a prostitute and her pimp had physically abused her. Seven of the accused's eight children had been taken by Social Services in 2013 and she had developed an addiction to oxycodone in 2013 after receiving a prescription for it after being beaten with a baseball bat by her then-spouse. The accused had also started using crystal meth at 31 and had attended detox and substance abuse treatment ten times. Although she had completed high school and two years at university, she had not been employed for the past 15 years. Beginning in her youth and continuing until 2015, the accused had 60 convictions, primarily for property and compliance offences. She had had no convictions since 2015 when she began her current relationship and was turning her life around. The accused, too, had been a witness in a murder trial in the past and said that she had found the experience very stressful. In her address to the court, though, the accused was unwilling or unable to offer any explanation why she committed the offence. HELD: The accused was sentenced to 18 months' imprisonment followed by three years' probation. The court considered the Gladue factors and found that because the accused could not explain her actions and had suffered stress herself while testifying as a witness, her moral culpability was not reduced nor was there any appropriate restorative sentence other than incarceration, particularly when the most significant sentencing principles applicable were deterrence and denunciation.

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M.K.F.B., Re, 2019 SKQB 133

Goebel, May 23, 2019 (QB19130)

Family Law – Child in Need of Protection – Evidence Required
Family Law – Child in Need of Protection – Permanent Order
Family Law – Child in Need of Protection – Person of Sufficient Interest

In September 2018, three children, aged six, nine, and 11, were found to be in need of protection pursuant to The Child and Family Services Act (Act). They were placed in the care of agents of the Ministry of Social Services (ministry) for six months. Prior to the expiration of the six months, the ministry applied for a protection

hearing requesting that the children be placed in its care until the age of 18. The mother advised the court that she consented to the order. The oldest child's father was deceased. The fathers of the two younger children were served with the application but did not directly participate. The draft order indicated that the mother and the father of the youngest child shall exercise access with all of the children.

HELD: The two-stage analysis required the court to first determine whether the children were in need of protection and, if so, to determine the appropriate order under s. 37 of the Act. The mother struggled with addictions that had not been dealt with. The children had been the subject of repeated s. 9 agreements since 2015. The court was satisfied that the children remained in need of protection pursuant to s. 11 at the time of the hearing. To determine the appropriate s. 37 order, the court had to consider a return to parental care as well as placing one or more children with a person of sufficient interest or making another temporary wardship order. The court concluded that it did not have sufficient evidence to make the determination. The affidavit evidence indicated that the older two children resided with their maternal grandmother and the youngest resided with his paternal grandmother. The evidence did not indicate whether placing the children with these caregivers as persons of sufficient interest had been explored. The ministry often provides a detailed report summarizing efforts made regarding persons of sufficient interest; however, no such evidence was provided. Also, the evidence must address the consideration of whether an adoption plan would be successful. The evidence was silent in that regard. Previous cases have rejected the argument that s. 37(2) creates a statutory presumption or default position. Further, the access terms indicated that the mother and youngest child's father "shall" have access to the children, yet there was no evidentiary foundation for the terms. The court adjourned the matter, giving the ministry leave to file additional evidence.

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Babkis, Re (Bankrupt), 2019 SKQB 144

Thompson, June 6, 2019 (QB19144)

Bankruptcy and Insolvency – Conditional Discharge

The bankrupt's discharge was opposed by the Minister of National Revenue (MNR) because: it was a tax-driven bankruptcy pursuant to s. 172.1 of the Bankruptcy and Insolvency Act (BIA); the bankrupt's assets were not of a value equal to fifty cents on the dollar on the amount of his unsecured liabilities and the bankrupt could be held responsible for his circumstances; and there was surplus income available. The bankrupt, a physician who had been earning approximately $245,000 per annum, stopped paying income

tax in 2011 because he was advised by a trusted co-worker in South Africa that, as a naturalized South African citizen, he was not obligated to pay tax in Canada for the first five years of his residency. In 2015, the bankrupt was informed by a lawyer that he had been misinformed and that he owed $530,000 in unremitted tax from 2011 to 2014. He immediately paid the Canada Revenue Agency (CRA) $140,000. He consulted a trustee in bankruptcy and filed a proposal to his creditors with their assistance. The CRA rejected it and he was thereby deemed bankrupt by s. 57 of the BIA. The CRA proved its claim for $399,300 for the bankrupt's personal income tax debt, which made up 100 percent of the proven unsecured claims. The trustee reported that the bankrupt had realizable assets valued at approximately $431,000 and as at January 2018, his available monthly income was $21,900. The bankrupt had paid $51,000 in surplus income. It also reported that the bankrupt had not been cooperative during the bankruptcy period by failing to respond to requests for income and expense statements. His surplus income was determined to be $11,000 per month that he had agreed to pay. The bankrupt deposed that he spent up to $3,000 per month, supporting many members of his family living in India and Russia. He was depressed by his tax problems and had to reduce his working hours to two or three hours per day at $120 per hour. HELD: The court granted a conditional discharge: the bankrupt would be discharged upon payment of $58,000 to the trustee. It found that the bankrupt had not rebutted the presumption of dishonesty under s. 172.1 of the BIA because his reliance on the tax advice of a colleague was unreasonable, his conduct during the bankruptcy was uncooperative and he may have chosen to be underemployed. The court considered in his favour that he had not made other payments in order to avoid paying his tax obligations, made a number of efforts to deal with the CRA, and paid $140,000 before deciding he could no longer continue making payments.

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R v Watetch, 2019 SKQB 147

Labach, June 11, 2019 (QB19141)

Criminal Law – Sentencing – Aboriginal Offender
Criminal Law – Sentencing – Deterrence and Denunciation
Criminal Law – Sentencing – Manslaughter
Criminal Law – Sentencing – Sentencing Principles

The accused and four others were charged with killing J.B. and attempting to kill R.M. during a riot in a federal penitentiary. The accused, the others charged and J.B. were all serving prisoners. A riot occurred with over 200 inmates participating over concerns about food. J.B. was attacked in his cell by the accused and others. He was beaten and stabbed and died as a result. The accused was 28

years old at the date of sentencing and a member of a First Nation. His father had a lengthy, violent criminal record. The accused never resided with his biological parents. He moved around to numerous homes on the First Nation. His first criminal offences were when he was 14. The accused's violent crimes started in 2010 when he was an adult. He was convicted of robbery in 2010 and of manslaughter in 2013. Most of the accused's adulthood had been spent in incarceration. The accused pled guilty on a new indictment to a charge of manslaughter, contrary to s. 236 of the Criminal Code. The Crown requested a sentence of 10 years consecutive to any other time he was serving. They also requested a DNA sample and a s. 109 firearms prohibition. The accused argued that a seven-year sentence was appropriate and that he had already provided DNA and was subject to a s. 109 firearm order.

HELD: The victim had not participated in the riot; he was in his cell. The accused did not give any reason for going in the victim's cell. There was no evidence that the victim fought back. The court found that the accused's responsibility for the killing of the victim was very significant. The accused was serving his sentence for manslaughter while he committed another manslaughter. The court considered his risk of recidivism to be high. The accused expressed no remorse for the crime. The court found that deterrence, general and specific, were major concerns that warranted a serious sentence. The location of the crime, a penitentiary, was found to require a serious punishment. The court found and considered numerous aggravating factors: the offence occurred in a penitentiary during a riot; the accused had a criminal record with a number of convictions including one for manslaughter; the brutality of the attack; and that the accused possessed some sort of knife that he used to stab the victim a number of times. The only mitigating factor was the accused's guilty plea. He was the first of five charged to accept responsibility. There were some Gladue factors present. The accused had no childhood to speak of and his First Nation was on treaty land known for some of the worst residential schools. The parties agreed that the range of sentences for manslaughter was between four and 12 years. Of particular importance to the court was s. 718.2(e) because the accused was an Aboriginal offender. No non-custodial sentence was found to be appropriate. The court concluded that a sentence of seven years would not meet the purpose and principles of sentencing as set out in the Criminal Code. The facts were found to be similar to the accused's first manslaughter conviction, for which he received a sentence of 8.5 years minus remand time. The court gave some weight to the accused's upbringing and familial circumstances but noted that deterrence and denunciation were the paramount factors in a case where a life has been taken. The programming the accused had already taken in the penitentiary must not have had an effect on him because he killed again. The court agreed with the Crown that a sentence of 10 years, consecutive to any other sentence the accused was serving, was appropriate. The court ordered that the accused provide a DNA sample because manslaughter is a primary

designated offence. The s. 109 firearm order for 10 years was also imposed as required.

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M.S., Re, 2019 SKQB 148

McMurtry, June 12, 2019 (QB19142)

Family Law – Child in Need of Protection – Consent Order
Family Law – Child in Need of Protection – Long-term Order
Family Law – Child in Need of Protection – Permanent Order
Family Law – Child in Need of Protection – Person of Sufficient Interest

The Ministry of Social Services (ministry) applied for an order of permanent custody of four children. The parents of the children were T.T. and J.S. Sr., who was deceased. The father died of a drug overdose in 2018 at the age of 31. At the time of the trial, T.T. was parenting her fifth child, A. The parties agreed to an order under s. 37(3) of The Child and Family Services Act placing each of the four children in the custody of the ministry until each child attains the age of 18. The children's maternal grandfather, G.D., was a person of sufficient interest. He sought to assist T.T. to care for the children. G.D. objected to the long-term order that the ministry and T.T. agreed to. The ministry argued that T.T. was involved in long-term patterns of domestic violence, drug abuse, and transiency. The ministry asserted that the issues were not only relevant to T.T.'s relationship with the four children's father. T.T. argued that she had changed and that she had cared for the four children from 2009 to 2015 when they were apprehended. The ministry had been involved with the family since 2010. T.T. did go to detox in 2015 but returned home and began drinking after seven days. She was transient and living in shelters and a hostel. T.T. and J.S. Sr. had been apart but got back together in 2015. In December 2015, the parents consented to an order placing the children temporarily into the care of the minister. Subsequent orders were obtained, each ordering that the parents obtain treatment for addictions and domestic violence, to obtain stable housing, and to visit regularly with the children. T.T.'s last visit with the children in July 2018 ended early and she did not see them again until the first day of trial, November 5, 2018. T.T. said that she thought she gave up her right to visits because she missed two. The children's protection worker, Ms W., said that she only told T.T. that travel expenses would not be paid up front, not that she could no longer have visits. T.T. did not have a criminal record but had been involved in numerous complaints to the police. The children resided together in a home managed by the YMCA since July 2015. The ministry did a home study on G.D.'s home, but it was negative. The children were very bonded to one another and the ministry did not want to disrupt that bond. The ministry found a

foster home for the children but there were no plans for the children to stay there long-term. The ministry determined that it would be difficult to find an adoptive home for all four children and so became agreeable to a long-term order. T.T. was 28 and a member of First Nation. She was apprehended from her parents when she was six months old and her grandparents raised her thereafter until she left their home at 14. T.T. said that she began drinking heavily and was sent to a treatment program. She was sexually assaulted at 14. T.T. moved to Alberta in May 2016 and had lived in seven places, with the longest stay being four months. The Alberta Ministry of Human Services found that intervention was not necessary with respect to T.T. caring for A. T.T. was found to be sober and T.T. indicated she had been sober since A.'s birth. T.T. agreed to the long-term order after seeing the children for the first time in 20 months during the trial. G.D.,T.T.'s father, was 56 and looking after his elderly father who is wheelchair-bound and abuses alcohol. G.D. lived on a First Nations reserve. He had a history of alcohol abuse and had a criminal record with 22 offences between 1983 and 2001. G.D. said that he stopped drinking in 2000. He said that he would put his father in a home if he could care for the children. An Alberta home study did not recommend that G.D. and his then common-law spouse care for the children. G.D. did not pick up the children's calls and his last visit with them was February 2018. G.D. said that he did not answer the phone because it was difficult for him when the children would ask him when he would visit them.
HELD: The court found that T.T. appeared to lack insight into the effort required to care for five children successfully. The court was not convinced that T.T. would work and stay in touch with the ministry, nor was the court certain that she could manage five children. T.T. was, however, sober and not in a violent relationship. The court concluded that G.D.'s relationship with the children was not strong. He did not visit them or contact them by phone for the first two years they were in care. He had visited with the children three times while they were in care. The court found that G.D. was not capable of caring for the children at the time of trial. The court agreed that a long-term order was appropriate. The children were found to be in need of protection. The proposed long-term order would keep the children together and allow T.T. time to work towards providing for their care. The court agreed with the consent judgment filed by T.T. and the ministry.

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Canadian Imperial Bank of Commerce v Star Development Corp., 2019 SKQB 149

Elson, June 12, 2019 (QB19145)

Civil Procedure – Queen's Bench Rules, Rule 12-10

The plaintiff applied without notice for an order granting substituted service upon the personal defendant of its statement of claim and any other documents requiring service, pursuant to Queen's Bench rule 12-10. It requested that the mode of service be by text message to the personal defendant's cell phone. The plaintiff alleged that it provided a revolving line of credit to the corporate defendant, payable on demand and guaranteed by the personal defendant. It had made the demand but the amount owing of $54,700 remained outstanding. The only supporting evidence submitted by the plaintiff was the affidavit of attempted service by the process server. He deposed that he had made four attempts to effect personal service within one week at both the personal defendant's residential address and his work address but was told by people that the defendant had moved out of the former and no longer worked at the latter. When he called the cell number, a voicemail identified it as the defendant's. The affiant offered no opinion as to a mode of service that would be likely to provide the defendant with notice of the document to be served.
HELD: The application was dismissed. The court found that the applicant's supporting evidence had not met the affidavit requirements of Queen's Bench rule 12-10 that showed that impracticality of effecting service by an authorized mode of service and that the alternate mode was likely to provide notice of the document to the person to be served. Depending on the relief sought in the subject proceeding, service attempts and investigations at one or two locations, without additional and meaningful effort to identify other locations, would rarely suffice. Further, the proposed method of service contemplated that the defendant travel to pick up the statement of claim from counsel's office, though the party to be served owes no duty to cooperate in effecting service.

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ICR Commercial Real Estate v Megas 6 Capital Corp., 2019 SKQB 151

Richmond, July 18, 2019 (QB19146)

Civil Procedure – Queen's Bench Rules, Rule 7-2, Rule 7-5

The plaintiff, a commercial real estate company, commenced an action against Megas 6 Capital Corp. (Megas 6), an investment corporation, and against several individual defendants. It alleged that it met with a representative of Megas 6 and the individual defendants respecting development of a parcel of land and they ultimately entered into two 12-month listing agreements. The agreements expired and the plaintiff alleged that it continued to provide services and that the defendants verbally renewed the contract on the same terms. It alleged that the defendants assured

them numerous times that the contract would be renewed. They breached the agreement by not renewing, and their failure resulted in a loss of profits. The individual defendants defended the claim on the basis there was no agreement to renew and if there was, the plaintiff had breached one of the terms of the contract that it would arrange a sale in one year. The defendants brought an application for summary judgment pursuant to Queen's Bench rule 7-2. Megas 6 requested a dismissal of the action because the agreements had expired and could not be renewed in writing, which was an express term of the contract, and the individual defendants additionally requested the recovery of damages in a counterclaim. The plaintiff brought an application for summary judgment in response.
HELD: The court denied the applications for summary judgment. The court found that it could not determine the issues based on the contradictory evidence. The complexity of the case and amounts of the claim and counterclaim required a trial.

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6517633 Canada Ltd. v Clews Storage Management Keho Ltd., 2019 SKQB 152

Tochor, June 19, 2019 (QB19147)

Civil Procedure – Queen's Bench Rules, Rule 7-2, Rule 7-5

The defendant corporation and the personal defendant applied for summary judgment dismissing the action brought by the plaintiff corporation. The plaintiff sold agricultural equipment, cattle oilers, on behalf of the defendants under a franchise agreement. When the parties terminated their business relationship, they entered into minutes of settlement that provided that the plaintiff was freed from a restrictive covenant in the agreement that prevented it from competing with the defendants in the sale and marketing of cattle oilers. In November 2017, the plaintiff alleged that at a meeting between its representative and the defendant's representatives, the latter indicated that they would put the plaintiff out of business.
HELD: The defendants' application for summary judgment was granted and the plaintiff's action was dismissed. The court found that there was no genuine issue for trial. The contents of the affidavits sworn by the plaintiff's and the defendant's representatives were similar. The statements made by the defendant's representative as to their competitive intentions regarding the plaintiff were not actionable.

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Saskatchewan Immigrant Investor Fund Inc. v Windermere Properties Ltd., 2019 SKQB 153

Rothery, June 19, 2019 (QB19148)

Civil Procedure – Queen's Bench Rules, Rule3-72, Rule 3-47(2), Rule 4-23

The plaintiff, MNP Ltd., was appointed receiver of the assets of Windermere Properties Ltd. (Windermere) after the Saskatchewan Immigrant Investor Fund Inc. (SIIF) brought a receivership application in its capacity as secured creditor of Windermere. As the time of the order, Windermere owed more than $10 million dollars to SIIF and $600,000 to trade creditors, amongst them the defendant, Pro-Western Mechanical (Pro-Western). It had a contract with Windermere to provide all plumbing, heating, ventilation and labour in a construction project. As a portion of the contract price was owed to it under the contract, Pro-Western filed its lien claim under The Builders' Lien Act for the amount and commenced an action in 2015 which was then stayed in accordance with the receivership order. After MNP took possession of the project, numerous problems occurred that resulted in replacement of the mechanical system. MNP then commenced a claim against Pro-Western in 2016, alleging that it was negligent in failing to warn MNP about the status of Pro-Western's scope of work. Pro-Western's insurer retained counsel who filed a statement of defence. Prior to the pre-trial conference between MNP and Pro-Western, the local registrar received correspondence from the law firm MacDermid Lamarsh, stating that it represented Pro-Western on other matters related to the litigation. It requested an amendment to the statement of defence to include set-off as a defence. The set-off pertained to the amount still owing to Pro-Western by Windermere. As a provision in the receivership order stated that consent of the receiver or leave of the court was required for any proceeding commenced against the receiver, MNP applied for directions as to whether Pro-Western was to be denied leave to amend its defence on the basis of set-off. In response, MacDermid applied for an order granting it leave to lift the stay and leave to amend its defence along with an application that MNP provide security for costs. Both counsel for MNP and Pro-Western agreed on the appropriate test to apply in determining whether the stay should be lifted, but differed as to the concept of material prejudice to Pro-Western. Counsel for Pro-Western asserted that, if Pro-Western could not rely on set-off as a defence to the MNP's actions against it for negligence, it would potentially be liable to MNP for its work done on the project without the benefit of being fully paid for that work. Furthermore, Pro-Western would suffer worse harm than other creditors if the stay were not lifted because Pro-Western was the only creditor that MNP had sued.
HELD: The application by Pro-Western's counsel to lift the stay was denied. The court found that Pro-Western was in no different position than any other creditor: it was not the only creditor that

MNP had sued and it would not suffer worse harm than other creditors if the stay were not lifted. If the stay were lifted to permit Pro-Western to apply to amend its defence to plead set-off, it would materially prejudice Windermere's other creditors and upset the distribution scheme under the receivership. Had it lifted the stay, the court would not have permitted Pro-Western to amend its pleadings. Legal set-off was not available to it because of the receivership; there was no mutuality of parties and rights. Pro-Western's application for security for costs was also dismissed because the application to amend had been dismissed. Furthermore, Pro-Western was not entitled to have its own counsel separate from its insurer's counsel present at trial, and MacDermid did not have standing to bring the application for security for costs in the action where Pro-Western's insurer's counsel had carriage of the defence.

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Schultz v Schultz, 2019 SKQB 154

Brown, June 20, 2019 (QB19149)

Family Law – Child Support – Interim
Family Law – Spousal Support – Interim
Family Law – Child Support – Determination of Income

The parties were married for almost 17 years and separated permanently in 2018. Only one of their three children remained at home. Although the parties originally had a shared parenting arrangement regarding this child, he now resided only with the petitioner wife in the family home in Melfort because the respondent had moved to Saskatoon to become the President of Federated Cooperatives in 2018. His annual income then increased from $72,000 to his present salary of $265,000 in 2018. He projected that his 2019 income would be $274,000 with expenses at $247,330. The petitioner worked full-time and earned between $81,000 and $86,000 per annum. She projected a shortfall of $20,900 in 2019 with expenses totaling $106,400. The respondent paid half of the family home's mortgage, heat, power, internet, property taxes and insurance costs. The petitioner applied for interim child support, interim spousal support and exclusive possession of the family home. The respondent had been elected to his current position for one year and it had been renewed in March 2019 for another term. He indicated that because of deficiencies in the petitioner's parenting and because his children in Melfort requested that he return there, he intended to quit his position and move back in July 2019. The petitioner denied the allegation as to her parenting or that such a request had been made. The issue was whether the respondent should be paying support based on his current income or on a lower amount given his intention to relocate to Melville and resume shared parenting of the one child.

HELD: The petitioner's application was granted. The court ordered that she be given exclusive possession of the family home. In determining the respondent's income within the Guidelines, it found that his evidence had not established that he was acting reasonably in his plan to quit his position to return to Melville. Although the respondent might provide further evidence at trial, the court attributed income to him based upon his 2018 income for the purposes of this interim application. He was ordered to pay child support of $1,886 per month as of April 2019 and 74 percent of s. 7 expenses. The petitioner was entitled to interim spousal support because of the disadvantage she was suffering as a result of the marital breakdown and the respondent's ability to pay. In order for her to maintain a reasonable standard of living, the petitioner was awarded $3,000 per month in interim support, but she would have to pay two-thirds of the mortgage and household costs while she resided in the family home.

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Jackson v Jackson, 2019 SKQB 155

McIntyre, June 24, 2019 (QB19150)

Family Law – Custody and Access
Family Law – Child Support

The parties each brought petitions regarding the division of family property and the parenting arrangements for their five-year-old daughter. At trial, the petitioner father was self-represented and the respondent had Legal Aid counsel. The respondent, a citizen of the Philippines, came to Canada in 2013 and began working in a restaurant on a work visa. She met the petitioner the same year and they were married. After she became pregnant, the respondent testified that the petitioner made her quit her job, which affected her ability to attain permanent residency through employment sponsorship. In 2014, their daughter was born. Although the petitioner had been employed until 2011, he had not had any steady employment since. The respondent testified that she left the family home with their daughter in December 2016 and moved into a women's shelter in Regina. She said that the respondent was psychologically abusive and controlled every aspect of her life. He spanked their daughter when she was an infant because she was a slow and picky eater. In January 2017, the court ordered that the respondent be allowed to relocate to Regina and the daughter was to have her primary residence with her and that the petitioner have parenting time for a short period on one day each week. After a pre-trial conference in May 2017, the parties agreed to the petitioner's access schedule. However, the respondent had to obtain numerous orders demanding that the petitioner return the child to her because he failed to return the child on the agreed-upon date.

HELD: The court adjourned the application for division of family property because the evidence was insufficient and Legal Aid does not provide representation on family property issues. It ordered that the parties continue to have joint legal custody, but found that their daughter's primary residence should be with the respondent as she was the psychological caregiver and she was given the final authority over all decisions involving her health, education and welfare. The court provided a current comprehensive access schedule for the respondent for the period after the child began kindergarten in the fall. Because the petitioner had not filed income tax returns and he worked irregularly as a carpenter, the court attributed $31,300 per annum to him and ordered him to pay $250 per month in child support and $167 for s. 7 expenses. Income of $15,000 per year was imputed to the respondent. When the child's daycare expenses were known after she began school, the child support order would continue unless the court varied it or the parties reached an agreement.

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