The Law Society of Saskatchewan Library's online newsletter
highlighting recent case digests from all levels of Saskatchewan Court.
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Consumers Co-operative Refineries Limited v Regina (City), 2020 SKCA 111

Caldwell Barrington-Foote Kalmakoff, October 1, 2020 (CA20111)

Municipal Law - Appeal - Property Taxes - Assessments - Non-regulated Property

The appellant, the Consumers Co-operative Refineries Limited, appealed the decision of the Saskatchewan Municipal Board Assessment Appeals Committee to dismiss its appeal from the decision of the Board of Revision of the City of Regina to uphold the City's 2016 assessment of the refinery on 9th Avenue North in Regina. The assessor assessed it as non-regulated property, using the market valuation standard (MVS). The MVS involved applying a land size multiplier (LSM) to adjust for the refinery's lot size. To calculate the LSM, the assessor used the same sales of properties from the same neighbourhood as had been used by the assessor in Imperial Oil v Regina. The board upheld the assessment on the basis that the appellant had not established that the assessor had erred in fact, law or assessment principles. The committee dismissed the appeal from the board's decision and upheld the assessment. Leave to appeal to the Court of Appeal was granted on four

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[B.H. v J.H.]

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questions, being whether the committee had erred: 1) by failing to find that, in light of Imperial Oil v Regina (City) or otherwise, the 105 percent LSM curve was unreliable and should not have been applied; 2) by placing the onus on the appellant to establish that the 2016 assessment had failed to achieve equity with similar properties; 3) by applying the equity standard set out under s. 165(4) instead of the equity standard set out under s. 165(5) of The Cities Act, and 4) by ignoring or failing to consider relevant evidence, particularly of market value, when determining whether the 2016 assessment had achieved equity with similar properties. HELD: The appeal was dismissed. The committee had not committed a reversible error. The court found with respect to each question that: 1) in accordance with its decision in Imperial Oil v Regina (City), the 105 percent LSM curve was unreliable when extrapolated to properties of the size of the refinery. However, under s. 210(3) of the Act, the board was not empowered to vary the 2016 assessment because the assessor had applied an unreliable LSM. 2) The appellant bears the onus of establishing that an assessment has failed to achieve equity. In this case, the appellant's evidence indicated that the 2016 assessment might not reflect typical market conditions for similar properties and that might have been sufficient, on a balance of probabilities, to show prima facie that the assessment had not achieved equity and therefore could be sufficient to shift the onus and evidentiary burden to the respondent. The committee erred in suggesting the appellant had not displaced the onus upon it. 3) The committee correctly treated the refinery as regulated property under the Act and thus applied the equity standard under s. 165(4) whereas the assessor had mistakenly assessed it a non-regulated property and therefore applied the equity standard under s. 165(4). Under ss. 210(1.1) and 226(3) of the Act, the effect of the difference between the two standards is a slight alteration of the remedies available in a municipal tax appeal so that a board and the committee may use single property appraisal techniques to vary a regulated property assessment. Finally, 4) the committee correctly found no reversible error in the board's handling of the evidence and in finding that the appellant had failed to establish that the 2016 assessment of the refinery had not achieved equity.

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Strom v Saskatchewan Registered Nurses' Association, [2020 SKCA 112]

Ottenbreit Caldwell Barrington-Foote, October 6, 2020 (CA20112)

Professions and Occupations - Registered Nurses - Discipline - Appeal
Constitutional Law - Charter of Rights, Section 1, Section 2
Statutes - Interpretation - Registered Nurses Act, 1988, Section 26

Harmony Builders Ltd. v Progressive Automotive Service Ltd.

Heck (Meszaros) v Meszaros

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R v Sears

R v Sjoberg

Service Employees International Union - West v Saskatchewan Health Authority

Strom v Saskatchewan Registered Nurses' Association

Toronto-Dominion Bank v Kimble

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The appellant appealed the decision of a Queen's Bench chambers judge to dismiss her appeal from the decision of the disciplinary committee (DC) of the respondent, the Saskatchewan Registered Nurses' Association (SRNA) (see: 2018 SKQB 110). The DC had found the appellant, a registered nurse (RN), guilty of professional misconduct pursuant to ss. 26(1) and (2)(l) of The Registered Nurses Act, 1988. While on maternity leave from her position, the appellant had posted comments on her Facebook page regarding her concerns about the care her grandfather received at a long-term care home while he was dying and with the quality of palliative care generally. In these posts, the appellant had noted that she was an RN. She linked to a newspaper article in her post that raised the same concern. Her posts became public after she tweeted them to the Minister of Health, though she claimed that she had not known that would make the comments public. The SNRA laid the charge against the appellant after another RN, practicing at the care home, made a complaint. The SRNA investigated the complaint by interviewing other employees at the facility who said they had taken offence at the posts. The DC found that the appellant, although motivated by grief and anger, had engaged in generalized public venting about the facility and its staff through social media rather than raising her concerns through proper organizational channels. By identifying herself as an RN, she had established a link between her views and her position and was guilty of professional misconduct. The DC dealt with the appellant's submission that a finding of professional misconduct would infringe her s. 2(b) Charter rights by finding that her right to freedom of expression had been infringed, but that it was justified under s. 1 of the Charter. In the appeal of the DC's decisions to the Court of Queen's Bench, the chambers judge applied the reasonableness standard of review established in Dunsmuir. Regarding the issue of professional misconduct, the judge said that he was not to examine the approach taken by the DC to make its decision, but the ultimate decision itself, which he found to fall within the range of reasonable outcomes. Regarding whether the appellant's off-duty conduct was subject to discipline, he determined that the DC's reasoning supported its conclusion that professional misconduct had occurred and fell within the range of available decisions. By identifying herself as an RN, the appellant had linked her profession with her concerns as a granddaughter. He rejected the idea that the DC should have considered other factors. Based upon the evidence that the posts had caused other RNs to be upset, it was open to the DC to draw the inference that the posts had harmed the nurses' reputation at the facility and harmed the standing of the nursing profession. The grounds of appeal included whether the chambers judge had erred in upholding the DC's conclusion that the appellant was guilty of professional misconduct within the meaning of s. 26(1) of the Act and concluding that the DC had not erred in finding the infringement of the appellant's Charter rights were justified under s. 1. Before the appeal was heard, the Supreme Court rendered its decision in Vavilov relating to the standard of review that applies to a statutory appeal. The court invited the parties to make supplementary submissions as to the impact of Vavilov on the appeal.
HELD: The appeal was allowed, and the decision of the DC set aside. The court found that the DC erred in its finding of professional misconduct. It further found that the DC erred in its finding that the infringement of the

appellant's right to freedom of expression was justified. First, the court found that due to the impact of the Vavilov, the chambers judge erred in his choice of the reasonableness standard and, consequently, it could assess the DC's decision according to the correct standard of review. Further, the judge had erred in describing and applying the reasonableness standard. He held that he was confined to examining only the DC's final decision and not its approach. The decision as to whether Ms. Strom's conduct amounted to professional misconduct within the meaning of s. 26(1) of the Act was a discretionary decision. As such, the standard of review is that described in Rimmer, McVeigh, Okanagan and Penner, and that standard accommodates the review of the errors alleged by the appellant. In exercising its discretionary powers, the DC erred in law by failing to accord sufficient or any weight to relevant criteria concerning the imposition of professional sanctions for off-duty conduct that required a contextual analysis: that is, whether there was a nexus between the off-duty conduct and the profession that demonstrated a sufficiently negative impact on the profession or the public interest. It did not analyze the tone, content or purpose of the appellant's posts, all of which were important contextual factors when answering the question of how the comments would be understood by readers, and thus whether there was an impact of the kind necessary to establish a nexus sufficient to the purpose of the Act. It only summarized the appellant's statements as generalized public venting and gave no weight to the grief that may have motivated her. Further, it had not contested that the comments were true nor addressed whether the appellant's posts might have added to the public discourse about health care and enhanced the reputation of RNs. It did not consider the appellant's personal autonomy or freedom of speech. There was no evidence of the impact of the conduct on the profession or the public. Regarding the Charter issue, the court stated that the standard of review was correctness, not reasonableness. It found that the DC's approach failed to consider all of the contextual factors particular to the appellant's case. It did not recognize that many of her comments were both critical and laudatory and intended to contribute to public awareness and discourse. The impact of the DC's decision on the appellant's freedom of expression was serious and unjustifiably infringed upon her Charter right.

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Service Employees International Union - West v Saskatchewan Health Authority, 2020 SKCA 113

Richards Leurer Barrington-Foote, October 6, 2020 (CA20113)

Labour Law - Arbitration Board - Judicial Review - Standard of Review
Labour Law - Arbitration - Judicial Review - Appeal

The appellant, Service Employees International Union, appealed the decision of a Queen's Bench judge that quashed the decision of an arbitrator (see: 2019 SKQB 282). The appellant had filed grievances on behalf of two of its members, employees of the respondent, Saskatchewan Health Authority. Each of the employees were casually employed as continuing care aides (CCA), although neither held one of the specified qualifications, a Continuing Care Aide Certificate. Their applications for positions advertised by the respondent for permanent full-time CCAs were passed over in favour of candidates who held the Certificate but had less seniority. The arbitrator had considered the terms in the collective agreement and two Letters of Understanding (LOU) that related to the issue of qualifications, utilizing the modern approach to interpreting agreements set out in Imperial Oil, and concluded that the agreement had been breached when the employees were denied the positions. She found that the respondent had not correctly assessed the grievors according to the agreement when it ignored their equivalent qualifications and then gave the positions to an applicant with less seniority. In the judicial review of the arbitrator's decision, the parties agreed that the reasonableness standard of review should be used. The chambers judge applied it and found that the award was unreasonable because the arbitrator had failed to apply established arbitral precedent or, alternatively, did not explain her failure to follow established precedent. As well, the decision did not fall within the range of acceptable outcomes. Among the issues were whether the chambers judge correctly: 1) interpreted the award, 2) concluded that the award was unreasonable because of the arbitrator's failure to explain why did it not follow arbitral precedent, and 3) concluded that the award rendered "nugatory" the relevant provisions in the agreement and the LOU.
HELD: The appeal was granted by a majority of the panel hearing it and the order quashing the award was set aside. The court found that the arbitrator properly followed the modern approach to interpreting the agreement and justified her award with transparent and intelligible reasons that rationally accounted for the language of the agreement. The chambers judge had identified the appropriate standard of review, but without the benefit of the Supreme Court's recent decision in Vavilov that requires a reviewing court to proceed only with a correct understanding of the reasons given by the tribunal whose decision is under review. It determined with respect to each issue that the chambers judge: 1) had not correctly interpreted the award. He had misread the arbitrator's reasons when he concluded that she had conflated the requirement in the LOU for the "ability to do the work" and the provision in the agreement that established that the seniority of an employee who was able to do the work also having the necessary "qualifications." The arbitrator had treated the two as separate requirements that must be met before a candidate could lay claim to a position based on seniority; 2) had erred in concluding that the award was unreasonable because of the arbitrator's failure to explain why she had not followed arbitral precedent, because that conclusion was based on his assessment that she had conflated ability with qualifications. As she had not, it was not necessary for her to follow the rule in arbitral precedent that "qualifications are different from ability" or to explain why she did not follow it; and 3) erred in finding the award unreasonable for the same reason as provided in the previous issues. The arbitrator had not conflated the

requirements and further, had justified her interpretation of the agreement with transparent and intelligible reasons. Although the respondent had raised that the award was unreasonable for reasons other than those found by the judge, the court rejected its arguments. In dissent, Barrington-Foote J.A. upheld the chambers judge's finding that the arbitrator's decision was unreasonable. He found her interpretation that the relevant phrases in the agreement and the LOUs all held the same meaning to be incorrect.

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Toronto-Dominion Bank v Kimble, 2020 SKQB 229

Scherman, September 16, 2020 (QB20216)

Statutes - Interpretation - Saskatchewan Farm Security Act, Section 9

The proposed plaintiff, the Toronto-Dominion Bank (bank), applied for an order under s. 11 of The Saskatchewan Farm Security Act (SFSA) that s. 9(1)(d) did not apply to the various mortgages granted by the proposed defendants, the mortgagors. The mortgages owed by the proposed defendants had been in default since March 2019. The bank demanded payment accompanied by the requisite notices required by the Bankruptcy and Insolvency Act, the Farm Debt Mediation Act and the SFSA. No payments had been made since the demands were made. In compliance with the SFSA, the Farm Land Security Board conducted mediation proceedings in August 2020 and filed two separate reports with the court. The proposed defendants, two brothers and their spouses, were farmers who farmed their collective lands through a 50/50 partnership. The partnership, KBV, owned much of the equipment the proposed defendants used to farm their lands and was one of the bank's borrowers. Its debt obligation was guaranteed by the brothers and secured by their mortgages. In 2018, the partners ceased farming jointly through KBV and could not settle their differences of opinion regarding the division or sale of various KBV assets. The board's reports stated that it found that, with the benefit of the assumptions set out in the SFSA, including a 50 percent partnership split and refinancing of all of the bank's debt, there was a reasonable possibility that one of the couples could meet the obligations of the mortgage. They further indicated that the couple was making a reasonable effort to work with the bank, but the partnership settlement dispute hindered their effort to satisfy the mortgage debt. Regarding the second couple, the board concluded that the farm could not meet the mortgage obligations from cash flow, that the sale of land was required and that the couple was making a reasonable effort to work with the bank, but the partnership settlement was negatively affecting the effort to satisfy the mortgage debt.
HELD: The application was granted, and the order made that s. 9(1)(d) of the SFSA did not apply to the

proposed defendants' mortgages. The court found that it was satisfied on the evidence that the mortgagors did not have a reasonable possibility of meeting their obligations under the mortgages and had not been making a sincere and reasonable effort to meet their obligations. It decided not to give significant weight to the board's reports because it had made legal errors in them, such as assuming that the two sets of mortgagors would be responsible for only 50 percent of the debt owing by KBV when in law, each partner was responsible for 100 percent of it. Among other errors, the board failed to determine whether the proposed defendants were making a reasonable effort to meet their obligations under the mortgage and concluded, rather, that they were making reasonable efforts to work with the bank. Since the proposed defendants had not made any payment for 18 months after the demands were made, that led to the conclusion that they did not have a reasonable possibility of meeting their obligations under the mortgage, nor were they making a reasonable effort to do so.

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Heck (Meszaros) v Meszaros, 2020 SKQB 230

Megaw, September 17, 2020 (QB20209)

Family Law - Custody and Access - Variation

The petitioner and respondent each brought multiple applications regarding the parenting regime of their children. After trial in 2018, a judgment provided for a shared parenting arrangement and where the children were to attend school (see: 2019 SKQB 21). After the judgment was rendered and before the hearing of these applications, the eldest son's relationship with the respondent father was severed and had not been restored. The respondent had unilaterally ended the relationship between both sons and a psychologist. Both boys suffered from mutism and anxiety, and the petitioner had selected this psychologist with the respondent's agreement. However, the parties had reached an agreement that a psychologist in Calgary should treat the eldest children. The petitioner was in a new relationship and wanted to move to Alberta to reside with her new partner. In her application, the petitioner sought a variation of the existing order to give her primary care of the children and permit them to move with her from Regina to Alberta and transfer schools. She further requested that the respondent's parenting time be supervised as well as other relief. The respondent's application included a request for an order directing that another psychologist be appointed to treat the children.
HELD: The court determined that a viva voce hearing was required. It found that there were significant areas of contradiction between the parties and more complete evidence was necessary to decide what was in the children's best interest.

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B.H. v J.H., 2020 SKQB 231

Brown, September 17, 2020 (QB20210)

Family Law - Spousal Support - Interim

The petitioner applied for interim spousal support. She and the respondent had been married in 1982 and separated in 2004. The parties, each represented by counsel, signed an interspousal agreement (ISA) in 2006. The ISA provided that the petitioner receive monthly support payments for three years following its execution and included the option for a review of support in 2007; otherwise, the ISA extinguished any further claims. A divorce was granted in 2008. The petitioner attested in her affidavit in support of her application that she was suffering from depression and had had heart attacks in 2016 and 2017. Her annual income in 2017 had been $18,650 but by 2019, it was $3,500. In 2020 she expected income of $18,000 due to the Canadian Emergency Response Benefit. The respondent's income for the same period had been in the $200,000 range. The petitioner argued that because of the long-term marriage and the short-term duration of spousal support agreed to in the ISA, she was entitled to spousal support at this time as she was in need and the respondent had ample resources. The respondent opposed the application, saying that the petitioner's illnesses were unproven and unconnected to their relationship, and far too much time had elapsed for her support claim to proceed since he had complied with the ISA.
HELD: The application for interim spousal support was dismissed but the court directed that the matter proceed to pre-trial. It found that the petitioner had not met the threshold to obtain interim relief given the ISA and the intervening time period of 14 years. However, there were gaps in the evidence that prevented it from conducting a Miglin review and they could only be filled with viva voce evidence accompanied by cross-examination.

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Bank of Nova Scotia v Tomkewich, 2020 SKQB 232

Danyliuk, September 17, 2020 (QB20217)

Statutes - Interpretation - Land Contracts (Actions) Act, 2018, Section 7
Mortgages - Foreclosure - Leave to Commence Action

The proposed plaintiff, Bank of Nova Scotia (bank) applied for an order granting leave to commence an action for foreclosure and related relief and an order waiving the requirement on the bank to provide the mortgagor and the court with updated material as to the state of the mortgage required by s. 7 of The Land Contracts (Actions) Act, 2018.
HELD: The application for leave to commence an action in foreclosure was adjourned and the application for an order waiving the requirement for updated information regarding the mortgage debt was dismissed. The court found that the materials presented to support the first application were deficient. It found on the evidence, the mortgage was a collateral mortgage payable on demand and that the affidavit sworn by a bank manager, filed in support of the application, indicated that the bank had not made a demand upon the proposed defendants, the mortgagors, either verbally or in writing and, therefore, default had not been triggered. As well, there was no proof of service of the notice of hearing upon one of the two proposed defendants. The matter was adjourned to give the bank one last opportunity to remedy the defects. In dismissing the application to waive s. 7 of the Act, the court referred to its reasons given in First National Financial GP Corporation v Peterson (see: 2020 SKQB 222).

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R v Rohovich, 2020 SKQB 233

Meschishnick, September 18, 2020 (QB20219)

Criminal Law - Judicial Stay Application - Appeal
Criminal Law - Indictment and Information - Endorsements

The appellant appealed the dismissal of his application to have the charges against him stayed because of a breach of s. 789(2) of the Criminal Code and his conviction for impaired driving following trial in Provincial Court (see: 2019 SKPC 47). When the appellant first appeared in Provincial Court, the judge asked him whether he was planning to hire private counsel or apply for Legal Aid, and inquired of the Crown if this was a situation where custody was possible. The Crown responded that it was a possibility so the judge asked if it was a "notice situation" and the Crown confirmed that it was. The judge explained to the appellant that he had asked these questions because Legal Aid would only represent him in a notice situation or if the Crown were

seeking jail time. The judge wrote the words "possibility of custodial situation - notice situation" in the remarks section of the endorsement. The appellant argued that the entry violated s. 789(2) of the Criminal Code. Regarding the conviction appeal, the appellant advanced a number of grounds, amongst which were whether the trial judge had erred: 1) in overruling an objection to a leading question. The Crown had asked the arresting officer what was the basis of the arrest and the defence objected to it as constituting a leading question; 2) in failing to consider all of the evidence, particularly evidence elicited on cross-examination, and failing to properly assess the credibility of the arresting officer. The appellant relied upon R v Nelson in this ground; and 3) by ruling that the certificate of qualified technician, which violated s. 320.34 of the Code, was admissible. The judge ruled that any failure to comply with the requirements of the section did not affect the admissibility of the certificate.
HELD: Each of the appeals was dismissed. The court found with respect to the dismissal of the stay application that it agreed with the conclusion of the Provincial Court judge that the endorsement in question was not part of the information. It found that the reference to "notice situation" which was entered into the court record was not sworn information, nor was it entered on the basis of representation received under oath, and thus could not be part of an "information" as contemplated by s. 789(2) of the Code. It had not met the formalities required by s. 789(1)(a) of the Code. Regarding the conviction appeal, it found that the trial judge had not erred: 1) when he overruled defence counsel's objection, as the question asked by the Crown was not leading; 2) by failing to consider all the evidence, as the findings he made were based upon evidence to support them. He may not have mentioned that he considered the cross-examination evidence and why he had not found it to be of significance in assessing the officer's credibility, but deference was due to his finding that she was a credible witness. The verdict was not unreasonable and was supported by the evidence. The case did not fall within the principles set out in Nelson; and 3) had not erred in admitting the certificate, as failure to disclose does not automatically affect admissibility.

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Harmony Builders Ltd. v Progressive Automotive Service Ltd., 2020 SKQB 222

Popescul, September 23, 2020 (QB20221)

Statutes - Interpretation - Commercial Liens Act

The applicant, Harmony Builders Ltd., applied pursuant to The Commercial Liens Act to have the commercial lien registered by the respondent, Progressive Automotive Service, against its 2014 Ford F350 truck (F350

truck), wholly discharged without payment into court of any monies. The applicant argued that the lien was invalid and should be discharged because it related to storage charges incurred under suspicious circumstances. The respondent argued that the charges for storage and repair were legitimately rendered. The president and director of the applicant had separated from her husband and was involved in family law proceedings. In December 2019, the court granted the husband's application for an order of exclusive possession of the F350 truck currently in his possession. It ordered that the F350 truck not be sold or seized or removed from the husband's possession for four months to give him time to acquire his own vehicle. In May 2020, the applicant's owner received an invoice from the respondent for storage fees of almost $8,000 and learned that the F350 truck had been stored in the respondent's compound since September 2019 when her husband had left it there. The applicant's owner was suspicious of the claim because neither she nor the applicant had received any invoices before and the owner of the respondent was her husband's close friend. She tendered evidence, consisting of pictures and a video that showed her husband driving the F350 truck, proving that it had not been stored continuously at the respondent's compound but was being used by her husband. The husband deposed in his affidavit that he had not driven the F350 truck since September 2019 when he left it at the compound to be repaired and consented to storage fees being charged. He had acquired a 2012 Ford F150 truck which he used as his personal vehicle and its close resemblance to the F350 truck was responsible for it being misidentified in the pictures and video.
HELD: The application was granted. The court ordered that the lien be discharged against the F350 truck without payment into court of any monies and the respondent to deliver it into the applicant's possession. Although the lien was held to unenforceable, the respondent's right to sue on the debt was unaffected by the order. It found that, based upon the evidence before it, it could not resolve whether the F350 truck had been continuously in the respondent's compound since September 2019. However, it exercised the discretion given to it under the Act to conclude that due to the suspicious circumstances, the lien should be removed without resolving the question respecting the underlying debt.

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R v Sears, 2020 SKQB 239

Robertson, September 24, 2020 (QB20222)

Criminal Law - Trial Procedure - Witness Testimony - Videoconference

The Crown applied pursuant to s. 714.2 of the Criminal Code for evidence to be given by the complainant via videoconference in the presence of the parties. Both accused opposed the application. Counsel for Sears argued that there was a potential that the accused's right to a fair trial would be compromised by allowing the complainant to testify other than in person. The two accused had been charged with committing aggravated assault on the complainant contrary to s. 268 of the Code. The alleged offence occurred in Estevan. The complainant was resident in Minot, North Dakota. Due to the restrictions imposed by COVID-19, the complainant would have to self-quarantine for two weeks if he were given permission to cross the border, and upon his return to Minot, he might have to spend another two weeks in quarantine. The Crown had arranged for his testimony to be given at the courthouse in Minot and it had been tested as workable.
HELD: The application was granted. The court was satisfied that the circumstances caused by the pandemic justified the use of remote testimony and that receiving the evidence by videoconference would not be contrary to the principles of fundamental justice.

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R v Sjoberg, 2020 SKQB 236

Klatt, September 22, 2020 (QB20218)

Criminal Law - Application for Court-Appointed Counsel

The accused was charged with two counts of possession for the purpose of trafficking heroin, fentanyl and cocaine, contrary to s. 5(2) of the Controlled Drugs and Substances Act. He applied for court-appointed counsel. Initially the accused had been represented by Legal Aid and had elected to be tried by judge and jury in the Court of Queen's Bench. During various pre-trial conferences that followed, the accused was represented by private counsel until March 2020, when the lawyer was given leave to withdraw. The accused's application to Legal Aid for representation was denied, whereupon he brought an application for court-appointed counsel. When he first appeared, the court adjourned the hearing and invited him to file supplemental information regarding his income, debts and efforts to find financial assistance and private counsel to represent him. At the resumption of the hearing, the accused did not file the supplemental information. The accused was 23 years of age and had a grade 12 education. He argued that he did not have the knowledge to represent himself.
HELD: The application was dismissed. The court found that although the charges were serious and the election of trial by judge and jury would require legal representation, the accused had not provided the necessary evidence regarding his employment and debts. He had failed to establish on a balance of

probabilities that he was indigent after being given the opportunity to supplement the information that he initially filed.

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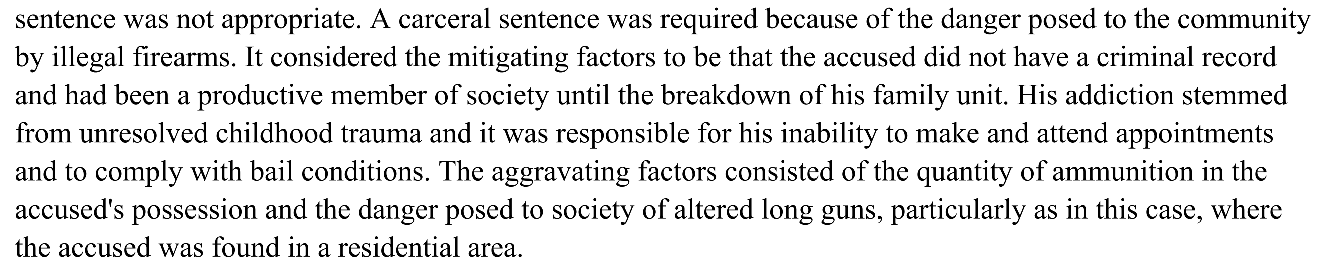
R v McKenzie, 2020 SKPC 31

Evanchuk, August 25, 2020 (PC20031)

Criminal Law - Firearms Offences - Sentencing

The accused pled guilty to being an occupant in a vehicle in which he knew there was a prohibited firearm, contrary to s. 94(1)(a)(i) of the Criminal Code, and to possession of a small amount of methamphetamine. After being released from custody, the accused breached conditions and pled guilty to that as well. At the time of the offence, the accused was 24 years old. The police had stopped a vehicle in which the accused was a passenger after observing that it was being driven erratically through a residential neighbourhood in Regina. They could see live ammunition in the cup console and during a search of the vehicle, the police found a sawed-off .22 LR calibre firearm in the trunk. The accused acknowledged that the firearm belonged to him and during a search of his person, the police found 31 live cartridges in his pockets. He was charged with various firearms and drug offences and released from custody on an undertaking. Less than a week later, the accused was arrested after being observed as a passenger of a stolen vehicle. After his arrest, a small amount of methamphetamine was found on his person. The Crown argued that a global 36-month sentence was appropriate regarding the firearms offences with sentences for the other charges to run concurrently. The defence counsel submitted that a lengthy conditional sentence followed by a period of probation was a fit sentence because of the accused's background and because he did not have a criminal record. He had had a troubled upbringing because his mother suffered from alcohol and substance addictions. He was mentally and physically abused during his childhood and adolescence. He began experimenting with cocaine, MDA and other illegal substances from the age of 13. The accused had been able to overcome his addictions and work full-time as a welder and raise a son during his early twenties, but after his marital relationship broke down, he began using drugs again. Since the charges were laid, the accused had expressed remorse and had begun to address his addiction.
HELD: The accused was sentenced to 18 months for the s. 94 offence and concurrent sentences for the remainder of the offences. He received an 18-month probation order with conditions. The court found that the s. 94 offence in the circumstances of this case fell within the true crime category and that a conditional



sentence was not appropriate. A carceral sentence was required because of the danger posed to the community by illegal firearms. It considered the mitigating factors to be that the accused did not have a criminal record and had been a productive member of society until the breakdown of his family unit. His addiction stemmed from unresolved childhood trauma and it was responsible for his inability to make and attend appointments and to comply with bail conditions. The aggravating factors consisted of the quantity of ammunition in the accused's possession and the danger posed to society of altered long guns, particularly as in this case, where the accused was found in a residential area.

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