Case Mail

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Administrative Law – Appeal – Arbitration
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Canadian Union of Public Employees, Local 59 v. Saskatoon (City), 2014 SKCA 14 - Court of Appeal, Richards Lane Caldwell, February 11, 2014 (CA14014)

The union appealed the decision of the Chambers judge that dismissed its application to quash the decision of the Board of Arbitration dismissing a policy grievance. The grievance alleged that the employer failed to pay retroactive wages to employees consistent with past reclassifications. In 2001 the collective bargaining agreement was amended to suspend the job reclassification system and implement a new one. The employer drafted a memorandum of understanding that contained a retroactivity list, and the new system was implemented on January 1, 2008. The union refused to sign the memorandum of understanding, alleging that it was not consistent with the prior method of dealing with reclassifications. The union grieved because they felt that employees who were in the same position as the reclassified employees at the date of the original reclassification or after that date should also receive reclassification pay. The union argued that the payments should be made because they would have been made under the old collective agreement. The employer also filed unfair labour practice complaint because the union repudiated the agreement. The labour board held that the union did not bargain in good faith and it was ordered to sign the memorandum of agreement. The labour board's decision was upheld at judicial review by the Court of Queen's Bench and the Court of Appeal. After the appeals on the employer's application were concluded, the board dealt with the union's grievance and it was dismissed with the majority finding that the labour board had effectively dealt with the matter because they found there was an agreement. The board also noted that they would have dismissed the grievance for abuse of process or that its pursuit was a collateral attack on the labour board's decision. The Queen's Bench Court upheld the board's decision as a reasonable one.
HELD: The appeal was dismissed. The correct standard of review was one of correctness with no deference due to the reviewing court. The Court of Queen's Bench correctly identified the appropriate standard of review, reasonableness, for the grounds of appeal: issue estoppel, res judicata, and abuse of process. The Court of Appeal had to first consider whether the grievance was about the existence of an agreement, as found by the board, or whether it was about the interpretation of an agreement between the parties. The board's conclusion was reasonable. The board offered the union the opportunity to amend its grievance to make it clear that they were grieving the interpretation of the agreement; however, the union declined to do so. The Court of Appeal held that the Chambers judge's conclusion that the union's objection to the employer's position on the ground of estoppel was meritless. The employer's position before the labour board was whether the parties had modified the agreement between

them as to the method for paying retroactive wages by amending the collective bargaining agreement and agreeing to the terms set out in the memorandum of agreement. It was reasonable to conclude that that if the union's grievance were heard in its substance it would have resulted in the parties relitigating issues that had been finally determined by this Court in the labour board's decision.

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Appeal – Criminal Law – Impaired Care or Control
Appeal – Criminal Law – Care or Control Over .08

R. v. Poncelet, 2014 SKCA 30 - Court of Appeal, Richards Caldwell Ryan-Froslie, March 25, 2014 (CA14030)

The accused appealed a summary conviction appeal court decision ordering a new trial. The appellant was charged with having the care or control of a motor vehicle while impaired and while his blood alcohol level exceeded .08. He was found in his truck, intoxicated, with his head slumped over the steering wheel at 3:00 am. The appellant's truck was parked in the parking lot of a bar. The appellant testified at trial that he did not intend to drive. He testified that he knew he was intoxicated and planned to sleep in his truck until the next morning. He got into his truck at about 9:00 pm. He reclined the seat and stretched out to sleep. At midnight, he woke up and was cold. He started the truck and warmed it up. He then shut the truck off and slept until 2:00 am when he started the truck again to keep warm. The police officer found the appellant after he started the truck to warm up the second time. The appellant had been acquitted at trial.
HELD: The accused's appeal was allowed and his acquittal restored. The Court of Appeal found that the trial judge did not misdirect himself on the governing legal principles, and his findings of fact about the risk of the appellant either intentionally or inadvertently putting the vehicle in motion must be allowed to stand. The Court distinguished the present case from its earlier decision in R. v. Andersen on its facts, noting that the trial judge had accepted that the appellant would not have driven while impaired. Although the SCC decision in Boudreault means that an intoxicated person found in the driver's seat of a vehicle will almost invariably be convicted of impaired care or control, each case must be decided on its own facts. In this case, the factual findings made by the trial judge are close to the line in terms of involving a palpable and overriding error, but the trial judge was entitled to make the findings of fact that he made. The trial judge's findings with respect to the risk of danger are entitled to deference.

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Cases by Name

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Bergquist v. Bergquist

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R. v. Hart

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R. v. Kitchener

R. v. Klemenz

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R. v. Olson

R. v. P. (R.V.)

The respondent company had financial obligations to the appellant that were secured by a mortgage. The respondent also granted the appellant a security interest in all non-inventory goods and equipment, including machinery, fixtures and tools. The respondent defaulted on the obligations and the appellant applied unsuccessfully to the Court of Queen's Bench for an order appointing a receiver pursuant to s. 243(1) of the Bankruptcy and Insolvency Act ("BIA"). The Chambers judge found that Part II of The Saskatchewan Farm Security Act ("SIA") applied, so the respondent was required to have leave before an action could be commenced. The appellant's argument that federal paramountcy rendered the SIA requirements inoperative was not successful. The Chambers judge also found that a receiver would not have been appointed in any event because the respondent was not insolvent and that it would not have been just and convenient to appoint one. The appellant was also having financial difficulties and had protection from its creditors under the Companies' Creditors Arrangement Act ("CCAA") in British Columbia. The appellant owed creditors $34.8 million; $10 million was the amount owed by the respondent to the appellant.

HELD: The appeal was dismissed. The appeal court agreed with the appellant that Part II of the SIA was inoperative due to federal paramountcy and that the respondent was insolvent; however, they also found that the Chambers judge did not err in deciding that a receiver should not be appointed in the circumstances of the case. The appeal court held that there was no operational conflict between the BIA and SFSA; an order for leave could be obtained prior to appointment of a receiver under the BIA. The appeal court did find, however, that Part II of the SFSA frustrated the purpose of s. 243 of the BIA so as to bring paramountcy into play. The only time requirements in the BIA with respect to the appointment of receivers is the 10-day notice period in s. 243(1.1). Parliament recognized that the proceedings were time sensitive and therefore only a 10-day notice period was granted. Part II of the SFSA requires waiting at least 150 days, which would frustrate the purpose of the BIA in moving quickly. The purpose of the BIA would also be frustrated by Part II of the SFSA because the leave application in the SFSA requires that more criteria be met. The Chambers judge was found to have erred because she did not conclude that the respondent was insolvent. The BIA does not require that a debtor be unable to meet each and every obligation in order to be considered insolvent. The respondent did not pay obligations to two of three major creditors and was unable to pay them. The appeal court also noted that a debtor needs only to fail to meet one obligation even though the BIA uses the word obligations. The Interpretation Act makes it clear that plural also includes singular. Whether a receiver is granted is discretionary and therefore a discretionary standard of review was required. The appeal court reviewed the Chambers judge's analyses on whether to appoint a receiver as follows: 1) the Chambers judge's comments regarding the scope of a receiver's authority were incorrect. However, the appeal court found that they did not affect the Chambers judge's decision regarding whether to order a receiver; 2) the Chambers judge concluded that a vesting order for the debtor's land would not be granted because there were not exceptional circumstances. The Court of Appeal found that the Chambers judge misinterpreted the case she was relying on to make her determination and also found that her determination did not go to the core of her decision on the receiver issue; 3) the appeal court agreed with the appellant that the Chambers judge did not take into account all of the factors in deciding not to appoint a receiver. She only focused on a receiver collecting rents and the vesting order. The appeal court therefore reviewed all of the factors to decide whether it was just and convenient to appoint a receiver and concluded that the Chambers judge did not err in her decision not to grant an order for a receiver. The appellants were instructed to proceed against the respondent in the usual process of foreclosure.

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Civil Law – Class Actions – Application to Amend Statement of Claim After Certification

Chatfield v. Bell Mobility Inc., 2014 SKQB 82 - Court of Queen's Bench, Elson, MArch 21, 2014 (QB14074)

Having already had one application to amend the statement of claim rejected by the Court, the plaintiffs applied to amend the statement of claim a second time. The second amendment application was made after the class action was certified. The application is for unjust enrichment. The defendants oppose the application, asserting that the amendments will reintroduce a cause of action for deceit, misrepresentation and negligence, which were expressly rejected when the action was certified.
HELD: The application for amendment was dismissed without prejudice to the right of the plaintiffs to seek an amendment setting out material facts as to both the nature and content of the representations made by the defendants and to the manner in which the representations influence the interpretation of the cellular service contracts or are incorporated into them. A key factor in allowing an amendment to a pleading in a class action is whether the amendment merely contains a further allegation that does not change the nature of the action, or, whether the amendment fundamentally changes the nature of the application and would require consideration of all the matters that were considered on the first amendment application. In this case, the Court was satisfied that the allegations in the proposed amendments are irrelevant to the claim for unjust enrichment and are substantially inconsistent with such a claim. The proposed amendments are little more than a slightly dressed up version of the rejected cause of action from the original claim.

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Civil Procedure – Third Party Defendant
Civil Procedure – Parties – Third Party Claim
Civil Procedure – Queen's Bench Rule 3-31

Counios v. Husk (c.o.b. Husk Law Office), 2014 SKQB 63 - Court of Queen's Bench, Gunn, February 28, 2014 (QB14059)

The defendant Husk sought an order pursuant to Queen's Bench rule 3-31, adding Schulz as a third party defendant to the action commenced by the plaintiff against Husk. The action related to the fact that the plaintiff had consulted Husk regarding her family property rights. The plaintiff and Schulz had been in a six-year-long common law relationship that ended in 2007. The plaintiff visited Husk at her law office in the fall of 2008 and alleged that Husk had failed to issue the petition for the division of family property prior to the expiration of the limitation period. In her statement of defence, Husk stated that the plaintiff contacted her in February 2009 and was advised by her about the two-year limitation period. As the plaintiff did not pay the requested retainer, Husk stated that she was never retained by the plaintiff. In spite of that fact, Husk applied for the addition of Schulz as a third party defendant. She claimed that Schulz had been unjustly enriched by the failure to divide the family property in question and that the property was subject to a constructive trust for the benefit of him and the plaintiff.

HELD: The Court dismissed the application. The Court found that the claim did not prima facie disclose a reasonable cause of action by Husk against Schulz. In addition, based upon delays in the proceedings caused by Husk, the Court found that the plaintiff would be unnecessarily delayed by a third party claim at this stage.

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Constitutional Law – Charter of Rights, Section 7, Section 24(1)
Criminal Law – Motor Vehicle Offences – Driving with Blood Alcohol Exceeding .08

R. v. Boutin, 2014 SKCA 21 - Court of Appeal, Klebuc Caldwell Whitmore, February 25, 2014 (CA14021)

The appellant appealed the decision of the summary conviction appeal court judge that set aside the stay of proceedings imposed by the trial court and directed that the matter be remitted to Provincial Court for continuation of the trial (see: 2012 SKQB 291).
HELD: The Court dismissed the appeal and remitted the matter for trial. At the time this appeal had commenced, the Supreme Court had not yet issued its decision in R. v. Babos. The breach of s. 7 would not merit the imposition of a stay of proceedings under the "residual" category described in that decision.

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Constitutional Law – Charter of Rights, Section 11(b), Section 24(1)

R. v. Dzuba, 2014 SKQB 57 - Court of Queen's Bench, Elson, February 25, 2014 (QB14054)

The accused was charged with driving with a blood alcohol level exceeding .08 and impaired driving thereby causing bodily harm contrary to s. 255(2) of the Criminal Code. The date of the alleged offence was in May 2010. The accused applied for an order that the charges be stayed pursuant to s. 24(1) of the Charter on the basis that the accused's right to be tried within a reasonable time as provided by s. 11(b) had been denied such that a judicial stay of proceedings would be justified.
HELD: The Court reviewed the factors that must be taken into account in deciding whether the stay was justified. The length of time since the offence occurred was 47 months, and 35 months had passed before the accused was committed for trial at the preliminary hearing. The Court found no evidence of express waiver. The inherent delay for this case, which was not complex, was established at six months. The actions of the defence in asking for an adjournment had resulted in just less than six months. The Crown had sought five adjournments of the preliminary hearing, which had caused 16.5 months of delay. The institutional delay for a superior court after committal has been set at 14 to 18 months. The only actual prejudice that the accused had described was the additional legal cost he had incurred as a consequence of the many adjournments. The Court was reluctant to measure constitutional rights in the context of a defence counsel's business practices but decided to conclude that it would find the delay so prolonged and significant that prejudice could be inferred. The Court held that the delay was unreasonable and that a stay of proceedings should be directed.

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Contracts – Breach – Damages

Debtor and Creditor – Preservation Order
Civil Procedure – Service – Queen's Bench Rule 6-41
Civil Procedure – Small Claims Court
Statutes – Interpretation – Enforcement of Money Judgments Act
Statutes – Interpretation – Queen's Bench Act
Statutes – Interpretation – Small Claims Act

Taylor v. Heritage Roofing & Exteriors Inc., 2014 SKQB 85 - Court of Queen's Bench, Sandomirsky, March 25, 2014 (QB14075)

The plaintiffs claimed, in a small claims action, that the defendant breached a contract to provide and install new windows. The plaintiffs applied in The Court of Queen's Bench, without notice to the defendant, for a preservation order pursuant to s. 5 of The Enforcement of Money Judgments Act. According to the plaintiffs, they saw a notice at the defendant's place of business that it was closing out and an auction was schedule to sell the business assets. The plaintiffs therefore sought a preservation order requiring the auctioneer to pay $20,000 of the auction proceeds into court so that the defendant was not judgment proof if the plaintiffs were successful in their small claims action.
HELD: An action for a preservation order is permitted without notice pursuant to rule 6-41 of the Queen's Bench Rules. The Court concluded that the plaintiff could make its application in Queen's Bench Court without also commencing an action in Queen's Bench Court. The Small Claims Act, 1997 and The Queen's Bench Act, 1998 provide for a symbiotic relationship between the two courts. The test to be met for a preservation order is whether the court is satisfied that the plaintiffs, if successful, would obtain a money judgment against the defendant. The Court ordered the preservation as requested by the plaintiff, but the defendant was given leave to make an application on seven days' written notice to the plaintiffs to argue why the preservation order should be cancelled or modified. Further, the Court ordered that the plaintiffs were required to provide security in the amount of $5,000, as authorized by s. 5(7) of The Enforcement of Money Judgments Act, prior to the preservation order being taken out. The Court ordered the security because the defendant corporation would be deprived of the use of the $20,000 until the matter is resolved. The Court noted that s. 5(9) of The Enforcement of Money Judgments Act also authorized the Court to make preservation order against the auctioneer as requested by the plaintiffs.

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Contracts – Parties

D. Holdings Ltd. v. Crawford Realty (1990) Ltd., 2014 SKCA 28 - Court of Appeal, Jackson Caldwell Herauf, March 19, 2014 (CA14028)

The respondent was given judgment against the appellants in Queen's Bench Chambers. The respondent had sued D. Holdings Ltd. and Dan Leonard to recover a commission on the sale of real estate. D. Holdings Ltd. and Dan Leonard defended on the basis that the brokerage agreement had not named the registered owners of the land in question, which were Dan Leonard Auto Sales and Daniel Anthony Leonard. D. Holdings Ltd., and Dan Leonard appealed from the judgment on the basis that the Chambers judge had erred by rejecting their argument that they were not the legal or equitable owners of the property.
HELD: The Court dismissed the appeal. The contract clearly stated that the appellants

were the sellers and that they were contracted to pay the broker its gross commission.

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Criminal Law – Appeal – Conviction
Criminal Law – Breathalyzer – Demand for Sample
Criminal Law – Defences – Charter of Rights, Section 9, Section 24(2) – Appeal
Criminal Law – Impaired Driving – Blood Alcohol Level Exceeding .08

Saskatchewan (Attorney General) v. Kachmarski, 2014 SKQB 39 - Court of Queen's Bench, Popescul, February 5, 2014 (QB14041)

The appellant appealed his conviction of impaired driving contrary to s. 253(1)(a) of the Criminal Code. The police were notified of a possible impaired driver on the highway. When a police officer was approaching the appellant he suddenly veered to the right and into the ditch. The officer noted an odour of liquor when he attended at the vehicle in which the appellant was the sole occupant. The appellant was unsteady on his feet. He was arrested and advised of rights to counsel and given the police warning. The trial judge concluded that the breath demand was not valid because there was no proof of the words used in the demand. The Certificate of Analysis was excluded because of the unlawful detention that flowed from the invalid breath demand. The trial judge did, however, find that there was enough evidence to convict the appellant of impaired driving. The appellant's grounds of appeal were that: 1) his s. 9 Charter rights were breached because there were not reasonable grounds upon which to arrest him for impaired driving and the appropriate remedy was to exclude all evidence from that point on; and 2) the trial judge erred by not excluding all evidence after the invalid breath demand was made.
HELD: The Court concluded as follows: 1) the trial judge made findings of fact relating to the state of impairment of the appellant and the Appeal Court determined that the only logical conclusion that could be drawn was that the arrest was lawful and did not result in arbitrary detention. The police officer made the Breathalyzer demand moments after the arrest. The trial judge concluded that the officer had reasonable grounds to make the breath demand. Implicit in the trial judge's conclusion was the finding that the officer also had reasonable grounds to believe that the appellant had committed the indictable offence of impaired driving or was in the process of committing the offence. The appellant's arrest was not within the s. 495(2)(b) limitation because the officer could believe the public interest required the arrest. The appellant had driven off a highway into a ditch of snow and was stuck. The arrest was lawful and not arbitrary; 2) the Court held that the demand was valid and lawful so there was no Charter breach at all and there should not have been a Charter remedy to exclude the breath test results. Section 254(3) only requires that a demand for a breath sample be made; it does not prescribe a certain demand that must be made. The officer only needed to give an unambiguous demand, of which there was evidence. Because there was no Charter breach there was no remedy for the breach and thus the appellant's second ground of appeal was also dismissed.

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Criminal Law – Appeal – Conviction – Assessment of Credibility
Criminal Law – Appeal – Summary Conviction Appeal

R. v. Dauajak, 2014 SKCA 22 - Court of Appeal, Lane Caldwell Whitmore, February 26, 2014 (CA14022)

The appellant applied, pursuant to s. 839 of the Criminal Code, for leave to appeal his convictions for assault with a weapon, uttering a threat to cause death, and breach of an undertaking. Two trials were held, and in each the appellant testified and the central issue was credibility. He appealed the convictions to Queen's Bench. The summary conviction appeal judge dismissed both appeals, finding that it was open to the trial judge to make the findings of credibility that she had regarding the assault charge. Regarding the charge of uttering threats, the appeal judge reviewed the evidence and found that there was a substantial basis for the decision of the trial judge regarding the credibility of the witnesses and accepting the complainant's evidence.
HELD: The Court granted leave but dismissed the appeals as they were without merit. The transcripts showed that it was open to the trial judge to make the findings of credibility that they had. The summary conviction appeal judge had not erred in upholding both convictions.

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Criminal Law – Assault – Sexual Assault

R. v. P. (R.V.), 2014 SKQB 52 - Court of Queen's Bench, Chow, February 18, 2014 (QB14049)

The accused was charged with sexual assault causing bodily harm contrary to s. 272(1)(c) of the Criminal Code. The complainant was under the age of 16 when the alleged offence occurred on the White Bear Reserve. She had been drinking with her sister and her sister's partner, the accused. The complainant testified that the accused had sexually assaulted her in his home while her sister was asleep. She also told the police that the accused had a gun. The police searched the house and were unable to find one. The complainant was taken by her grandmother to the police station where she gave a taped interview. She was then taken to the hospital in Regina. She was examined by a physician who was an expert with respect to child sexual abuse and injury causation. The doctor gave her expert opinion at trial that there had been penetration within 24 to 48 hours before the examination. Another expert testified on behalf of the defence that based on her examination of the samples taken from the complainant and articles of clothing, that she had been unable to identify any male DNA. The accused denied the complainant's story.
HELD: The Court found the accused not guilty. It preferred his evidence to that of the complainant based on inconsistencies between her videotaped interview and her testimony at the preliminary inquiry and during trial. She admitted that she disliked the accused and therefore had a motive to fabricate.

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Criminal Law – Driving over .08 – Blood Sample – Seized from Hospital
Criminal Law – Impaired Driving

R. v. Hart, 2014 SKPC 42 - Provincial Court, Cardinal, February 19, 2014 (PC14024)

The accused was the driver of a vehicle involved in a rollover on a grid road in a rural area. When the officer arrived on scene, the accused was outside the vehicle being

tended to by EMTs. At the hospital, the officer made a breath demand. The officer made a blood demand after she was advised that the accused would be transported to Saskatoon by ambulance and could not provide a breath sample. However, the Crown chose not to rely on the blood samples taken pursuant to the blood demand because the officer had violated the accused's right to counsel. Instead, the Crown chose to rely on BAC readings obtained from two blood samples taken by hospital staff for medical purposes and obtained via a search warrant. The accused argued that the hospital samples should also be excluded because of the violation of her right to counsel.
HELD: The hospital blood samples were admitted as evidence. There was no evidence that hospital staff were acting as agents of the state when the blood samples were taken from the accused. The mere fact that physicians participate in emergency treatment of an accused does not render them agents of the government for the purposes of the Charter. The officer did not ask the hospital to take any samples other than the two samples that were required for the blood kit. The officer believed that the two samples in question were taken by the hospital for medical purposes. There was no evidence that the constable had anything to do with the two hospital samples after the blood was drawn. There was no evidence that the police tracked the samples or that she intended to seize them later as a matter of common police practice. The accused's right to counsel does not extend to the blood samples taken for hospital purposes and seized as a result of a valid search warrant. The blood samples and Certificate of Analysis stating that the accused's blood alcohol content at the time of driving was between 227 and 242 milligrams of alcohol in 100 millilitres of blood is admissible and the accused is guilty of the .08 offence. The accused was also found guilty of impaired driving on the basis of the report from the RCMP lab, which stated that a person with the blood alcohol level the accused had at the time of driving would have their ability to drive impaired by alcohol, but a conditional stay was entered on the impaired driving count.

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Criminal Law – Driving Over .08 – Defences – Necessity – Self-defence – Defence of Property

R. v. Pankiw, 2013 SKPC 205 - Provincial Court, Labach, January 16, 2014 (PC13199)

The accused was charged with driving with a blood alcohol level over .08. The accused agreed that he had been driving with a blood alcohol level over .08, but suggested that the defences of necessity, defence of person and defence of property applied. The accused was sleeping on his couch after having consumed a couple of beers. He awoke to a flashlight shining across his yard. The accused believed that someone broke into his house as he ran after a car that he saw on his property. The accused got into his own vehicle and pursued the car. He called the RCMP as he was chasing after the car. The accused lost sight of the vehicle that had been in his yard and ended up chasing another motorist on the highway and into the city. The accused was arrested by city police. The accused claimed that because he had previously been a member of parliament, his property had been vandalized on numerous prior occasions and he had previously received death threats. He suggested that this was relevant to his behaviour on the offence date.
HELD: The accused was convicted of driving over .08. The defence of necessity was not available to the accused because the accused was not in a situation of imminent peril or danger; there was a reasonable legal alternative to the accused getting into his

vehicle and chasing after the intruders, and the accused's actions were not proportionate to the risk caused by his own behaviour. The harm associated with drinking and driving far outweighed any harm to the accused by letting the intruders escape. A reasonable person would have expected the accused to phone the police and wait for them to show up rather than get behind the wheel of his truck and chase after them when his blood alcohol level was almost twice the legal limit. The accused is entitled to rely on the new self-defence provisions. The accused is not entitled to rely on defence of person because there is no air of reality to the defence. There is no evidence that the accused or his family were at risk of harm. Likewise, the accused cannot rely on defence of property because the accused's belief was not reasonable that someone had taken his property, and the accused's act of drinking and driving to retake property that he was not sure had been taken by a person that he was not sure had actually been inside his home, and the evidence does not support it. The accused's actions on the offence date were based on unreasonable assumptions.

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Criminal Law – Drug Offences – Possession for the Purpose of Trafficking – Appeal
Criminal Law – Drug Offences – Possession for the Purpose of Trafficking – Sentencing – Appeal
Criminal Law – Evidence – Admissibility – Appeal

R. v. Belyk, 2014 SKCA 24 - Court of Appeal, Jackson Ottenbreit Herauf, March 12, 2014 (CA14024)

The appellant appealed his conviction and sentence with respect to charges of trafficking in marihuana, possession of marihuana for the purpose of trafficking and possession of proceeds of crime, for which he was sentenced to 18 months. The appellant appealed his conviction on the ground that certain text messages between third parties were inadmissible and that the appellant's trial counsel had failed to object to their admissibility. The sentence was appealed on the basis of fitness. The charges arose as a result of the police conducting a surveillance operation of another person whom they suspected of trafficking in drugs. As part of the operation, the appellant's residence was under surveillance. The other person was seen arriving at the appellant's house and then leaving it carrying a shopping bag. The police stopped the other person, arrested him and seized cell phones and the bag that contained marihuana. Then the police located and arrested the appellant. They found a cell phone, a bank card, a cheque and $1,000 in cash in his possession. They then searched his home and found a surveillance system set up to monitor a pail containing marihuana in his garage. They also found $5,900 in cash and boxes of Ziploc bags. The Crown relied upon the evidence contained in the cell phones found in the possession of the other suspect. The text messages were classified as "ride", "customer" and "meeting" messages. The meeting messages involved arrangements to meet between the other person arrested and the appellant. At trial, the Crown applied to introduce the contents of the text messages through notes made by a police officer who had copied them from the various phones. The Court and the Crown suggested that it would be less time-consuming to ask the officer to identify his copy of the notes and enter them as an exhibit and the appellant's counsel agreed and said that he had no objection. The appellant argued that trial counsel's failure to object was not fatal to the appeal as the trial judge had the duty to consider admissible evidence only. As the text messages included the other person and third parties, it was less reliable evidence

and the trial judge erred in admitting them without a voir dire.
HELD: The Court dismissed the appeal. It relied upon s. 686(1)(b)(iii) of the Criminal Code and found that the appellant would have been convicted even if the text messages had been excluded. The sentence was slightly higher than some sentences, but aggravating features were present. The appellant was a supplier of drugs, selling from his home in a residential neighbourhood. He sold drugs to maintain his lifestyle. He had a significant criminal record and his pre-sentence report indicated a medium risk to re-offend.

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Criminal Law – Evidence – Admissibility of Statement – Voluntariness of Statement
Criminal Law – Motor Vehicle Offences – Driving While Impaired
Criminal Law – Obstruction

R. v. Olson, 2014 SKPC 33 - Provincial Court, Rybchuk, March 10, 2014 (PC14036)

The accused was charged with impaired driving and driving while his blood alcohol exceeded .08, contrary to ss. 255(1) and 253(1)(a) and (b) of the Criminal Code and that he wilfully obstructed police officers engaged in the lawful execution of their duties contrary to s. 129(a) of the Code. In a voir dire related to various Charter applications, the sole issue that emerged was whether the statements made by the accused to the police officer who arrived at the scene of the accident were inadmissible as statutorily compelled statements pursuant to The Traffic Safety Act and a violation of s. 7 of the Charter. The accused and a number of others had had been involved a serious accident at 4:00 am. The RCMP officer arrived to investigate the accident. An ambulance and the fire department were already in attendance, dealing with injured passengers. The accused was standing outside the damaged vehicle when the officer spoke to him. She smelled alcohol on him and thought that he had been drinking. He advised that the driver of the vehicle had left the scene and run into the bush. The officer took the accused to her vehicle because it was raining. In the vehicle, she noticed that the smell of alcohol was stronger and that the accused's speech was slurred. The accused told the officer that he did not know the name of the driver but described him. The officer spent the next hour searching for the driver. She testified that when she arrived at the scene of the accident she was investigating pursuant to her duties under The Traffic Safety Act and she did not warn or caution the accused when she obtained the statement from him because all the information she had indicated that the accused was merely a passenger in the vehicle and not the driver. The accused argued that the answers he gave to the officer's questions as to who was driving were not admissible against him in the criminal proceedings as "use immunity". The officer had a statutory duty to investigate the accident and the accused was statutorily required to answer her questions pursuant to s. 253(3) and (4) of The Traffic Safety Act. If the statements were admitted and used to incriminate him, it would result in an unfair trial and a breach of s. 7 of the Charter.
HELD: The Court admitted the statements. The Court did not believe the accused. He had lied to the officer regarding who was driving the vehicle. In his testimony, the accused contradicted himself and was not credible. He did not have an honest subjective belief that he was required by law to answer the questions put to him by the officer. In this case, the Crown relied upon the statement to support the charge of obstruction in providing false information. There was no issue regarding the voluntariness of the statement in the voir dire.

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Criminal Law – Home Invasion – Sentencing
Criminal Law – Break and Entry with Intent to Commit Indictable Offence – Sentencing

R. v. Klemenz, 2014 SKQB 60 - Court of Queen's Bench, Dawson, February 28, 2014 (QB14056)

The accused, Klemenz and Matychuk, were each found guilty by a jury of breaking and entering the home of FJ and committing therein the indictable offence of aggravated sexual assault contrary to s. 348 (1)(b). The sentencing proceeded for each of them separately. The jury did not identify the facts it found to support the conviction. Each of the accused was convicted of the offence as a principal and/or party to it. Klemenz and Matychuk with a third person, planned to break into a commercial property in Regina to steal items from the property. When they got through the security gate, they found a camper trailer on site. At 2:30 am the two accused entered the trailer and found the victim, FJ. He was told to get down on the floor and both of the accused stomped on his back, demanding to know where his money and debit card was. The third accused took the victim's money, wallet, laptop, cell phone and stereo while the two accused continued to beat him. They left the trailer but returned in a few minutes and continued to beat him. Then they sexually assaulted him with pens and a frying pan handle. After obtaining more information from him, they left, and the victim crawled out of the trailer to the business premises where he was found by the employees at 7:00 am. The victim had to have surgery immediately because of a rectal perforation. Later he had reconstructive surgery to reverse the ostomy. He can no longer work. Klemenz, 39 years of age, was described as a recovering drug addict with a lengthy criminal record of 40 previous convictions involving primarily driving offences and robberies. However, he had been on parole since 2011, during which time he had a job. His former employers and his siblings wrote letters of support as to his good character. Matychuk, 35 years of age, had a difficult childhood and became a drug addict. At the time of the offence, he was off drugs but suffered from alcoholism. He had 67 previous convictions relating primarily to break and enters to commit theft. The Crown argued that since this was a serious aggravated sexual assault, aggravated by the fact that it occurred during a home invasion, s. 348.1 of the Code applied. As weapons were used and each of the accused have lengthy records, an appropriate sentence is 12 years' imprisonment, given 1:1 credit for pre-sentence custody. Counsel for Klemenz submitted that an appropriate sentence was six years less 1:1 credit for time in remand because he had strong family support and had taken positive steps while in custody to improve his life and has committed no infractions while on remand. Counsel for Matychuk submitted that his sentence should be for six years with credit of 1:1.5 credit for time spent in custody for the same reasons.
HELD: The Court sentenced Klemenz to 12 years' imprisonment for breaking and entering and committing the offence of aggravated sexual assault. He was given credit for 22 months spent in custody. Matychuk was sentenced to 12 years in prison but was given credit for time in custody on a 1:1 basis because the Court had not found any circumstances to justify any greater amount of credit. Matychuk's credit was for 19 months. The sentences were based on the circumstances of the offence: a home invasion and inflicting serious bodily harm on a young victim. The assault was violent and degrading and took place over a period of time. Weapons were used while the victim was bound and sexually assaulted and threatened.

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Criminal Law – Impaired Driving
Criminal Law – Care or Control over .08 – Reasonable and Probable Grounds
Constitutional Law – Charter of Rights – Arbitrary Detention

R. v. Dreaver, 2013 SKPC 220 - Provincial Court, Morin, October 17, 2013 (PC13212)

The RCMP came upon three vehicles parked head to tail in the middle of a grid road on a First Nation. The arresting officer was dealing with the occupants of the second vehicle when she observed some movement in the third vehicle. She approached the third vehicle and found the accused in the driver's seat. She noted a strong odour of beverage alcohol coming from the vehicle. She asked the accused to step out of the vehicle and noticed that a smell of alcohol was coming from the accused's breath. She noted that the accused had red, glossy eyes. The officer immediately formed the opinion that the accused was in care or control of a motor vehicle while his ability to do so was impaired by alcohol. The accused objected that the breath demand was made without reasonable and probable grounds.
HELD: The accused was acquitted of both counts. The officer made a hasty decision and, as a result, lacked reasonable and probable grounds to make a breath demand. The lack of grounds led to the arbitrary detention of the accused. The Court held that the impact on the accused's rights was serious and could breed public cynicism that would bring the administration of justice into disrepute.

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Criminal Law – Impaired Driving – Driving over .08 – Defences – Necessity

R. v. Masuskapoe, 2013 SKPC 219 - Provincial Court, Morin, October 16, 2013 (PC13211)

The accused admitted that he was operating a motor vehicle while his ability to do so was impaired by alcohol. However, the accused argued that he should be acquitted on the basis of the defence of necessity. The accused testified that he had arranged a designated driver but was running out of gas. He tried to stay at his grandmother's but she asked him to leave. He went to his aunt's house next door, but no one was home. He went to an uncle's house about four miles away but his cousin attacked him for no apparent reason as he tried to sleep on the couch. The accused made a hasty retreat and was stopped by police driving to his sister's house about five miles away. His grandmother had called the police to report he was driving while impaired. The temperature outside was minus 25 degrees Celsius.
HELD: The accused was acquitted of impaired driving and driving with a blood alcohol level over .08. The defence of necessity was made out on the basis that the accused had no reasonable alternative but to drive to a residence for the night given the extremely cold temperatures outside. There was no evidence that by driving impaired the accused caused any accident or damages.

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

R. v. Stanley, 2014 SKPC 19 - Provincial Court, Scott, January 27, 2014 (PC14011)

The accused was charged with driving while his ability to do so was impaired by alcohol contrary to s. 255(1) and s. 253(1)(a) of the Criminal Code and while his blood alcohol exceeded .08 contrary to s. 255(1) and s. 253(1)(b). The defence argued that the breath samples were not taken as soon as practicable and that the Crown had failed to prove that the officer served a true copy of the certificate upon the accused as required by s. 258(7) of the Code. The defence also argued that the accused's ability to operate a motor vehicle was not impaired. The accused had stopped at a red light but he stopped halfway into the intersection and then backed up. The officer who was in his cruiser behind him, had to blow his horn to alert the accused that he was there. The intersection was an unusual configuration as the cross street was off-set. The time between the stop and the first breath test was 55 minutes. The defence argued that a 15-minute delay between the breath demand and the departure to the police station had not been explained. With respect to the issue of service of the certificate, the officer testified that it was his usual practice to photocopy the certificate, compare the copy with the original, sign it and give it to the person charged. He could not recall what happened in this case and had not made any notes. With respect to proof of impairment, the officer described the accused's stop halfway into the intersection and his failure to notice the police cruiser behind him gave him reason to stop the accused's vehicle. He smelled alcohol coming from the accused's vehicle and observed that the accused's eyes were red and glossy.
HELD: The Court found the accused guilty of driving while over .08 but not guilty on the charge of driving while impaired. It found that the officer did not have to account for everything that had happened between the demand and the breath test and that it had been administered as soon as practicable. The officer's statement on the reverse side of the certificate, certifying service of a true copy on the accused was sufficient to meet the requirements of s. 257. Considering the character of the intersection, the Court found that the evidence of the accused's bloodshot eyes coupled with an odour of alcohol and the accused's admission of consumption was not sufficient to convince it that the accused's ability to operate a motor vehicle was even slightly impaired.

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Criminal Law – Obstruction

R. v. C. (M.M.M.), 2014 SKPC 24 - Provincial Court, Gordon, March 3, 2014 (PC14035)

The accused was charged with wilfully obstructing a peace officer engaged in the lawful execution of his duty, contrary to s. 129(a) of the Criminal Code. Two officers attended at the accused's residence to arrest her son pursuant to a warrant. The officers were aware that the accused had a history of being uncooperative with the police. After the officer arrived at the house, they told the accused that they were there to execute the warrant and she became angry, yelled at them and ordered them to leave. Her son was standing behind her. When one of the officers tried to get around her to reach her son, she blocked him and told her son to run. The officers then arrested the accused. The accused testified that the officer pushed her and she stumbled and fell backward. The defence asserted that the officers were required to have the original arrest warrant for the son when they effected the arrest.
HELD: The accused was found guilty. The Court held that the officer was acting in the lawful execution of his duty and that it had not been necessary for him to carry the

original warrant. The Court accepted the evidence of the officers and found that the accused had wilfully obstructed the officers.

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Criminal Law – Recognizance

R. v. Kitchener, 2014 SKPC 62 - Provincial Court, Cardinal, March 20, 2014 (PC14047)

The Crown laid an Information pursuant to s. 810.2 of the Criminal Code that sought that Kitchener be bound over by a recognizance. An RCMP officer with the High Risk Serious Violent Offender Unit deposed that he had reasonable grounds to fear that the accused would commit a serious personal injury offence as defined by s. 752 of the Code. The Crown called the officer as well as the Aboriginal Liaison Officer and Parole Officer, both with Corrections Service Canada (CSC), who each had dealt with Kitchener while he was an inmate at the Prince Albert Penitentiary. The documents filed in support of the application for the recognizance, prepared by the CSC, and Kitchener's criminal record were admitted as an exhibit. Kitchener had a lengthy criminal record consisting of four convictions for assault, assault causing bodily harm, assault with a weapon and six sexual assault offences. The latter offences occurred between 1994 and 2007. When the officer who swore the Information visited Kitchener to serve him with the summons, the officer saw a case of beer at his residence. When he spoke to Kitchener, he inquired repeatedly when he could start drinking alcohol as his s. 810.2 recognizance was about to expire. The Aboriginal Liaison Officer testified that Kitchener had completed the Aboriginal Substance Abuse Program in 2009 but expressed concern that his ongoing risk to abuse substances and re-offend remained high. She described him as "opportunistic" with respect to his last sexual offences as they were committed against children who could not resist him or against older victims when they were incapacitated due to alcohol or drug consumption. The parole officer testified that Kitchener had completed the Moderate Intensity Sex Offender Program while incarcerated. In his opinion, Kitchener remained an untreated sexual offender as he failed to internalize the programming and there was no reduction in his risk. Kitchener regarded himself as a victim. He showed little empathy for his victims because he had been abused in residential school and knew that his abusers had gotten away with it, so he would too.

HELD: The Court granted the recognizance. It accepted the evidence presented on behalf of the Crown and found that the officer had reasonable grounds to believe that Kitchener would commit a serious personal injury offence and that there were objective grounds to support his fear. Kitchener was found to be an untreated sexual offender who posed a moderate to high risk to commit further sexual offences and the risk was tied to alcohol consumption. Kitchener had not taken any steps to deal with his addiction.

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Criminal Law – Sentencing – Application for Remand – Dangerous Offender – Serious Personal Injury Offence

R. v. Jensen, 2014 SKQB 58 - Court of Queen's Bench, Danyliuk, February 27, 2014 (QB14055)

The accused pled guilty to four counts of robbery. The Crown applied pursuant to s. 752.1 to have him remanded for assessment as part of the process to have him designated either a dangerous or a long-term offender. The issue was whether the robberies amounted to “serious personal injury offences” under s. 752. Counsel filed an agreed statement of facts, which meant that they were bound by it as was the Court other than being capable of drawing inferences arising directly from the statement. The accused had entered the same store on four different occasions during May and June of 2012 carrying a knife and demanding cash. The employees gave him money from the till. During one of the robberies, the accused tried to jump over the counter to the till area. The employees testified that they had been scared during the robberies and one employee took a week off to recover and then quit his job. All of the robberies were videotaped by surveillance cameras and these were reviewed in Court. A video made of a warned statement given by the accused to the police officer was also viewed. The Crown took the position that based upon the agreed statement of facts and the videos, there were sufficient facts to conclude that one or more of the robberies could constitute the predicate offence. There was a use of violence or attempted use of violence or alternatively, the employees were actually endangered by the accused’s conduct and that they suffered psychological harm. The defence submitted that no overt threats, physically or verbally, were made with the knife and it was not used. It was therefore not a serious personal injury offence because the employees’ safety was not in serious jeopardy from the accused. The counter created a situation wherein the distance between the clerks and the accused was eight feet.
HELD: The Court granted the application. The Court noted that the facts admitted by the accused in the agreed statement included that he had produced a knife and/or held it out to scare and threaten the employees and that they were in fact scared by the accused. During the first robbery, the video showed that the accused attempted to jump over the counter. When this happened, the clerk opened the till and gave him the money. Under s. 752, this conduct constituted “something further” and was sufficient to be an attempt to use violence during the offence. The accused had committed a serious personal injury offence within the meaning of s. 752(a)(ii).

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Criminal Law – Sentencing – Robbery – Face-masked

R. v. Shingoose, 2014 SKPC 47 - Provincial Court, Koskie, February 20, 2014 (PC14023)

The accused pled guilty to one count of robbery with a knife and one count of having her face masked. The accused, wearing a Halloween mask, robbed a pharmacy of drugs while brandishing a knife and imitation gun. The accused’s son drove the getaway vehicle. The accused had a drug addiction and had been abusing drugs by injection for seven months prior to her arrest. As a result of her drug addiction, the accused’s health, employment situation and marriage had been adversely impacted. She led a largely transient lifestyle and was unwilling to address her addictions issues. She had one prior conviction for impaired driving in 2010 for which she had received a fine.
HELD: The accused was sentenced to three years from the date of sentencing (effectively a sentence of three years and four months when remand time was considered). The nature of the offence is inherently dangerous and violent. A clear message needs to be sent that this behaviour will not be tolerated by society. There was some planning involved in these offences because the accused wore a disguise

and had secured a getaway vehicle and driver.

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Employment Law – Wrongful Dismissal – Settlement – Income Tax

Deiana v. Credit Union Central of Saskatchewan, 2014 SKQB 79 - Court of Queen's Bench, Sandomirsky, March 19, 2014 (QB14072)

The parties entered into minutes of settlement where the defendant agreed to pay the plaintiff $100,000 to settle the plaintiff's claim for wrongful dismissal. The defendant paid $70,000 to the plaintiff's solicitor and withheld the remaining $30,000 to be remitted to CRA as income tax on a lump sum retirement allowance. The plaintiff seeks full payment of the $100,000.
HELD: An award pursuant to a wrongful dismissal settlement is fully taxable under the Income Tax Act. It is an implied term of such settlements that the employer will make all necessary tax deductions from the initial award. The lump sum withholding rate applicable to payments over $15,000 is $30,000. The plaintiff is not entitled to the full award.

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Family Law – Child Protection – Permanent Order

B. (J.B.), Re, 2014 SKQB 49 - Court of Queen's Bench, Sandomirsky, February 13, 2014 (QB14047)

A hearing had to be held to determine the status of two boys, aged three and five. The boys had been subject to an interim order previously. All parties agreed the boys were in need of protection. The Ministry sought a permanent order. The father sought a six-month order to allow him to achieve stability with a view to being granted custody. The mother sought a long-term order to allow her more time to work on her personal issues. Both parents had a history of serious drug use, chronic addiction to alcohol, lack of appropriate parenting skills and poor coping mechanisms to deal with their son's behaviour. There was also a history of chronic domestic violence between the parents. The evidence suggested that each parent was doing better with their addictions, but the father still exhibited controlling behaviour towards the mother.
HELD: A permanent order was issued. The adoption prospects for the boys were good. Neither boy has a significant bond with either parent. Further, a long-term order is not legally available under s. 37 of the Act. It is not in the children's best interests to consider the father as a future resource. The father is self-serving and has not really changed. He does not see his own shortcomings. Placing the children with the father would only provide a vehicle for him to attempt to continue to control the mother. Any further contact with the father risks serious emotional harm for the boys. The father's right of access with the children was terminated. The mother was permitted to have access to the boys until they were placed for adoption.

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Family Law – Child Support – Income – Farming Income – Losses
Family Law – Child Support – Retroactive

Family Law – Child Support – Variation
Family Law – Custody and Access – Best Interests of Child
Family Law – Custody and Access – Mobility Rights – Primary Residence
Family Law – Custody and Access – Variation
Family Law – Custody and Access – Voices of the Children Report

King v. McSymytz, 2014 SKQB 33 - Court of Queen's Bench, Rothery, February 11, 2014 (corrigendum) (QB14037)

The petitioner wanted to relocate from Nipawin, Saskatchewan, to Saskatoon, Saskatchewan, for employment purposes. She wanted to take the two children of her relationship with the respondent with her. The interspousal contract between the parties granted the respondent reasonable access upon reasonable notice. An interim order did not vary the arrangement and required that the petitioner not relocate the children pending further court order. The parties participated in an unsuccessful pre-trial conference. The respondent brought an application for primary residence of the children because he said they were effectively living with the petitioner's mother while she was working in Saskatoon. An interim variation order was made because the petitioner was working in Saskatoon. The interim order alternated weeks between the parties because the respondent was employed elsewhere every second week. The petitioner was required to commute to Saskatoon every second week. The oldest child turned 12, so a Voices of the Children Report was ordered.
HELD: The Court ordered that the children would primarily reside with the respondent and the petitioner would have reasonable access. The parties were both capable of being the children's legal custodian. The respondent had married and his spouse had a good relationship with the children and was capable of caring for the children in the respondent's absence. The respondent was also found to have some insight into the conflict between him and the petitioner and into ways to minimize it for the children. The children had been in Nipawin for seven years and were doing well there. Most of the parties' relatives lived in the area. The children already had an established home with the respondent. The children's home, school, and extracurricular activities with the petitioner were only proposed and had not been established. The petitioner had a new career in Saskatoon and it was uncertain how that demand would affect the children's adjustment to a new community. The Voices of the Children Report indicated that the oldest child wanted to remain in Nipawin and the youngest to move to Saskatoon. The report's author noted that the children did not really appreciate the gravity of the situation if they were split up. The oldest child was, however, more vocal about remaining with her father. It was in the children's best interests to reside together. The petitioner was ordered to pay child support and her proportionate share of s. 7 expenses. The respondent was also ordered to pay retroactive child support for the period June 2010 to February 2013; however, the amount was deducted by the overpayments he had made during the months of shared parenting. The Court only had the respondent's income tax return as evidence and thus the farming loss therein was allowed and there was no deduction to his income for travel costs as may have been permitted because they were not claimed on his returns.
CORRIGENDUM dated February 11, 2014: [1] Paragraphs 40, 41 and 42 of my judgment dated January 29, 2014 shall be replaced and read as follows:
>>> [40] However, that is not the end of the calculation. There has been a de facto shared parenting from March, 2013 to present, but Darrren has paid $1227 per month for the last eleven months. Darren's monthly obligation based on his 2013 income ($135,041) is $1808. Kelly's monthly obligation based on her 2013 income ($54,301) is $734. That is a net amount owed by Darren of $1074 per month. Having paid $1227

for the last eleven months means he is entitled to a reimbursement of $1683 for an overpayment of child support.
>>> [41] While Darren owes Kelly retroactive child support and s.7 expenses of $8203.73, Kelly owes Darren $1683 in overpayment. Thus, Darren owes, in total, the sum of $6520.73 to Kelly.
>>> [42] Kelly's child support obligations shall not commence until October 1, 2014, when she shall pay $85.27 for the month of October 2014, and $734 per month from November, 2014, onward. This order will compensate her for the child support obligations owed to her by Darren.

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Family Law – Spousal Support – Appeal

Bergquist v. Bergquist, 2014 SKCA 20 - Court of Appeal, Klebuc Ottenbreit Whitmore, February 27, 2014 (CA14020)

The appellant appealed the Queen's Bench decision wherein the appellant was ordered to pay spousal support to the respondent in the amount of $6,000 per month (see: 2012 SKQB 354). The parties had operated a business during the course of their marriage. When they sold it in 2007 for $2.7 million, they created a new business. The appellant incorporated it but did not include the respondent as a shareholder, unbeknownst to her. In the appeal, the appellant argued that the trial judge erred in: 1) imputing no income to the respondent. The respondent was 63 at the time of separation and testified that she had not sought employment since then because she had only worked within the family business as a bookkeeper. The appellants argued that income in the amount of $25,000 per year should be imputed to the respondent because she could work, but had failed to try to find employment; 2) finding that the respondent had no obligation to generate income from her real estate and that no income should be imputed for these assets. The appellant submitted that the respondent could and should generate her own income by selling her home and cottage, which she had received as a part of the division of family property. The respondent argued that the trial judge correctly decided that she was not so obligated. Her support payment and income she generated must be sufficient to maintain a lifestyle for her that was comparable to what she enjoyed during the marriage; 3) finding that the respondent was entitled to compensatory support based on experiencing economic disadvantage arising from breakdown of the marriage and economic hardship in relation to the marital standard of living. The appellant argued that the respondent had not been disadvantaged during the marriage as she had continued to work as the family business bookkeeper. The trial judge had found that the equity invested by the appellant in the new corporation had seriously disadvantaged the respondent, which entitled her to compensatory spousal support; 4) setting the quantum of compensatory support at $6,000 per month on the ground that he found that the appellant's income was $80,000 greater than the respondent's, where in fact, the difference was $6,000; and 5) finding that the respondent was entitled to taxable costs at double column 5.
HELD: The Court dismissed the appeal on all of the grounds with the exception of the trial judge's award of costs. It held with respect to each ground that the trial judge's conclusions were entitled to deference and specifically found that: 1) the trial judge correctly applied Moge and took into account the age and education of the respondent, and her current circumstances at the time of the breakdown of the marriage in his

decision not to impute income to her; 2) the quantum of spousal support should not be reduced because of the matrimonial property division, where there is entitlement and an ability to pay. The respondent was not expected to live on her capital; 3) the appellant would not have had the business but for the respondent's contributions during the course of the marriage and while she looked after the children as well. The trial judge had properly exercised his discretion in finding that the respondent had been economically disadvantaged by being excluded from the new corporation; 4) the appellant could not calculate his income by deducting his mortgage payments as that was his choice to take out a mortgage after the family property had been divided equally. Furthermore, the trial judge had not forced the appellant to work to age 67 to provide support payments. The appellant could apply for variation based on a change in circumstances if he retired earlier; and 5) that the trial judge gave no indication that he intended to exercise his discretion to order costs other than at column 3. As there is no column 5, the Court set aside the order and awarded costs at column 3.

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Limitation of Actions – Mortgage – Saskatchewan Farmland Security

Lozinski v. Thiessen Bros. Farms Ltd., 2014 SKQB 81 - Court of Queen's Bench, Scherman, March 20, 2014 (QB14073)

The applicant inherited farm land from her father at his death. In 1981, the applicant's father had mortgaged the land to the respondent. In 1996, the applicant's father signed an acknowledgment and repayment agreement. The parties acknowledge that the 1996 agreement created a new limitation period from the date it was signed. In 2006, the respondent served notice of an intention to foreclose on the applicant's father pursuant to s. 12 of The Saskatchewan Farm Security Act. This service had the effect of suspending the running of the limitation period clock. The matter was not resolved in mediation and the respondent took no steps to commence foreclosure proceedings. The applicant's father died in 2012 and she commenced an application to have the mortgage discharged on the basis that the limitation period to enforce the mortgage had expired. The respondent asserts that the limitation period remains suspended. HELD: When s. 12 of The Saskatchewan Farm Security Act was enacted it was the legislature's intention that a mortgagee, to whom The Saskatchewan Farm Security Act applied, could suspend the limitation period clock from running and after serving a notice of intention to enforce its security, provided that within three years of such service the mortgagee made application to the court for an order under s. 11 permitting it to commence an enforcement action. If the three years for making such an application expires without an application being made, the limitation period begins to run again. The notice of extension in this case expired in 2009 and the limitation clock began to run again. The limitation period for the commencement of an action to enforce the respondent's mortgage has expired and the registration of the mortgage is ordered discharged.

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Real Property – Land Titles Act
Statutes – Interpretation – Improvements under Mistake of Title Act
Statutes – Interpretation – Land Titles Act, 2000

Hill v. King, 2014 SKQB 86 - Court of Queen's Bench, Gerein, March 26, 2014 (QB14076)

The plaintiffs claimed entitlement to 125 feet along Buffalo Pound Lake (2.5 acres) as registered owners pursuant to The Land Titles Act, 2000 and the defendant claimed entitlement pursuant to The Improvements under Mistake of Title Act. The plaintiffs held title to Block B of a plan and the defendant held title to Block A of the plan. The defendant made many lasting improvements to the Block B portion over many years. The issue for the Court was whether the defendant had an honest but mistaken belief that he owned the land, Block B. The plaintiff claimed damage done to their trailer and for trespassing on their land while the defendant claimed for trespassing on his land. HELD: The Court concluded that the defendant did not have an honest but mistaken belief that he owned Block B. The plan clearly shows that Block A, the defendant's, does not extend to the lake front. The defendant was noted to be astute and sophisticated so should have known this. Further, the defendant had hired a lawyer throughout who should have pointed out the limits of his title. Also, when the defendant purchased the land, the offer to purchase did not include the lakefront nor did the appraisal of the defendant's parcel. The Court concluded that neither party proved the damages they claimed and none were awarded. The Court said that in normal circumstances the defendant would be awarded compensation for his improvements; however, the Court did not make a compensation order in this case, noting that the defendant's use of the land was proper compensation.

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