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The appellants were found guilty of two counts of conspiracy to commit murder contrary to s. 465(1)(a) of the Criminal Code. One count was in relation to A.'s spouse, J., and the other was in relation to C.'s spouse, B. B. began leaving a recording device in her home when she suspected C. was having an affair. In a July 1 recording, the appellants talked about killing their spouses. At trial, the Crown's evidence consisted of: 1) the July 1 recording; 2) statements given by the appellants; and 3) recorded conversations between undercover officers and the appellants. The appellants did not testify at their trial. C. indicated to an undercover officer that he knew his wife was recording him, so he discussed the murders to give his family something to talk about. He said that he had no intention of committing murder. After her arrest, A. admitted that there had been an earlier conversation about taking the lives of their spouses, but she said she did not intend to carry it out. The appellants appealed on the basis that the trial judge erred in the charge to the jury. The three key issues from the grounds of appeal were: 1) did the trial judge adequately charge the jury with respect to the appellants' defence that C. did not have a genuine intention to agree to commit murder: 2) did the trial judge properly explain the relationship between proof by circumstantial evidence and

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the requirement of proof beyond a reasonable doubt; and 3) did the trial judge properly address the question of inconsistent verdicts and the test in Carter? There were also several unsuccessful grounds of appeal such as arguments regarding jury interference.

HELD: The appeals were allowed with respect to the first two issues and a new trial was ordered. The appeal court also found error in relation to the trial judge's handling of some aspects of the third issue but would not order a new trial in relation to it. The key issues were determined as follows: 1) the actus reus of conspiracy is the agreement, which then makes the distinction between the mens rea and actus reus artificial. A genuine intention is required for the mens rea, pretending to agree is a defence. The offence is only made out where there are at least two people that intend to agree and intend to carry out the common purpose. The appeal court considered three sub-issues with respect to the mens rea: a) are there two aspects of the mens rea that are required to be proven, i.e. an intention to agree and an intention to put the common design (or purpose) into effect. The Supreme Court of Canada clearly stated that the mental element of conspiracy divides itself into an intention to agree and an intention to carry out the unlawful act; b) is mutuality required with respect to the intention to put the common purpose into effect or is it a separate aspect, standing outside of the agreement. The appeal court found there must be both the intention to agree and the intention to carry out the common purpose before an agreement can be proven; and c) to what aspect of the mental element of conspiracy is the pretending to agree defence directed, i.e. the intention to agree or the intention to put the common purpose into effect? The defence of pretending is directed to the intention to put the common purpose into effect. The jury should have been instructed that if they were satisfied that C. did not intend to agree to carry out the common purpose, or if they had a reasonable doubt as to his intention, not only would they be required to acquit C., they would also be required to acquit A.; 2) the appellants argued that the charge to the jury left them with the impression that, because the appellants discussed killing their spouses, the jury was required to draw an inference that the Crown had proven beyond a reasonable doubt that: they intended to agree to commit murder; they intended to carry out the unlawful purpose; and they had an agreement to do so. The appeal court found that the recording was direct evidence that a conversation took place but was circumstantial evidence in relation to the proof of intention. According to Villaroman, juries must receive instruction on two issues with respect to circumstantial evidence: the nature of circumstantial evidence, which the trial judge did; and also, the relationship between proof by circumstantial evidence and the requirement of proof beyond a reasonable doubt, which the trial judge did not specifically instruct on. The trial judge was found to have erred by failing to caution the jury on how to infer guilt and on the reasonable doubt instruction; and 3) the appeal court addressed three sub-issues that arose: a) did the trial judge err by charging the jury so as to leave

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open the possibility of inconsistent verdicts; b) was the trial judge required to give a Carter instruction; and c) did the trial judge err by not advising counsel before they closed their cases that he was not going to charge on an all or nothing basis. The sub-issues were determined as follows: a) the trial judge's approach to consider the elements of the offence on an individual basis was appropriate. He erred, however, on the question of inconsistent verdicts by saying "it is theoretically possible for you to have different answers to each of the above questions". The word "theoretically" was found to downplay the pretending to agree defence. He also erred by not explaining the consequence of arriving at different answers for the appellants. The appeal court would not have ordered a new trial on this basis, however, because the jury did not seem to be confused by the instruction; b) because the Crown was not relying on the co-conspirator's exception to the hearsay rule, there was no need for a charge using Carter; and c) the court did not find an error in the trial judge's decision to charge the jury, leaving open the possibility that one of them may be acquitted and the other convicted.

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Peter Ballantyne Cree Nation v Saskatchewan, 2018 SKCA 90

Caldwell, November 19, 2018 (CA18089)

Civil Procedure – Amendments – Statement of Defence
Civil Procedure – Appeal – Leave to Appeal
Civil Procedure – Judicial Discretion
Civil Procedure – Queen's Bench Rule 3-72

The appellants appealed a Court of Queen's Bench fiat made pursuant to the judicial discretion in Queen's Bench Rule 3-72 that allowed the respondents to amend their statement of defence. The fiat addressed interlocutory matters and, therefore, the appellants properly sought leave to appeal against the fiat. The appellants argued that the judge abused his discretion by committing several errors in principle, by disregarding material matters of fact and by failing to act judicially. HELD: Leave to appeal was denied. The discretionary power to grant leave is exercisable on considerations of merit and importance. The considerations must weigh decisively in favour of leave being granted. Rule 3-72(1)(c)(i) gives a judge broad discretion to permit amendments. The appeal court concluded that the appellants were not convincing in arguing that the errors went to the result of the chambers judge's decision. If the appeal was allowed, the proceedings would be further delayed and add further cost. The fiat did not bear heavily on the course of the proceedings. The respondents were correct in observing that the amendments did form an integral part of the proceedings. Further, the fiat did not raise a new, uncertain or unsettled point of law

and it did not bar the appellants from raising res judicata or issue estoppel arguments in the future.

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Balzer v Federated Co-operatives Ltd., 2018 SKCA 93

Richards Herauf Schwann, November 28, 2018 (CA18092)

Employment Law – Appeal
Employment Law – Labour Standards – Limitation Periods
Employment Law – Labour Standards – Management
Employment Law – Labour Standards – Overtime
Employment Law – Wrongful Dismissal – Just Cause
Statutes – Interpretation – Labour Standards Act, Section 68.4

The appellant was terminated from his employment in 2002 as a result of allegations of safety violations after propane vapour was released when the appellant backed up his propane delivery truck without first disconnecting the propane fill hoses. The trial judge awarded the appellant over $19,000 in unpaid overtime but dismissed his wrongful dismissal and defamation claims. He appealed the decision. The respondent cross-appealed the decision relating to the unpaid overtime. The appellant signed a statement near the beginning of his employment indicating that he had received the discipline section of the safety policy, that it had been explained to him, and he understood it. The discipline portion indicated that dismissal or suspension would result from violation of the major rules, which included failure to observe regulations for safety, equipment operation, accident prevention, and fire prevention. The appellant was given a card with numbers to call in the event of an incident. In 2002, the appellant began to fill his delivery truck, but did not place the fail-safe chock blocks behind the rear wheels of the truck. He did not disconnect the fill hoses from the truck. The appellant backed up instead of driving forward and the back-check valve pulled loose from the barrel of the truck resulting in the escape of propane vapour. The appellant left the compound, without locking it, to borrow a pipe wrench from an adjacent property. Approximately 5,000 litres of propane were discharged over 15 to 30 minutes before the liquid propane in the truck became refrigerated. When the appellant returned to the compound, he called his co-worker and told him what happened. The appellant then went for lunch for an hour. The appellant did eventually attempt to contact his immediate supervisor, but he did not leave a message, nor did he call his employer's 24-hour emergency number. A co-worker persuaded the appellant to report the incident. The appellant then left the employee in charge of the problem while he went to a meeting the next day. His employment was terminated for cause after an investigation into the incident. The trial judge found that the appellant's dismissal related to a breach of a major rule and failure

to observe the safety policy. The trial judge adopted the seven factors from Hancock to determine whether the respondent established cause for dismissal. The trial judge concluded that the appellant had been dismissed for cause. The appellant's issues on appeal were: 1) whether the trial judge erred in failing to consider if the "brass" back check valve was the cause of the propane escape; and 2) whether the trial judge erred in his assessment of the seriousness of the incident and whether termination was a proportional response to the incident. The respondent's issues on cross-appeal were: 1) whether the trial judge erred in allowing the appellant's claim for overtime pay based on s. 6 of The Labour Standards Act (LSA), when that issue was never argued at trial; and 2) in the alternative, whether the trial judge erred in applying the limitation period outlined in The Limitation of Actions Act (LAA), instead of the limitation period prescribed in the LSA.
HELD: The appeal and cross-appeal were dismissed. The issues on appeal were determined as follows: 1) the appellant pointed to three pieces of evidence in support of his argument that a faulty brass check valve was the real cause of the propane escape. The applicable Code at the time required the check valve to be made of steel or iron, not brass. The trial judge did not squarely address the appellant's argument, likely because he found it irrelevant to the legal framework he had adopted and the basis for his dismissal. The appeal court found that the problem with the appellant's argument was that he was not terminated because of the propane leak, but for not following the safety policies and procedures before, during, and after the leak. The appeal court did not agree with the appellant's arguments against two of the trial judge's findings of fact; whether he was provided with a specific emergency response plan and whether his judgment was impaired due to propane fumes. There was no error on the trial judge's part; 2) the appellant argued that the situation was not as serious as the respondent portrayed it to be and none of the infractions would have made a measurable difference to the outcome. The appeal court noted that the appellant took issue with the weight assigned to the evidence by the trial judge and the inferences drawn from the findings that were accepted. An appellate court cannot reweigh evidence without deference to the findings of fact. The appeal court found no basis to interfere with the trial judge's proportionality analysis. The issues on cross-appeal were discussed as follows: 1) the respondent argued that the appellant was in management and thus not entitled to overtime pay. The trial judge found as a fact that the appellant did not perform services entirely of a managerial character. The respondent argued that the trial judge erred by resolving the overtime issue by using s. 6 of the LSA, which was not even argued by the appellant. The respondent indicated that it was caught off guard and prejudiced as a result. The appeal court agreed that the trial judge committed an error of law by determining the issue on a legal theory that was not advanced or explicitly argued by the parties at trial. The appeal court found that the respondent did lead evidence that would have been the same as

required for providing a defence under s. 4(2) of the LSA. The appeal court concluded that the error in law did not amount to a substantial wrong or miscarriage of justice that required the judgment to be set aside or sent back for a new trial; and 2) the respondent argued that the appellant's claim for overtime pay was limited by s. 68.4 of the LSA to one year and not the six-year limitation period set out in the LAA. The appeal court concluded that the trial judge did not err in law because he followed a Saskatchewan decision declining to interpret the LSA in a manner that limited an employee's rights and remedies available in a civil action to one year.

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R v S.P.C., 2018 SKCA 94

Ottenbreit Whitmore Schwann, December 5, 2018 (CA18093)

Criminal Law – Sentencing – Appeal – Dangerous Offender
Criminal Law – Sentencing – Appeal – Determinate Sentence

The Crown appealed the sentence of the respondent. He was declared a dangerous offender after pleading guilty to eight sexual and pornography related offences. He was sentenced to 11 years and three months' imprisonment after remand credit, a ten-year Long-Term Supervision Order (LTSO), and ancillary orders. The respondent's first conviction was for sexual assault against two children he was babysitting in 1989. The assaults occurred over a prolonged period of time. He was later convicted of sexually assaulting his step-daughter over a four-year period. The predicate offences for the dangerous offender designation were the sexual assaults of his two daughters when he was 44 years old and starting when they were 10 and 11 years old. The doctor who assessed the respondent for the dangerous offender hearing concluded that he was at a high risk for accessing and viewing child pornography and for incestuous contact offences. He was found to have a pedophilic personality disorder, so the doctor concluded that it could not be assumed that further treatment would reduce the respondent's risk to reoffend. The doctor also indicated that the respondent was a high-risk offender, but the risk was not unmanageable. The victims were children in his care or family members, so a concrete and coherent risk-management strategy could be put in place on the respondent's reintegration into the community. The sentencing judge found that the respondent understood his problem, which was the first step in dealing with it. Further, there were two lengthy periods of no offending and the respondent's criminal record was not long. The issues on appeal were: 1) did the sentencing judge misinterpret ss. 753(4) and 753(4.1) of the Criminal Code and apply the wrong legal test when imposing a determinate sentence; 2) did the sentencing judge err by misapprehending the evidence relating

to whether there was a "reasonable expectation" a lesser sentence would adequately protect the public?
HELD: The appeal was dismissed. The issues were determined as follows: 1) the Crown argued that the sentencing judge should have determined whether there was a "reasonable expectation" that a lesser sentence would adequately protect the public, but instead determined whether there was a reasonable expectation that the respondent's risk might be managed in the community under a conditional release at an unknown point in time. The appeal court found numerous examples that the sentencing judge was alive to the test to be applied pursuant to ss. 753(4) and 753(4.1) and was alive to its proper application. The appeal court found that the sentencing judge had to consider the management of risk to determine the appropriate sentence; and 2) the Crown argued that the evidence did not support anything less than an indeterminate sentence. The appeal court found that the Crown focused on intractability rather than risk and protection of the public. Because there was evidence that the respondent could not be controlled or directed did not mean he had to receive an indeterminate sentence. Further, the appeal court found that the Crown only pointed to evidence from the doctor's report that pointed to incurable pedophilia and did not point out conclusions that the doctor made regarding the management of the respondent's risk and protection of the public. There was evidence upon which the sentencing judge could reasonably conclude that there was a reasonable expectation the public would be adequately protected by something less than a determinate sentence. The Crown argued that the judge focused on the following irrelevant matters: a) comparing and contrasting the facts in the respondent's case to facts in other cases; b) referring to the doctor also indicating that the respondent understood his problems; and c) referring to further sexual offender treatment. The appeal court did not find that the sentencing judge committed an error by focusing on irrelevant matters.

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Prestige Commercial Interiors (1992) Ltd. v Suderman, 2018 SKCA 95

Ottenbreit Caldwell Whitmore, December 6, 2018 (CA18094)

Builders' Lien – Appeal
Builders' Lien – Privity of Trustee and Beneficiary
Statutes – Interpretation – Builders' Lien Act, Sections 6, 7, and 8

The question on appeal was whether a plaintiff has to have a direct contractual relationship with the trustee to claim as a beneficiary of a trust constituted under ss. 6, 7, or 8 of The Builders' Lien Act. The chambers judge interpreted the Act to require privity of contract and, therefore, dismissed the appellant's claims against the respondents. The appellant had been subcontracted by one of the respondents who had a

contract with another respondent, P.G. There was no privity of contract between the appellant and P.G. The chambers judge concluded that there was no genuine issue for trial based on the appellant's claim of breach of trust by the P.G. directors because there was not privity of contract and because the appellant did not put forward any evidence that the P.G. directors committed a breach of trust.
HELD: The appeal was dismissed. The Act refers to trust funds being established in ss. 6, 7, and 8. Pursuant to s. 6(4), the owner is declared to be the trustee of the trust fund. The trustee (owner) is required to pay all amounts owing to the contractor by him or her prior to using the funds for any other use. Section 7 also establishes a similar trust situation where the contractor is the trustee to subcontractors that have contracted with the contractor. Section 8 further creates a trustee relationship another step down the construction pyramid where the subcontractor is the trustee. The appeal court found the language of the Act to be unambiguous with an intention to create three distinct and separate trusts. The trust provisions adopt the principle of privity of contract and privity of trust. The privity requirement was found to keep the construction process running smoothly. The trust provisions ensure that third parties to the improvement, such as judgment creditors, cannot interfere with the flow of funds down the construction pyramid. The requirement of privity of contract was found to read harmoniously with the scheme of the Act. Academic writings on the Act are consistent with the appeal court's interpretation. The appeal court also found support and opposition to its position in case law. Most of the case law, however, supports an interpretation requiring privity of contract between the trustee and beneficiary. The appeal court concluded that the legislature intended to codify the principle of privity of contract and privity of trust in ss. 6, 7, and 8 of the Act.

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Stilborn v SaskPower, 2018 SKCA 97

Richards Ottenbreit Schwann, November 22, 2018 (CA18095)

Civil Procedure – Application for Dismissal of Action – Want of Prosecution
Civil Procedure – Queen's Bench Rules, Rule 4-44

The appellants commenced an action against the respondent in May 2007 originally claiming $59,858.25 for loss of equipment, poultry chicks, and clean-up after the respondent power provider shut off the power supply to their farming operation. Later in 2007, the appellants changed legal counsel and amended their claim to increase the damages sought to more than $350,000. In 2009, the appellants became self-represented. There was nothing done on the file from 2009 to 2013. In August 2013, the respondent's legal counsel wrote to the appellants

inquiring about the litigation. The appellants did not respond. In 2016, the appellants retained new counsel who sought to proceed with the litigation. The respondent successfully applied pursuant to Rule 4-44 of The Queen's Bench Rules to dismiss the action for want of prosecution. The appellants argued that: 1) in considering whether the delay was inordinate the chambers judge erred in her calculation of time by failing to consider certain items; 2) in the second stage of the analysis, the chambers judge erred by failing to give sufficient weight and consideration to the other lawsuits brought by them following the commencement of the action against the respondent; and 3) the chambers judge made two errors at the third stage of the analysis: (a) a material fact was overlooked because the chambers judge erred by failing to consider the obvious merit of their claim and the respondent's admission of liability; and (b) the respondent did not make much effort to locate witnesses and then indicated to the chambers court that the witnesses were unavailable.

HELD: The appeal was dismissed. The appeal court had to consider the appeal with deference to the chambers judge given the decision to dismiss for want of prosecution is discretionary in nature. The chambers judge identified the applicable law, the ICC analysis. The appellants' arguments were considered as follows: 1) the appellants' argument that the chambers judge erred in her calculation of time to determine that the delay was inordinate was not successful. The test requires consideration of the time the plaintiff has taken to get the litigation to the point where it is when an application is brought. The chambers judge found the time to be just short of nine years. Also, the time did not start over just because the respondent changed legal counsel. The appellants' other litigation, with other defendants, also had no bearing on determining whether the delay in the matter at hand was inordinate; 2) the chambers judge did consider the appellants' explanation for delay to determine whether it was excusable. The chambers judge concluded that the appellants made a deliberate choice not to advance the lawsuit against the respondent. The chambers judge also considered cases where there was an excusable delay; and 3)(a) the appellants argued that the respondent admitted liability because the respondent's insurer paid them $60,000. The appellants failed to appreciate that the majority of the amended claim, such as aggravated and punitive damages, was not admitted by the respondent. Also, the insurance payment was but one consideration in the balancing exercise of the third stage; and (b) the appellants indicated that they were able to locate the respondent's key witnesses so the argument that they would be prejudiced if the matter proceeded was inflated. The chambers judge did give more treatment to the prejudice factor than the other factors under the third stage of the analysis, but the appeal court found it was in response to the appellants' argument on the prejudice point. The chambers judge did not comment on whether witnesses were available. The chambers judge did comment that the respondent may be prejudiced by weakened memory with the passage of time, which was

found appropriate by the appeal court. Also, the appeal court noted that the prejudice factor is an important, but not primary factor in the third stage of the analysis. The chambers judge did not err.

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Cowessess First Nation v Phillips Legal Prof. Corp., 2018 SKCA 101

Jackson Whitmore Schwann, December 21, 2018 (CA18099)

Civil Procedure – Appeal – Abuse of Process
Civil Procedure – Appeal – Interlocutory or Final Decision
Professions – Lawyers – Assessment of Accounts by Local Registrar
Statutes – Interpretation – Legal Profession Act, Section 67(1)(a)(iii)

An order was made pursuant to s. 67(1)(a)(iii) of The Legal Profession Act, referring a series of lawyer's bills to the local registrar. The question for the appeal court was whether the order was final or interlocutory. To appeal an interlocutory order, leave would be required pursuant to s. 8 of The Court of Appeal Act, 2000 or the court would have to grant leave nunc pro tunc. The respondents appealed the decision referring the bills for assessment and the costs award to the appeal court without first obtaining leave. The applicant applied to the Court of Appeal for an order quashing the respondents' notice of appeal pursuant to Rule 46.1(1)(a) of The Court of Appeal Rules arguing that the decision was interlocutory or alternatively, that it was vexatious and an abuse of process of the court.
HELD: The application was dismissed. The chambers decision was found to be final and the appeal court would have granted leave nunc pro tunc if it were interlocutory. Further, the appeal was not vexatious or an abuse of the process of the court. The court reviewed case law and determined that it was clear that refusing to refer a lawyer's bill for assessment was a final order. There was no previous case determining whether granting the order for assessment was final or interlocutory. The court adopted the question in Anstead and asked whether the chambers decision finally disposes of the rights of the parties. The court concluded that the order did dispose of the respondents' right to contest the jurisdiction of the local registrar to assess the bill of fees. The court first looked at the statutory structure; s. 69 of the Act sets out what the local registrar can consider. The local registrar can only assess the costs, not reconsider whether it is in the interests of justice to permit the assessment. There was a right of appeal from the local registrar's decision, but the right did not extend to the chambers decision. Section 72 of the Act does give the right to appeal a decision of the Court of Queen's Bench. The appeal court said that there was no authority for the respondent to appeal the chambers decision pursuant to s. 72. The appeal court also found that the determination made under s. 67(1)(a)(iii) was not incidental to the local registrar's decision: it fixed the scope

of the local registrar's jurisdiction. The determination was also not incidental to the resolution of the originating application made to the chambers judge. The appeal court noted that the respondents made a decision to comply with prior decisions and not apply for leave and there was no delay. The applicants also argued, alternatively, that the appeal should be quashed because the notice of appeal was lengthy and disorganized, which would prejudice them. The court did not agree with the applicants. An appeal has not been quashed due to length and disorganization. The respondents indicated that everything would become clear once the factum was filed.

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Naber v Calidon Equipment Leasing, 2018 SKCA 103

Jackson Caldwell Leurer, December 28, 2018 (CA18101)

Creditors and Debtors – Appeal
Creditors and Debtors – Lease – Farm Equipment – Saskatchewan Farm Security Act
Statutes – Interpretation – Saskatchewan Farm Security Act

The appellants entered into six leases of farm equipment with the respondent. No payments were made after March 2016. Another creditor of the appellants obtained a court order compelling payment with respect to other equipment. The appellants paid $700,000 to that creditor in 2017. In July 2017, the respondent commenced proceedings to take possession of the leased equipment. Notices of intent to take possession were served on the appellants pursuant to The Saskatchewan Farm Security Act. The respondents did not accept two offers of partial payment after the notices were served so as not to cancel the notices. In 2018, the appellants applied pursuant to s. 50 of the Act for relief from forfeiture of the leased equipment due to temporary financial hardship so they could plant and harvest a crop in 2018. Their application was dismissed and they were ordered to deliver the equipment to the respondent. The chambers judge made the order after holding that the respondent did not establish either that their inability to pay arose from temporary circumstances or that postponing forfeiture for a period of eight months was reasonably temporary in nature. The chambers judge found the arrears at the chambers application were $458.073.52. The appellants argued that the chambers judge should have looked at the actual amount owing, which was $375,000, and the $85,000 they were willing to pay. The appellants filed a notice of appeal and the order was stayed. They had possession of the equipment for seeding and harvest 2018 while waiting for the appeal to be heard. The appellants argued that their application in January 2018 should have stopped the accumulation of monthly interest of 24 percent due to s. 60(1). They also argued that the chambers judge erred by

fixing the amount owing; it was argued that would prejudice the appellants in future negotiations with the respondent.
HELD: The appeal was dismissed. The appellants' argument regarding the continuing interest was misplaced. The filing of the application does not trigger s. 60(1), the postponing of an order under s. 53 does. The chambers judge did not postpone the order: he ordered delivery of the leased equipment to the respondent. Also, all of the penalty interest charges accrued before the hearing under s. 53 took place. The chambers judge did not fix the amount owing, he only used the figure of $458,073.42 for comparison purposes. The appellant's submissions to the appeal court regarding the exact amount owing to purchase the leased equipment or to redeem the equipment was not properly before the appeal court. The appeal court concluded that the chambers judge left open the questions as to the amount owing so the parties could agree upon it or take further action by court application.

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Rowan v Canada (Attorney General), 2018 SKCA 104

Jackson Ottenbreit Whitmore, December 31, 2018 (CA18102)

Extradition – Appeal – Committal Decision
Extradition – Appeal – Fresh Evidence
Extradition – Appeal – Surrender Order
Statutes – Extradition Act

The appellant was indicted in the United States (U.S.) for fraud equivalent charges. He allegedly continued to solicit money for the company he was CEO of after knowing that the wind turbines it developed did not produce higher than usual amounts of electricity. After a hearing in the Court of Queen's Bench, the appellant was ordered, pursuant to s. 29 of the Extradition Act, to be committed into custody to await surrender to the U.S. The appellant made submissions to the minister under s. 43(1) of the Act. The minister ordered the appellant to be surrendered to the custody of the U.S. in accordance with s. 40 of the Act. The appellant appealed the committal decision under s. 49 and he sought judicial review of the minister's surrender order under s. 57. He also applied to adduce fresh evidence and for an extension of time to make the application. The Court of Appeal considered the following issues: 1) should the fresh evidence be admitted; 2) was the committal decision unsupported by the evidence; and 3) was the surrender order reasonable?
HELD: The appeal was dismissed and the application for judicial review was denied. The issues were analyzed as follows: 1) the fresh evidence sought to be introduced was an affidavit from the appellant attaching a waybill that he argued contradicted one individual's evidence at the application. Section 683(1)(d) of the Criminal Code,

regarding fresh evidence, applied by virtue of s. 52(1) of the Act. The Palmer factors for the introduction of fresh evidence have been adopted in extradition matters. The Palmer factors are: diligence; relevance; credibility; and materiality. The case became presumptively reliable when the U.S. certified it. The extradition judge has limited ability to critically assess the evidence and the judge is limited as to the evidence that can be considered in the committal hearing. The appeal court extended the time for the fresh evidence application because the appellant had limited access to his records such that it was not appropriate to deny him a hearing of the application to adduce fresh evidence. The court then considered the Palmer factors: a) the court did not give much weight to the due diligence factor and found it unnecessary, given the remaining Palmer factors considered together; and b) relevance and materiality. The waybill was found to cast doubt on the reliability of the record, but a single instance of where the record of the case is not sufficient does not rebut the presumption of reliability inherent in the Extradition Act. The appeal court concluded that the waybill evidence would have had no impact on the outcome of the committal hearing and was thus not admitted; 2) the appeal court found that s. 53(a)(i) of the Act provided two pathways for review: that of a verdict unsupported by the evidence and that of one being unreasonable. The appeal court analyzed the appellant's arguments and concluded that he was arguing that the extradition judge's decision was unsupported by the evidence. The two grounds of appeal with respect to the committal order were: a) that the extradition judge erred in failing to make a determination that the three affidavits admitted into evidence undermined the reliability of the record of the case; and b) that the extradition judge erred in finding that the record of the case provided some evidence on each element of the reference offence (i.e. fraud). The court considered the grounds of appeal as follows: a) at the appellate level, if the court is satisfied the extradition judge's assessment of the evidence is reasonable and supported by the evidence, the committal order must stand. The Crown affidavit evidence was found to be sufficiently reliable; if the appellant had defences to the allegations in the affidavits, they would be best dealt with at trial. Also, the resolving of any conflicting evidence was best addressed at trial; and b) the Crown argued that the appellant was again arguing a defence that should be left for the trial judge to determine. The actus reus of fraud requires a deprivation or the risk of deprivation. The appeal court was satisfied that the record provided some evidence of the actus reus and mens rea of the offence of fraud; and 3) defences not considered at the committal hearing can be considered at the surrender stage, but the minister's analysis must be conducted in light of the unjust or oppressive requirement in s. 44(1)(a) of the Act, which is clearly a high test. The court considered the two aspects of the appellant's concerns: a) delay; and b) the sufficiency of the record of the case. They were considered as follows: a) the appellant argued that the delay in the case constituted an abuse of process such

that it would be unjust and oppressive to surrender him for extradition given the delay on the part of the U.S. authorities seeking his indictment and then his extradition. Nearly a decade had passed, which the appellant argued prejudiced him because documents for his defence may no longer be available. The minister was found to be correct in indicating that s. 11 and its jurisprudence had no application to the extradition context. The Supreme Court of Canada has held that delay in the foreign state may engage s. 7 of the Charter. The minister found the explanation for the delay to be reasonable and the appeal court found no reason to intervene; and b) the minister correctly identified her limited ability to assess the record of the case: that was the role of the extradition judge. The appeal court found no basis to hold that the minister's conclusions were unreasonable.

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P.B., Re, 2018 SKQB 315

Pritchard, November 19, 2018 (QB18326)

Family Law – Child in Need of Protection – Permanent Order

The Ministry of Social Services (Ministry) applied for an order declaring the two children, a boy and a girl, to be permanent wards of the Ministry pursuant to s. 37(2) of The Child and Family Services Act. Neither parent attended the hearing, nor did the parents' First Nation. The boy was apprehended at four months old, in 2011, due to concerns regarding his parents' drug addictions. The boy was still in the temporary care of the Ministry when his sister was born. When the girl was born, she was treated for drug withdrawal and was apprehended before her release from the hospital due to concerns regarding the parents' substance abuse. Temporary orders were obtained regarding the girl. The order of November 2012 required the parents to participate in the Prairie Spirits Connections Mending the Circle Program. The parents were actively involved in the intensive program and the boy was returned to his parents within a month or two of his parents completing the program. Visits between the girl and parents commenced but did not go well. The parents often returned her to the Ministry's care earlier than planned. In 2014, the girl was returned to her parents under a three-month period of supervision. A year later, the girl was seriously burned in a hot bath. The Ministry re-apprehended the children. While the girl was in the hospital for the burns, the mother would occasionally visit, but the father was not allowed to visit because he had been banned from the hospital. The parents' attendance at visits after the girl was discharged from the hospital was irregular. The girl was still undergoing care at a hospital in Ohio for her burns at the time of the hearing. The boy was returned to his previous foster home, and they found that his development had regressed since he had left their

care two years previously. In 2016, the boy was placed in a therapeutic foster home to help deal with his aggression. The parents opposed long-term placement of the children, so they entered into a three-month consent order. Shortly thereafter, the father was arrested and sentenced to 52 months' incarceration. The mother's efforts at visits and programming was up and down. She admitted to the Ministry in February 2018 that she had been depressed and drinking. The last visit the mother had with the children was August 2017. In October 2017, the Yorkton Tribal Council confirmed that they were unable to find potential family placements for either child.
HELD: The court was satisfied that both children were in need of protection pursuant to s. 11 of the Act. The girl was in care most of her life, only being in her parents' care for a short period, during which she sustained life-altering burns. The boy had been in the Ministry's care for half of his life. The foster parents were committed to the long-term care of the girl. The boy was in the same foster home as the girl at the time of the hearing. The foster parents expressed a wish to raise the siblings together. The court ordered that the children be made permanent wards of the Ministry pursuant to s. 37(2) of the Act.

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L.V. v N.Z., 2018 SKQB 331

Tochor, November 29, 2018 (QB18327)

Family Law – Child Support – Interim
Family Law – Custody and Access – Best Interests of Child
Family Law – Custody and Access – Interim
Family Law – Custody and Access – Primary Residence
Family Law – Custody and Access – Wishes of the Child

The petitioner applied for an order respecting her four children. The respondent did not take serious issue with most of the application, but did object to the child, C.'s, primary residence being with the petitioner. C. was born in 2004. The oldest child was the petitioner's child from a previous relationship. The two youngest were born in 2008 and 2010. The parties began cohabitating in 2003 and separated in 2017. The petitioner was the primary caregiver of the children. The respondent was often required to be away from home for his employment. At separation, the children resided with the petitioner in the family home and the respondent had parenting time with the three younger children every second weekend. In August 2018, C. moved in with the respondent to make it easier to get to his summer job. The petitioner was under the understanding that C. would return to her residence at the end of summer. C. did not return to live with the petitioner. He has refused any contact with her. In October 2018, there was an interim order made requiring that C. spend five days, including overnights,

with the petitioner. C. only spent one weekend with the petitioner. The three primary issues were: 1) the primary residence of C.; 2) parenting arrangements; and 3) ss. 3 and 7 expenses.
HELD: The issues were determined as follows: 1) a factor weighing heavily in favour of C. returning to the petitioner's residence was the fact that he lived with her for nearly a year after the separation. C. would not be at risk at her residence. C.'s wishes also had to be considered, but they were not decisive. The willingness of the respondent to encourage access was also a factor. There was no evidence that the respondent made any efforts to encourage C. to have contact with the petitioner. Also, the respondent did not follow the October 2018 court order. The respondent's unwillingness to follow the order and to facilitate access was found to weigh heavily in favour of C.'s primary access with the petitioner. C.'s learning challenges since September 2018 were also found to have increased. The court concluded that it was in C.'s best interests to return to live with the petitioner and his siblings; 2) the respondent did not contest that he stood in loco parentis to the petitioner's oldest child, nor that the youngest two children should reside with the petitioner. The court ordered joint custody of their three biological children with their primary residence with the petitioner. The order included that the respondent have parenting time with the three youngest children every second weekend and at any additional times agreed upon by the parties; and 3) the respondent's income was found to be $67,733.62. He was ordered to pay $1,486.70 per month in s. 3 Guidelines child support in addition to 55.5 percent of any s. 7 expenses. The respondent was also ordered to pay costs of $400 to the petitioner.

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R v Harper, 2018 SKQB 332

Rothery, December 7, 2018 (QB18328)

Criminal Law – Procedure – Jurisdiction – Criminal Code, Section 485
Criminal Code – Procedure – Queen's Bench Court – Practice Directives

The accused sought a declaration that the Court of Queen's Bench lost jurisdiction over him pursuant to s. 485(3) of the Criminal Code. The accused was charged with two counts of trafficking in cocaine, contrary to s. 5(1) of the Controlled Drugs and Substances Act. He elected trial by Queen's Bench judge alone in February 2018. After the preliminary inquiry in May 2018, the Provincial Court committed him to stand trial on the information. The Crown filed the indictment dated May 11, 2018 with the Queen's Bench on May 17, 2018 and the preliminary inquiry transcript was filed on June 19, 2018. The pre-trial conference was set for September 7, 2018. The accused argued the Queen's Bench had lost jurisdiction over him because the pre-trial conference was in excess of

three months after the next pre-trial conference scheduled after the accused had been committed to stand trial. He argued that, because no summons or warrant had been issued within three months of May 25, 2018 (the date of the next pre-trial conference), in accordance with s. 485 of the Criminal Code, the proceeding was deemed dismissed.
HELD: The accused's application was dismissed for two reasons: 1) s. 485 is with respect to allegations of loss of jurisdiction over the accused by the Provincial Court, so s. 485(3) did not have any application to the proceeding; and 2) the accused's appearances were in compliance with the Criminal Code and practices and procedures of the Queen's Bench Court. The Provincial Court judge did not fix the date the accused had to appear at Queen's Bench as argued by the accused. The Provincial Court judge just indicated that the accused was ordered to "stand trial next regular sitting" of Queen's Bench. The "next regular sitting" was not interpreted by the court to be "next pre-trial conference date". The Provincial Court judge did not make an order in accordance with s. 548 of the Criminal Code. The practices and procedures of Queen's Bench courts in Canada have been recognized by the Supreme Court of Canada to meet local needs and conditions. The practice directive relating to pre-trial conferences was found not to be inconsistent with the Criminal Code. The pre-trial was set for the next date after the preliminary hearing transcript had been received by the Queen's Bench court; the transcript had not been received by May 25, 2018. The accused was properly before the court for his trial: the court had not lost jurisdiction.

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Kot v Kot, 2018 SKQB 338

McMurtry, December 3, 2018 (QB18322)

Civil Procedure – Affidavit Evidence – Admissibility – Interlocutory Applications
Civil Procedure – Affidavit Evidence – Leave to File Supplementary Affidavit
Civil Procedure – Queen's Bench Rule 13-30, Rule 16-47, Rule 16-48
Wills and Estates – Probate – Revoke
Wills and Estates – Wills – Proof in Solemn Form
Wills and Estates – Wills – Undue Influence

The applicant was the spouse of the deceased, who left a partially handwritten will dated August 2014, when he died in September 2015. The will named three executors: the applicant and his two brothers, the respondents. Letters probate were granted in December 2015 based on evidence from all three executors that the will was the deceased's last will and testament. All three named executors were granted the right to administer the estate. The applicant sought an order revoking probate pursuant to Rule 16-47 of The Queen's Bench Rules. She also implicitly

sought proof of the will in solemn form, pursuant to Rule 16-48. The applicant argued that the will was not the deceased's last will and testament because the deceased had revoked the will by destroying it just prior to his death. She argued that the deceased was unduly influenced by the respondents in the execution of his will. The applicant and deceased were married in 1997. One brother, R., and the deceased farmed on each other's farm land without compensation. The other brother, C., farmed on his own and was witness to the will. He indicated that the deceased prepared the will on his own and then took it to C. and another brother to witness his signature. C. also said that the applicant never had concern with the will's validity before the application. The will provided R. an option to purchase the land. According to C., the deceased wanted to protect R.'s ability to continue to farm after his death. R. said that the deceased had shown him an unsigned copy of the will, indicating that he was worried about his health. R. said that he had the original will for a year, at which time, the deceased gave him a copy and took the original. The applicant said that the deceased told her that he was going to see a lawyer about a new will after retrieving the original from R. The applicant took the original will, unbeknownst to the deceased, and substituted it with a copy. The deceased thereafter tore up the will copy, according to the applicant, saying that R. did not deserve anything. The applicant said that she was advised by a lawyer to proceed with an application for probate because it is better to have a will than no will. The estate proceeded as if the will was valid until the application. The issues were: 1) whether the deceased revoked the will by act of intentional destruction and/or declaration; and 2) whether the will was valid in view of suspicious circumstances surrounding the preparation and execution of the will. C. also applied for leave to file a supplementary affidavit attaching emails between his former lawyer and the estate lawyer. One of the emails attached to C.'s affidavit was an email from the estate lawyer stating that he had no record or recollection of the applicant advising him of the deceased's purported destruction of the will. The applicant opposed C.'s application for leave to file the affidavit for violating Rule 13-30. HELD: The court found that the application was interlocutory in nature and thus affidavits were not necessarily limited to facts in C.'s personal knowledge. Leave was granted allowing C. to file his supplementary affidavit. The applicant's arguments were considered as follows: 1) The passage of time was considered by the court and it was noted that the evidence supporting or contesting the validity of the will was unchanged in the four-and-one-half years after the deceased's death. The court also reviewed the evidence supporting the will's validity and invalidity. The court was satisfied that the brothers showed that there was no genuine issue to be tried on the question of the deceased revoking his will. The evidence that the deceased ripped up a copy of the will believing it to be the original was found to be very weak. The lapse of time between probate and the application was not fatal to the applicant's position but did suggest her claim had little credibility. The

court concluded that there was no genuine issue for trial on the question of whether the deceased revoked the will; and 2) the applicant had to adduce probative evidence of undue influence. The applicant did not meet the burden. The positions she held were found to be inconsistent: she said that the deceased was capable of both tearing up his will and changing his mind about leaving anything to R. She also said that the deceased's will was overborne by R. and C.'s influence. There was no genuine issue for trial on undue influence. The court awarded costs to the respondents.

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R v Sutherland-Kayseas, 2018 SKQB 339

Smith, December 5, 2018 (QB18323)

Criminal Law – Sentencing – First Nations Offender
Criminal Law – Sentencing – Murder – Second Degree
Criminal Law – Sentencing – Parole Eligibility

The accused was convicted of the following Criminal Code offences: second degree murder, contrary to s. 235(1) and two counts of assault with a weapon, contrary to s. 267(a). The period of parole ineligibility pursuant to s. 745.4 of the Criminal Code was at issue. The three factors to consider in 745.4 are: 1) the character of the offender; 2) the nature of the offence; and 3) the circumstances surrounding the commission of the offence. The accused was First Nations and a Gladue report was before the court. She grew up with parents that she described as tough and scary with violence and family gang involvement. The accused was put into foster care when her mom was arrested for fraud and left the accused and her siblings with a man she knew. The accused had a grade 8 education. She had a young offender criminal record.
HELD: The Gladue factors were found to be appreciable. The court commented on the factors to consider as follows: 1) the accused's level of personal moral turpitude may be less than otherwise because she never really had a chance; 2) the facts surrounding the offence were characterized as brutal by the court. The victim was shot dead in the home he shared with his parents, and in front of his parents. The assault victims were his parents. The home invasion and robbery were planned and deliberate, although the murder was not. There were other gang members that also participated in the home invasion and robbery; and 3) the accused's friend overheard her bragging about killing someone. When the accused learned that the friend had shared it with other friends, the accused kidnapped her friend. The accused pled guilty to the kidnapping and was sentenced to nine years. The accused was also convicted of dangerous driving as a result of a high-speed chase in downtown Saskatoon. The court concluded that the objectives of the law are met by sentencing the accused to a life sentence with no

eligibility for parole for a period of 12 years. The 12 years was to be calculated from the date of the accused's arrest for the murder charge.

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Beahm v Smith, 2018 SKQB 340

Kalmakoff, December 5, 2018 (QB18324)

Civil Procedure – Appeal – Standard of Review
Small Claims – Appeal – Liability in Automobile Accident – Liability for Deductible
Small Claims – Torts – Negligence

The appellant backed out of his driveway and when he got into the street his vehicle collided with a vehicle being driven by the respondent. The respondent had just backed out of the driveway of a house on the opposite side of the street. Saskatchewan Government Insurance (SGI) initially determined that the appellant and defendant were each 50 percent at fault for the collision and each had to pay half of their deductible. At a trial commenced by the respondent, the trial judge found the appellant 100 percent at fault for the collision. The appellant appealed that decision. The respondent testified that she had backed out of a parking pad and was just going to drive forward when the appellant backed into her vehicle. A witness also testified to seeing the accident on behalf of the respondent. The appellant testified that both parties backed out at the same time and hit one another in the middle of the street. The trial judge first considered whether the appellant was negligent in the operation of his vehicle. He said that the plaintiff and defendant both had a duty to keep a proper lookout and to move their vehicles backward only when it was safe to do so. He found that the respondent's vehicle was on the move first, so the appellant fell below the required standard of care. He fell below the standard of a reasonably careful and prudent driver when backing out onto a busy street. The appellant's issues on appeal related to: 1) trial fairness concerns, because he was not represented by counsel; and 2) the trial judge's findings of fact regarding contradictions in the evidence. HELD: The standard of review on questions of law is correctness, while the standard is a "palpable and overriding error" with respect to findings of fact. The issues were dealt with as follows: 1) questions relating to trial fairness are questions of law. At the outset of the trial, the judge explained the process to the appellant and asked him if he had any questions. The appellant did not ask any questions. The trial judge also assisted the appellant during the trial. Before the appellant cross-examined the respondent, the trial judge again explained the process of cross-examination to him. When the respondent testified, the trial judge also asked him questions to assist him in leading his evidence. The court concluded that there was no error related to trial

fairness that called for intervention on appeal; and 2) the appellant argued that evidence presented by the respondent that was contradicted by the appellant should have been rejected, or not given as much weight as the trial judge gave it. He also argued that the trial judge should have preferred his evidence. Credibility findings are entitled to deference on appeal. The trial judge found that the respondent's vehicle entered the street first, affording the appellant the opportunity to observe her vehicle in motion before backing onto the street. The trial judge accepted the respondent witness' testimony, as he was entitled to do. The finding of fact regarding who began moving first was a pivotal determination to the conclusion that the appellant was negligent. The conclusion involved a question of mixed law and fact, attracting a deferential standard of review. The trial judge correctly identified the civil standard for negligence in the operation of a vehicle, along with the duty of care required by a driver. The trial judge also correctly identified relevant sections of The Traffic Safety Act. There was no reviewable error made by the trial judge. The appeal was dismissed and costs of $50 were awarded to the respondent.

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Humboldt Broncos Memorial Fund, Re, 2018 SKQB 341

Gabrielson, November 28, 2018 (QB18325)

Statutes – Interpretation – Informal Public Appeals Act

A GoFundMe Campaign (Campaign) was started after a bus accident occurred where all 29 passengers, a hockey team and team personnel, were affected: 16 people died, and 13 people survived with various injuries. The Campaign raised $15,172,948. A non-profit corporation, the HBMFI, was established to distribute the funds. HBMFI applied to the court to assist in distributing the funds. An interim distribution of $50,000 was made to each person on the bus and an advisory committee was approved. Information resource persons provided the advisory committee with personal information concerning the 29 people on the bus. In November 2018, the HBMFI made recommendations for allocation of the funds as recommended by the advisory committee: 1) the families of the persons who died in the accident would be paid an additional $475,000; 2) the survivors would be paid an additional $425,000; and 3) any remaining funds in the trust be paid to the 13 survivors in equal shares, share and share alike.
HELD: The Informal Public Appeals Act laid out a framework to deal with the funds raised in the Campaign. The court accepted the recommendation of the advisory committee. The advisory committee outlined the options they faced and also took into account that the survivors of the crash may be entitled to insurance pursuant to legislation, hockey organizations, and other sources. The survivors'

preference that they all benefit equally, regardless of their medical conditions, was also taken into consideration. The advisory committee explained that they recommended a discrepancy between the payment to survivors and those that passed away after they answered two questions: a) whether any of the 13 survivor families would trade places with the 16 families that lost loved ones, which was answered in the negative; and 2) whether any of the 16 families who lost loved ones would forego any amount of money to have the loved one back, which was answered in the affirmative. The court adopted the reasons for the distribution as recommended. The draft order was approved.

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R v Boyer-Lafond, 2018 SKQB 342

Scherman, December 11, 2018 (QB18329)

Criminal Law – Appeal – Conviction
Criminal Law – Defences – Charter of Rights, Section 10(b)
Criminal Law – Impaired Driving – Blood Sample – As Soon as Practicable

The appellant appealed his impaired driving conviction. He argued that the trial judge erred in law by: 1) failing to find that there was a breach of the appellant's s. 10(b) Charter rights when the police officer failed to reiterate for the appellant his rights to consult with counsel when a demand for a blood sample was made after he was unable to provide the breath samples previously demanded; and 2) dismissing the appellant's argument that the blood sample was not taken as soon as practicable without providing reasons for so concluding. The appellant's vehicle struck a police vehicle from behind at a red light in an intersection at approximately 2:49 am. The appellant failed an ASD at 3:11 and was arrested for impaired driving. He indicated that he understood his rights and wished to speak to a lawyer. At the detachment, the appellant consulted with Legal Aid counsel and then indicated that he was satisfied with the advice he received and was prepared to provide breath samples as demanded. After 18 attempts, the appellant was unsuccessful in providing a breath sample. The police officers believed that he was honestly attempting to provide a sample. A blood sample was demanded at 4:57 am. The blood samples were drawn between 7:00 and 7:05 am. The appellant's Charter rights were not reiterated nor was he given another opportunity to consult with counsel after the police decided that they would make a demand for a blood test. The appellant argued that he should be given another opportunity to consult with counsel after the demand for a blood sample was made because: a) it was a new and non-routine procedure in the investigation; and b) the new demand and resulting procedure resulted in a change in jeopardy for the appellant. He also argued that

the blood sample was not taken as soon as practicable.
HELD: The appellant's grounds of appeal were dealt with as follows: 1) the authorities conflict with respect to whether rights to counsel had to be given again. The court concluded that, absent some intervening good reason requiring the police to give a second opportunity to contact counsel before the blood test, the police were under no obligation to do so and there was not a Charter breach for failing to do so. The blood sample is not a non-routine procedure in an impaired driving case; it is specifically authorized in ss. 254(3)(b) if it is impracticable to obtain a breath sample. The court found that the advice the counsel would give after a blood test demand would be the same as after a breath demand; the consequences of not complying could be a refusal to provide sample charge. Further, the appellant's jeopardy did not change because of the blood test demand. Taking a blood sample was not found to be significantly more intrusive. The trial judge did not err in law by deciding that failure to give a second opportunity to consult with counsel was not a breach of s. 10(b) of the Charter; and b) "as soon as practicable" means within a reasonably prompt time, not as soon as possible. The appeal court did not find that the trial judge erred in law by concluding that the delay from 5:53 am to 7:05 am was as soon as practicable, even though reasons for the conclusion were not stated. There was no evidence other than that the police proceeded expeditiously from the time that they made the demand for a blood sample. The Criminal Code requires that blood samples be taken by a medical practitioner and the police officers could do nothing to require the medical practitioner to take the samples ahead of dealing with other patient's needs. The appellant's appeal was dismissed.

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Mervin (Rural Municipality No. 499) v Russett, 2018 SKQB 346

Rothery, December 12, 2018 (QB18333)

Municipal Law – Bylaw – Zoning
Municipal Law – Discretionary Development Permit
Municipal Law – Order to Stop Development

The applicant rural municipality made an order to stop development requiring the respondents to stop development on June 15, 2016. An enforcement order was also dated June 15, 2016. The respondents did not appeal to the development appeals board. The applicant applied to the court pursuant to s. 242(10) of The Planning and Development Act, 2007 for an order that the respondents comply with the orders. The respondents owned a 71.31-acre parcel of land (property) abutting a lake and located within a conservation district. It was determined by the applicant that the respondents were operating a campground on the property without a development permit as required by the provisions

of the applicant's zoning bylaw (bylaw). The respondents acknowledged that they had 19 camp stalls on the property, half of which had power supplied to them and none of which were supplied with water. They indicated that there was a sign with campsite rules for the benefit of their friends and family. The respondents said that the property was gated and private for the use of their seven children and 28 grandchildren. The applicant advised the respondents that they were required to obtain a development permit regardless of whether the campground was for public or private use. In April 2016, the respondents completed a development permit application and paid the $200 fee. The applicant refused the application because a site plan drafted by a Saskatchewan land surveyor was not included, as required by the bylaw. An order to stop development was issued by the applicant the same date the application for development was refused. The enforcement order directing the respondents to remove the campground was also issued the same date.

HELD: The court reviewed the Act and bylaw and found that the applicant was entitled to the order it sought. Section 62(1) of the Act requires a development permit prior to commencing development. The development of campsites was found to be a development. The respondents were required to comply with the general provisions in the bylaw, in addition to the provisions particular to the conservation district. The campsites and electrical power supplies were prohibited uses within the bylaw and the applicant was correct to issue its two orders. The respondents were in breach of the two orders. The court ordered that: 1) the respondents immediately discontinue operating the campground on the property; 2) by April 30, 2019, the respondents remove all electrical services and water supplies installed on the sites and restore the property to its conditions prior to developing the campsites; 3) the matter could be brought back to the court on 14 days' notice if there was non-compliance with the order; and 4) costs in the amount of $1,500 were awarded to the applicant.

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