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The appellants, members of the Yellow Quill First Nation, appealed the 2019 decision of a Queen's Bench judge to dismiss their application under s. 39 of The Child and Family Services Act to vary or terminate a permanent committal order made in 2013 regarding two of their children. They had been apprehended by the respondent, the Ministry of Social Services, in 2011. At that time, the appellants were addicted to drugs and alcohol, and the father's violence was a problem in the home. The two children were placed in the foster home of D.K. Later, another child of the appellants was placed in D.K.'s care soon after her birth in 2013 due to the mother's use of drugs. The appellants consented to an order permanently committing her to the respondent's custody in 2016, and they did not apply for variation of that order. All of the children had remained together in

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the same foster home since. The appellants applied to the Court of Queen's Bench in 2016 regarding the two older children because there had been a material change in circumstances. A trial was held in the spring of 2017 wherein the appellants described the positive changes they had made in their lives since 2013. They received counselling, began the methadone program and attended a treatment centre. They testified that they had dealt with the problem of violence and were residing together in a stable relationship with their other young children. They called as witnesses an outreach worker and a family support worker who stated that the appellants were working hard to make positive changes to be good parents and follow recommendations made after an Opikinawasowin (OPIK) meeting. The respondent submitted evidence from the 2014 OPIK meeting with Aboriginal Elders in which the appellants had been required to participate as a condition of a court order. The Elders' report stated that the appellants would need to address their addiction and domestic violence problems before they would support the children's return and recommended, among other things, that the parents participate in treatment and programs. The Elders reviewed the situation six months later to report a lack of progress made by the appellants in addressing their issues. They expressed concern that the relationship was still violent, whereupon the respondent resumed the process of having the two children placed for adoption by D.K. The respondent called child protection workers, a counsellor, an Elder from the OPIK review and a Ministry official who had prepared a protection assessment report. Their testimony acknowledged the efforts made by the appellants. It confirmed they had shown they were capable of parenting their other children. However, the author of the assessment report opined that the amount of counselling the appellants had received was insufficient to make the long-term change required. She also described several incidents of violence involving the father. She repeated information supplied by an Elder who had counselled the parties as a condition of the OPIK that contradicted their testimony. The judge reserved his decision and delivered his reasons two years after the trial. Relying in part on the OPIK Elders' recommendation, he concluded that the appellants had failed to demonstrate either that there had been a material change in circumstances since the committal decision or that the best interests of the two children would be served by varying or terminating the permanent committal order. The appellant's grounds of appeal were that the judge erred: 1) in failing to correctly apprehend the evidence in a variety of ways; 2) in failing to find that there had been a material change in circumstances; 3) in determining that it was not in the best interests of the two children to be returned to their care; and 4) by violating their s. 7 Charter rights in taking two years to render his decision. The respondent and the two children, currently aged 13 and 11 years, opposed the appeal. The children expressed their wish to remain with their sister and be adopted by D.K.
HELD: The appeal was dismissed. The court established that, under s. 39 of the Act, the trial judge possessed discretionary powers. Therefore, the standard of appellate review was deferential, subject only to review on the bases set out in L.S.O. v S.O. The court found that the trial judge had not erred: 1) in his treatment of the evidence of a number of the witnesses, because judges are not required to address every piece of evidence, and appellate courts begin with the assumption that a judge has considered and reviewed all the evidence. While he

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could have referred to the individual witnesses' evidence, he made it clear that he accepted the evidence of the OPIK review that the appellants had not met the recommendations. The judge considered the appellants' evidence that there was no violence in their home and rejected it. He had also admitted the OPIK and protection assessment reports, although they contained hearsay. The former was admissible under the statutory exception for business records, but the latter was not. Nonetheless, it was entitled to weight in the judge's analysis of whether there had been a material change. Further, the judge was entitled to consider the findings of fact made by the judge who had made the committal order under the two-step analysis required under s. 39(1); 2) in finding that there had been no material change by considering the entire period from the committal decision to the application. In the analysis of whether a material change had occurred, he took into account the purpose of the Act provided in s. 3 to preserve the family unit but noted that it was subject to the children's best interests. The onus was on the appellants to establish the requisite change, and despite the evidence of positive improvements, the judge possessed the discretion to decide it was not sufficient; and 3) in finding that it was in the best interests of the children not to be returned to their parents because he reviewed the factors set out in s. 4 and the children's evidence of their wish to live with D.K. and their sister. He did not underemphasize the importance of their cultural heritage. Concerning the fourth ground, the court held that it failed because it was raised for the first time on appeal, and the appellants had not led any evidence to show that the judicial deliberation delay prejudiced them. They had not taken any steps to address the issue of the delay. The judge was entitled to the presumption of integrity.

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R v Protz, 2020 SKCA 115

Ottenbreit Caldwell Leurer, October 7, 2020 (CA20115)

Criminal Law - Controlled Drugs and Substances Act - Possession for the Purpose of Trafficking - Appeal - Grounds for Arrest

The appellants appealed their respective convictions for possession of cocaine and methamphetamine for the purpose of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act. They challenged the trial judge's finding in a voir dire that there were reasonable grounds for their arrest (see: 2019 SKPC 26). The grounds consisted of information provided by three different confidential informants who supplied two RCMP officers with tips that the appellant, Protz, was selling cocaine in Yorkton and that the appellant, Ford, was working with him. After the officers began their investigation of the appellants, they each received information

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from their respective sources regarding the appellants' plans to go west to purchase drugs to bring back to Yorkton that ultimately led to the police stopping the appellants in their vehicle as they returned from Alberta and during a search of it, finding a substantial quantity of cocaine and methamphetamine. The appellants submitted that the admissibility of the evidence of the drugs seized upon their arrest was unlawful because the police did not have reasonable grounds for their arrest without warrant and had thereby violated their ss. 8 and 9 Charter rights and applied for the evidence to be excluded under s. 24(2). The trial judge determined that the arrest was lawful and no Charter breach occurred and admitted the evidence. The appeal was based upon whether the trial judge had erred in finding the police had reasonable grounds to arrest the appellants without warrant.

HELD: The appeals were dismissed. The applicable standard of appellate review in this case was whether the trial judge had made a palpable and overriding error in his findings of fact and whether the facts as found amounted to reasonable grounds to arrest under s. 495(1)(a) of the Criminal Code, reviewable on a standard of correctness. Where a decision to arrest is based on information provided by confidential information, the court must review the factors set out in DeBot: the compelling nature of the information; the credibility of the informant; and the corroboration of the information. The court found that trial judge had not erred in concluding there were reasonable grounds for arrest after he conducted this review and correctly determined that all three factors were satisfied.

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R v Stewart, 2020 SKCA 116

Jackson Barrington-Foote Kalmakoff, October 13, 2020 (CA20116)

Criminal Law - Motor Vehicle Offences - Dangerous Driving Causing Death - Conviction - Appeal
Criminal Law - Evidence - Identity of Accused - Appeal

The appellant appealed his convictions after trial by a Provincial Court judge for dangerous driving, impaired driving and driving while over the legal limit causing the death of two people and causing bodily harm to a third person (see: 2018 SKPC 65). The identity of the driver of the vehicle was the sole issue at trial. The appellant had not denied that he was impaired nor that he drove the vehicle on the day of the accident but testified that he was not driving when it occurred. The trial judge rejected his evidence and concluded that he was the driver based on circumstantial evidence. The grounds of appeal were that: 1) the verdict was unreasonable within the meaning of s. 686(1)(a)(i) of the Criminal Code because there were fundamental flaws

in the reasoning. The trial judge made findings of fact incompatible with the evidence that had not been contradicted nor rejected. The appellant argued that the judge's acceptance of two witness' evidence of when and where they saw the vehicle and their eventual arrival at the accident scene led her to flawed reasoning and rejection of the appellant's evidence that he had stopped the vehicle for a very brief time to change places with a passenger who was driving it when the accident happened. He also submitted that the verdict was unreasonable because the Crown's case on driver identity was circumstantial and that the Crown failed to prove beyond a reasonable doubt that there was no other rational inference but that he was the driver.
HELD: The appeal was granted. The court quashed the convictions and ordered a new trial. The court found that the verdict was unreasonable within the meaning of s. 686(1)(a)(i) of the Code. The trial judge's reasoning was flawed. Her reconstruction of the timing of events reported by the Crown's witnesses was incorrect and so, therefore, was her conclusion that there had not been enough time to permit the appellant and the passenger to switch places as driver. Regarding the issue of circumstantial evidence of the identity of the driver, the court noted that if the judge had not committed the error, she might not have rejected the appellant's evidence and concluded, on the totality of the evidence, that the Crown had proved his guilt was the only reasonable inference. In this case, it would not be appropriate to acquit the appellant of the charges: the correct remedy was to remit the matter to Provincial Court for a new trial.

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Phillips Legal Professional Corporation v Schenher, 2020 SKCA 117

Ottenbreit Ryan-Froslie Leurer, October 15, 2020 (CA20117)

Civil Procedure - Court of Appeal Act, 2000, Section 12
Civil Procedure - Court of Appeal Rules, Rule 51
Civil Procedure - Appeal - Costs

The appellant, Phillips Legal Professional Corporation, was successful in two appeals against the respondent, Schenher, in which it had requested an amendment to the formal Queen's Bench judgment rendered against the respondent and another defendant, Schulz. Its second appeal was against a Queen's Bench judgment that determined it did not have a valid solicitor's lien regarding the monies it held in trust (see: 2020 SKCA 87). In this application, the appellant sought costs for those appeals. The issues were whether: 1) the Court of Appeal has authority to grant costs to the appellant with respect to the Queen's Bench decision; and 2) costs, if any, would be awarded for the proceedings in the Court of Appeal and if so, what award would be appropriate.

HELD: The appellant was awarded costs. The respondent was ordered to pay to the appellant: $2,200 for the Queen's Bench proceedings and $6,387.50 for the Court of Appeal proceedings. The court found with respect to each issue that: 1) it had the power pursuant to s. 12 of the Court of Appeal Act, 2000 to make any decision that could have been made by the court appealed from. As the appellant was successful in overturning the Queen's Bench decision, it was entitled to costs under Queen's Bench rule 11-7(1); and 2); and 2) the appellant was entitled to costs in the appellate proceedings. The request by the appellant for enhanced costs on the ground that it had made reasonable offers of settlement that were not accepted by the respondent was declined because the offers were conditional on the respondent admitting controverted facts with which he disagreed. The appellant's draft bill of costs respecting its appeals assessed under Column 2 of the Court of Appeal tariff was appropriate pursuant to Court of Appeal rule 54(1)(b) because non-monetary relief was also granted. The court reduced the appellant's costs it claimed for an application to lift a stay and charges for correspondence and photocopying.

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Kelln v Mryglod, 2020 SKQB 237

Brown, September 23, 2020 (QB20220)

Civil Procedure - Queen's Bench Rules, Rule 1-3, Rule 3-81
Professions and Occupations - Barristers and Solicitors - Confidentiality - Conflict of Interest - Application for Removal

Each of the parties brought applications. The respondent, the former common law spouse of the petitioner, applied to have the petitioner's lawyer disqualified from acting for her in this family law action. He submitted that the lawyer had represented him between 1997 and 1999 during a divorce from his then spouse and that he had provided the lawyer with confidential information regarding his property and business interests that could now be used to prejudice his interests in this action, commenced in 2017. The petitioner applied to have the family law action consolidated with the civil action in which the respondent sued her for the return of a computer. She asserted that it was family property and, regardless, she had a right to it. She and the respondent had separated in 2016 after 11 years of cohabitation and she issued her petition for interim spousal support. The respondent was ordered to pay such support to her in the amount of $2,000 per month and to file a property statement within 20 days (see: 2017 SKQB 241). The respondent's appeal of that decision was dismissed as abandoned. As he failed to comply with the order, the court found the respondent in contempt and

ordered him to provide it by February 2020. His appeal of that decision was also dismissed. In June 2020, the respondent filed a property statement that was unsworn, incomplete and did not comply with the Queen's Bench Rules. At the time of his application regarding the petitioner's counsel, he had still not filed a sworn property statement.
HELD: The respondent's application was dismissed and the petitioner's application was granted. The court found that the respondent and the petitioner's lawyer had had a solicitor-client relationship 18 years earlier. The confidential information that the respondent claimed to have divulged to the lawyer was the same information that he had been trying to keep from the petitioner in this proceeding, did not qualify as confidential and could be used to his prejudice. The respondent had not established the information that he conferred to the lawyer was sufficiently related to this action and furthermore, he could not be prejudiced due to the passage of time. There was no good reason to deprive the petitioner of her choice of counsel, particularly because the respondent had not objected to the lawyer during the previous two years of proceedings and was now doing so in order to delay the action. In her application, the petitioner had demonstrated that the respondent's civil action against her had a real connection to the family law proceeding as required by Queen's Bench rule 3-81. Consolidating the actions achieved the objectives of the Queen's Bench Foundational Rules 1-3(1) to 1-3(4).

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A.A.O. v O.A.A., 2020 SKQB 248

Mitchell, August 31, 2020 (QB2032)

Family Law - Child Custody and Access - Interim
Family Law - Child Support - Determination of Income - Interim
Family Law - Spousal Support - Interim

The parties were married in 2009 and separated in 2018. The wife petitioned for divorce, custody, spousal and child support in January 2019. The respondent filed his answer and counter-petition, agreeing to all the requested relief but for the proposed custody and access. In December 2019, the petitioner applied, on an interim basis, for joint custody, primary care with reasonable access to the respondent upon reasonable notice to her, child and spousal support. The two children of the marriage had resided with the petitioner since the separation. The respondent agreed to the divorce and interim joint custody. He rejected the petitioner's proposal regarding access. The petitioner submitted that he had been an uninvolved parent during the marriage

and rarely saw the children after they separated. She deposed that the children had not been well cared for by him when they stayed at his residence and she proposed to continue to limit his access to 24 hours every other weekend and three hours after school one day each week. The respondent disputed the description of his parenting and said that petitioner controlled how and when he could have time with the children, often failing to tell him of their activities to prevent him from attending them. In terms of background to establish their respective incomes for the purposes of setting interim child and spousal support, the petitioner and the respondent had lived in London, where the petitioner earned a very high salary working as a petroleum engineer but the respondent had trouble obtaining full-time employment as a psychiatrist. He moved to Regina in 2013 to commence a practice and a year later the petitioner moved there with the children and her mother. She was unable to find work as a petroleum engineer and had started her own company to create food for people with medical conditions. In her financial statement, the petitioner attested that her net taxable income in 2017 was $292,500 and it was attributable to income-splitting between the parties for income tax purposes. As at January 2019, her annual income from her company was approximately $35,000. The respondent argued that income of $50,000 should be attributed to her as she should be able to work as an engineer regardless of whether positions were available because of the downturn in the oil and gas sector. In addition to his employment income, the respondent obtained revenues from his medical professional company, so that he currently earned a gross income of approximately $1,000,000. The petitioner contended that the entirety of this pre-tax corporate income should be imputed to the respondent, thereby entitling her to $28,400 per month in spousal support.

HELD: The court granted the divorce and ordered that the parties have interim joint custody. It also ordered that in this interim application, it would adhere to the status quo in the absence of evidence of any risk, so that the primary residence of the children would remain with the petitioner. The respondent was to have weekly parenting time which was to increase gradually over a number of months in order to meet the maximum contact principle. Regarding the determination of the parties' incomes, the court declined to impute income to the petitioner because of insufficient evidence pertaining to positions in the engineering field or whether she was intentionally underemployed and accepted her income as $35,000. It considered the respondent's income under s. 18 of the Guidelines and established it as approximately $634,300 after accepting his most recent income at $1,000,000 and permitting certain business deductions from it. He was ordered to pay the petitioner $7,740 per month in child support and 93 percent of s. 7 expenses. The petitioner had shown that she was entitled to spousal support on a compensatory and non-compensatory basis. The respondent was ordered to pay her $7,500 per month until further order or written agreement of the parties.

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Babey v Babey, 2020 SKQB 240

Megaw, September 25, 2020 (QB20223)

Family Law - Family Property - Contract - Enforcement

The parties separated and the action between them commenced in 2017. No substantive applications had been brought by either of them until the petitioner husband brought this interlocutory application seeking a judgment giving him sole ownership of a cabin and some recreational craft based upon a written agreement between the parties whereby the respondent agreed to sell her interest in those properties to him. He sought enforcement of the agreement pursuant to s. 29 of The Queen's Bench Act, 1998 (QBA). The agreement in question had been composed and written by petitioner in the style of a bill of sale on the spur of the moment after visiting the cabin and finding the respondent there. Although both parties had lawyers, the lawyers had not been consulted beforehand. If unsuccessful in his application the petitioner sought an order pursuant to s. 40 of The Family Property Act (FPA) vesting the property in his name or providing him with exclusive possession of it under ss. 6 and 26. He also sought orders related to the children's schooling and the times at which each party would have the children during the 2020 Christmas holidays and in the future, which he raised because he was before the court on the substantive family property issue. The respondent opposed the application, denying that there was an enforceable agreement to sell her interest in the specified property. There was no need to bring any application regarding parenting issues as there had been neither discussion nor disagreement on those topics.
HELD: The petitioner's applications were dismissed although the court granted an order prescribing the sharing of the children's time during Christmas 2020. The determination of whether an enforceable agreement had been created could not be undertaken on the basis of affidavit evidence in a chambers application. That issue, together with the other family law issues, should proceed to pre-trial and if necessary, trial.

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Hill Top Manor Ltd. v Tyco Integrated Fire and Security Canada, Inc., 2020 SKQB 241

Tochor, September 25, 2020 (QB20224)

Civil Procedure - Queen's Bench Rules, Rule 5-12

The defendant applied pursuant to Queen's Bench rule 5-12 for an order permitting it to cross-examine the plaintiff's representative on its affidavit of documents. The plaintiff commenced a claim for breach of contract against the defendant in 2017, alleging that it failed to install a sprinkler system in a personal care home in 1998, but the plaintiff had only discovered the alleged failure in 2016. The defendant denied the breach and pleaded that the plaintiff failed to commence its action within the applicable limitation period. It brought an application pursuant to Queen's Bench rule 7-9 to strike the claim for failing to disclose a reasonable cause of action, but it was dismissed (see: 2019 SKQB 223). In this application, the defendant submitted that cross-examination restricted to the affidavit of documents would assist the parties in determining the limitations issue. The plaintiff opposed it on the ground that it was a collateral attack on the decision to dismiss the defendant's previous application and that the defendant should not be allowed to select an isolated issue for cross-examination and should only be allowed to cross-examine in the context of formal questioning under the rules.

HELD: The application was granted. The court found that the cross-examination on the affidavit of documents would be consistent with the interests of justice and with the Foundational Rules. Although there had been no judicial consideration of Queen's Bench rule 5-12(5), the rule provides discretion to the judge to permit cross-examination on the affidavit of documents. Utilizing the cases decided under Queen's Bench rule 6-13, it noted that the court may exercise its discretion to permit cross-examination on an affidavit if it were established that it would assist in resolving the issue before it. In this case, the chambers judge's decision in the defendant's previous application had not ruled on the question of whether the limitation period had been breached. Permitting the defendant to cross-examine on the affidavit of documents may provide important evidence on the limitation issue, which could support an application for summary judgment or refute that the limitation period was breached and narrow the remaining issues for trial.

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Dabao v Investigation Committee of the Saskatchewan Registered Nurses' Association, 2020 SKQB 242

McMurtry, September 25, 2020 (QB20225)

Professions and Occupations - Registered Nurses - Discipline - Appeal
Administrative Law - Judicial Review - Duty of Fairness - Legitimate Expectation

The applicant, a registered nurse, applied for judicial review of a decision of the respondent, the Saskatchewan Registered Nurses' Association, to refer a decision made by its Investigation Committee (IC) on January 9, 2020 to a discipline hearing and abandon a Consensual Complaint Resolution Agreement (CCRA). On the first hearing date of the application, the applicant had sought and received an interim injunction under Queen's Bench rule 3-60 prohibiting the IC from proceeding to a disciplinary hearing until the judicial review decision had been rendered. This matter had arisen after the IC had investigated some complaints against the applicant in 2018 and 2019. It recommended to the Discipline Committee (DC) that she enter into a CCRA. The draft CCRA was sent to the applicant on November 1, 2019. One of its provisions stated that if the CCRA were signed by November 6, the IC would direct that the DC take no further action concerning the matter as long as the applicant complied with the CCRA conditions. The applicant's counsel obtained an extension to November 29 to review it. Before the deadline, the applicant's counsel requested that several clauses be amended. The IC declined but agreed to extend the deadline to January 2, 2020, which would be the final extension. The SRNA office would be re-opened that day after the Christmas holidays. On December 31, the applicant's counsel emailed the investigator to say that she would still like the SRNA to consider amending the CCRA, but the applicant would sign it if the IC refused. The applicant did not provide the signed copy as required by the deadline. No response was received from the email of December 31 until January 17 when the IC informed the applicant by letter that it had met on January 9 and decided to refer the matter to a discipline hearing. Her counsel advised the investigator that the decision was unfair and unreasonable in the absence of a reply to her December 31 email. If the IC refused to make changes, the applicant should be allowed to sign the CCRA per her expressed intention. The investigator informed the applicant that the IC had considered the email at their meeting but decided to send the complaints to a hearing. It realized the significance of its decision and its impact on the applicant but was committed to its process and maintaining a consistent approach. The issue was whether the IC acted unfairly by denying the applicant an opportunity to sign the CCRA, thwarting her legitimate expectation that she could comply with the January 2 deadline by agreeing to sign it by that date. The SRNA asserted that the duty of fairness at an investigatory stage is limited to a duty to provide information about the complaint being investigated and an opportunity to respond. The decision to refer the matter was made because of the applicant's continued requests to amend the CCRA and her failure to sign it by the deadline. The parties agreed that a duty of procedural fairness applied to the processes used by the IC. HELD: The application was dismissed. The court noted that no assessment of the standard of review is required when procedural fairness is at issue. It reviewed the applicant's circumstances in relation to the five factors set out in Baker. Considering the fourth factor, the legitimate expectations of the person challenging the decision, the court found that the IC had not established a legitimate expectation on which it failed to follow through. The applicant could not have had a reasonable expectation that the January 2 deadline would be extended again, and it was not reasonable for her to expect to sign the CCRA before the deadline given the contents of the December 31 email.

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West v Saskatchewan (Ministry of Health), 2020 SKQB 244

Robertson, September 25, 2020 (QB20229)

Statutes - Interpretation - Freedom of Information and Protection of Privacy Act

The appellant, a lawyer, filed an originating application that sought an order, pursuant to s. 58 of The Freedom of Information and Protection of Privacy Act (Act), for release of certain records held by the Ministry of Health of the respondent Government of Saskatchewan. The appellant had originally applied for access to the Ministry for records concerning Saskatchewan's participation in the pan-Canadian Pharmaceutical Alliance's (pCPA) deliberations relating to the pCPA's Competitive Value Process for Drugs for Gaucher Disease. The Ministry's response stated that portions of the records had been withheld under ss. 13(1)(b), 14(a), 17(1)(a)(b)(c), 19(1)(b)(c)(i)(i)(iii), 22(a)(b and (c). It released 114 pages of records, most of which were redacted. The Office of the Information and Privacy Commissioner (OIPC) reviewed the Ministry's response at the appellant's request. It issued a review report that found that ss. 17(1)(b)(i), 18(1)(e) and 22(a) of the Act applied to portions of the records and recommended release of the rest. The Ministry advised OIPC that it would not comply with the recommendations, continued to assert the claimed exemptions and indicated it would withhold the information. The appellant then filed this application. After the hearing, the court reserved its decision and ordered that the records be provided to it under seal for review in camera. After completion of the review, the hearing resumed and the deponent of the respondent's affidavit regarding the claimed exemptions was questioned.
HELD: The appellant's appeal was allowed in part. The court reviewed the provisions of the Act under which the respondent had claimed exemptions and the 19 documents to which they applied and ordered that six records be released and the remainder continue to be withheld. The effect of the decision was to be stayed for 30 days to permit the respondent to review it and the stay would continue if an appeal were taken against it.

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Robillard v Watt, 2020 SKQB 245

Klatt, September 28, 2020 (QB20227)

Landlord and Tenant - Damages - Appeal

The appellant tenant appealed the decision of a hearing officer ordering him to pay damages to the respondent landlord in the amount of $1,148.00 pursuant to s. 70 of The Residential Tenancies Act, 2006 but also ordering that the appellant's security deposit be disbursed to him (see: 2020 SKORT 1211). At the hearing the landlord gave evidence that when the appellant vacated the rental unit in October 2019, having lived in it for 13 years, the premises were in a deplorable state as it had never been cleaned and that there was a foul smell. She submitted an invoice she paid to have the unit cleaned and for the cost of running an ozone machine for two weeks to support her claim for damages. The appellant asserted that no inspection of the unit had been conducted when he moved in and it was in very bad condition but he had been desperate at the time. He argued that the photographs of its condition submitted into evidence by the respondent showed neither that it was bad nor that it was in worse condition than it had been when he moved in. The officer disagreed, and said that the photographs clearly depicted that the premises were in poor condition and supported the respondent's evidence. Among the grounds of appeal were that the hearing officer failed: 1) to consider s. 49(7) of the Act and the depreciation table in determining whether the respondent's claim was reasonable; 2) to consider s. 49(1) of the Act requiring the landlord to maintain the rental unit in a habitable condition; and 3) to consider s. 70(6) of the Act, specifically the appellant's disability and financial situation, in regard to his ability to leave the unit in a reasonable state upon leaving it.
HELD: The appeal was dismissed. The court found with respect to each issue that the appellant failed to establish that the officer erred in failing to consider: 1) s. 49(7) because the respondent's claim was not for expenses she incurred for repairs but for excessive cleaning necessary to make the unit habitable. The depreciation table is only relevant to assessing damage for the replacement of property and does not assist in determining damages if a tenant failed to keep the premises clean over a 13-year term; 2) in failing to consider s. 49(1) as it does not impose an obligation on the landlord to clean the unit while it is occupied. Neither party argued that the premises were in a state of disrepair at the beginning or end of the tenancy. The appellant presented no evidence to support his claim that the unit was in no worse condition than when he moved in; and 3) to consider the appellant's disability and financial state, because the argument had not been put to the officer and no evidence tendered.

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R v Beaulieu, 2020 SKQB 246

Danyliuk, September 29, 2020 (QB20230)

Criminal Law - Self-Represented Litigant
Criminal Law - Conduct of Trial - Appeal

The appellant had approached an undercover police officer posing as a prostitute to inquire about her rates. Officers overseeing the operation were notified and they arrested the appellant. At trial, the appellant represented himself, only questioned one of the three police officers who testified on behalf of the Crown and did not call any evidence. He was represented by counsel on his appeal. The grounds of appeal were: 1) whether the appellant should be allowed to adduce fresh evidence; 2) whether the trial judge erred by failing to provide sufficient guidance to the appellant; 3) whether the trial judge erred in misapprehending the evidence such that the appellant ought not to have been convicted; and 4) whether the trial judge erred in sentencing the appellant to a $200 fine and not canvassing the possibility of a conditional discharge. The parties agreed that the grounds alleged errors of law and therefore the standard of review was correctness.
HELD: The appeals from conviction and sentence were dismissed. The court found with respect to each issue that: 1) fresh evidence would not be allowed to be adduced. It rejected the defence's assertion that as the appellant was ineffective counsel for himself, the first requirement in the Palmer test was relaxed because the principles of ineffective counsel were not applicable in the case of self-representation; 2) the trial judge provided more than sufficient guidance to the appellant about trial procedure and no miscarriage of justice had occurred; 3) the trial judge did not consider the evidence referred to by the appellant in his notice of appeal because the matters were not put in evidence at the trial; and 4) the standard of review governing sentence appeals was deferential and appellate courts should not intervene, with some exceptions as set out in Lacasse. In this case, s. 286.1(1)(b)(i)(A) sets out a minimum sentence for a first summary conviction offence of $500. The sentencing judge erred by imposing a $200 fine, but it was to the benefit of the appellant.

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Spafford v Spafford, 2020 SKQB 247

Danyliuk, September 29, 2020 (QB20231)

Civil Procedure - Queen's Bench Rules, Rule 6-1, Rule 6-3, Rule 6-23, Rule 6-24, Rule 6-27, Rule 11-1, Rule 15-19

The petitioner wife served the respondent husband with a notice to disclose and he served his reply. Unhappy with it, the petitioner brought an appearance day notice pursuant to Queen's Bench rule 6-24 to resolve the

sufficiency of the disclosure provided. The issues were: 1) whether an appearance day notice was the appropriate procedural mechanism in the circumstances of the dispute; 2) what relief should be granted and 3) whether costs would be awarded.
HELD: The application was dismissed without prejudice to the petitioner's right to apply for the same relief using a notice of application with supporting material. The court found with respect to each issue that: 1) an appearance day notice was not the appropriate mechanism to use. In this case, where there were real and substantial disputes on factual matters, the notice of application process should be employed; 2) no relief could be granted as the matter could not proceed under Queen's Bench rule 6-24(1); and 3) it would not make any order as to costs, exercising its discretion under Queen's Bench rule 11-1, because there was a legitimate dispute and the petitioner required the information she sought from the respondent.

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Minier v Conexus Credit Union, 2020 SKQB 250

Scherman, October 1, 2020 (QB)

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

The parties to an action brought by the plaintiff for wrongful dismissal requested a determination of whether the matter in question was appropriate for determination in a summary judgment application. Counsel agreed that normally under Queen's Bench rule 7-5 the judge who hears the substantive summary judgment application makes the determination whether it is appropriate to grant it but they desired a determination of that issue in advance of the summary judgment hearing itself, based upon practical and efficiency considerations.
HELD: The court declined to order that summary judgment of the plaintiff's claim was appropriate. It found, based on its interpretation of Queen's Bench rule 7-5, that the ultimate determination of whether summary judgment is appropriate lies with the judge hearing the application for summary judgment. However, it was prepared to order that the matter be scheduled for a summary judgment hearing and that in connection with that order, made ancillary orders to ensure that the matter was as fully ready as it could be and to ensure that the evidentiary basis was such that the presiding judge could proceed to make a summary determination if they decided that it was appropriate in the circumstances. In this wrongful dismissal case, the evidence most pertinent to whether the dismissal was warranted rested in the surrounding circumstances. Therefore, either party was permitted to file supplementary affidavits addressing that issue within 30 days of this fiat. Each

party would be entitled to cross-examine the affiants within 60 days of the fiat, after which the plaintiff could ask the Registrar to schedule his summary judgment application.

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J.A.B. v C.A.B., 2020 SKQB 251

Richmond, October 1, 2020 (QB20234)

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

The petitioner husband petitioned for divorce, custody and child support and exclusive possession of the family home and equal division of property in June 2020. He sought interim custody of the parties' three-year-old daughter on the basis that he worked from home in running his successful portfolio management firm and thus was able to have primary care of the child. He did not file a financial statement at the time, but estimated his current annual income to be $197,200 and that of the respondent to be $75,000. The court granted an order for the petitioner to have exclusive possession of the family home, interim joint custody and shared parenting of the child. In September 2020, the respondent applied for child and spousal support. She deposed that she had been a part-time employee of the petitioner's business since 2017 and was also paid dividends from the family trust. She had terminated her employment and was not receiving any other financial support from the petitioner. As a result, she lived with her mother because she was unable to pay for her own residence without assistance from the petitioner. The petitioner's response to the application painted a different picture of his finances from that described in his June affidavit. He submitted that he was now in dire straits and submitted a profit and loss from January to August 2020 for the business showing that it had suffered a loss of $167,000 during that period due to the impact of COVID-19. He suggested that income should be imputed to him at $100,000. In his September affidavit, the corporation showed a profit of $323,700 from June 2019 to May 2020 even after the respondent's salary had been paid. He suggested that income of $29,800 per annum from employment insurance benefits be imputed to the respondent.
HELD: The application for child and spousal support was granted. The court reviewed the petitioner's corporate financial information in order to establish his income for support purposes in accordance with ss. 18 and 19 of the Guidelines. The most recent full year corporate income statement indicating a profit of $323,700 provided the most recent indication of net profit before tax including three months of COVID-19 income levels and the court imputed income to the petitioner in the amount of the net profit. Using the figure of

$29,800 as the respondent's imputed income, her child support obligation of $241 per month was set off against the petitioner's obligation of $2,626 per month and he was ordered to pay $2,385 per month until further order or agreement. The respondent established that she had need and the respondent had the means to pay spousal support of $6,651 per month to her until further order or agreement.

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Ritchie Bros. Auctioneers (Canada) Ltd. v Wells, 2020 SKQB 258

Keene, October 8, 2020 (QB20241)

Civil Procedure - Queen's Bench Rules, Rule 7-2, Rule 7-9
Professions and Occupations - Auctioneers
Statutes - Interpretation - Saskatchewan Farm Security Act, Section 46

The plaintiff, an auctioneer company, applied for summary judgment pursuant to Queen's Bench rules 7-2 and 7-5. The defendant, a farmer, approached the plaintiff in 2018 and asked it to sell some of his farm machinery, and the parties signed a sales agreement. The agreement included provisions that it represented the entire agreement between the parties, that the plaintiff would charge a commission and specifying other fees, such as lien searches. The plaintiff conducted personal property security searches and discovered creditor security interests registered against much of the equipment. After paying the creditors and subtracting its commission and other fees, the plaintiff was left with a deficiency in the amount of $67,700 after the auction. It claimed that amount from the defendant but when he did not pay, it sued him and he filed a statement of defence. The plaintiff submitted an affidavit from its manager who deposed that he told the defendant that any deficiency arising from the sale would be owed by him and that authorizations to pay would be obtained from the defendant regarding the registered secured creditors. After the sale, the defendant signed the authorizations sent to him by the plaintiff. In his statement of defence, the defendant claimed that the manager promised him there would be no deficiency and he would receive $100,000 from the sale. He asserted in his affidavit that the plaintiff would have known that he was a farmer and that s. 46(2) of The Saskatchewan Farm Security Act would therefore apply to him. He claimed it was the responsibility of the plaintiff or its manager, to tell him not to put the equipment encumbered by liens into the sale so that he would have been protected by the Act and no deficiency would have occurred. He denied that the plaintiff's manager told him that he would be responsible for any deficiency, but alleged he had said that there would be enough money from the sale to cover all debts and even if there were not, the security holders could not collect more than the sale value of the

equipment. He also claimed that he did not have the opportunity to read and understand the terms of the agreement. The issues were whether: 1) the matter was suitable for summary determination; 2) the plaintiff had a valid claim against the defendant for breach of contract; and 3) the plaintiff owed a duty of care to the defendant.
HELD: The application was allowed and summary judgment was granted. The defendant was ordered to pay $67,700 plus pre-judgment interest and costs to the plaintiff. The court found with respect to each issue that: 1) summary judgment was appropriate. It examined the defences and found no genuine issues to be tried. The amount owed to the plaintiff was small and deciding the case would save further expenditures of time and money by the parties and the court; 2) the contract was valid. The conflict between the evidence given by the plaintiff and the defendant was resolved by the presence of the â€œentire agreementâ€ clause in the contract. The defendant had not pleaded non est factum. The evidence established that the sale took place as per the agreement. As per the agreement and the written authorizations, there was no genuine issue requiring a trial regarding the obligation to pay the deficiency; 3) the question of law raised by this issue could be dealt with in the course of a summary judgment. The plaintiff, and auctioneers in general, do not have a duty of care to sellers as described by the defendant. He failed to provide any cases that held an auctioneer must provide advice to a seller with regard to security interests. To do so would be to impose an unreasonable obligation on auctioneers to act similarly to an advisor such as a trustee in bankruptcy.

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Maharaj v Rosetown (Town), 2020 SKQB 254

McCreary, October 5, 2020 (QB20238)

Administrative Law - Procedural Fairness
Municipal Law - Bylaw - Interpretation - Duty of Procedural Fairness
Statutes - Interpretation - Municipalities Act, Section 120, Section 358

The applicant, the mayor of the respondent town of Rosetown, applied in his capacity as a voter and as mayor to quash four resolutions passed by the respondent's council pursuant to s. 358 of The Municipalities Act. The resolutions concerned two Code of Ethics complaints, one of which was brought by the applicant against another member of council and the other brought by that member against the applicant. The respondent had received complaints made by two of its employees, pursuant to its harassment policy, alleging that the applicant had harassed each of them. The complaints were investigated by an external investigator, but the

applicant refused to participate. The investigator submitted a report that concluded harassment had occurred. Shortly after this, the applicant filed a formal complaint with the respondent, alleging that a councillor had contravened the communications provision of the Code of Ethics Bylaw by making comments that cast aspersions on the applicant's professional competence and/or credibility. The councillor submitted a response to the complaint but it was not provided to the applicant. The councillor then filed a formal complaint against the applicant, alleging that he had contravened the Code of Ethics Bylaw by harassing two employees, attaching the harassment report and alleging that the applicant had violated various provisions of the Code of Ethics Bylaw. The applicant made written submissions in respect of this complaint to the council after the harassment report. The council held a special meeting, conducted in camera. The applicant and the councillor recused themselves because of conflict of interest. The council passed resolutions which stated that the complaint against the applicant be deemed valid and that of the councillor invalid. The issues raised by the application were whether any or all of the resolutions should be quashed because: 1) they were passed in breach of The Municipalities Act or the respondent's Bylaws; and/or 2) the process by which they were passed was not procedurally fair at common law or pursuant to the Code of Ethics Bylaw.
HELD: The application was granted and two of the four resolutions quashed. The matter was remitted to the respondent for reconsideration using a procedurally fair process. The court found with respect to each issue that: 1) the standard of review for the application under the Act was reasonableness. With respect to the alleged violation of the Procedure Bylaw, it declined to exercise its discretion to quash the resolutions. The respondent complied with the Bylaw, except for committing the inconsequential breach of failing to use a specific form to announce the special meeting, and complied with the Act; and 2) it interpreted the Code of Ethics Bylaw to require a procedurally fair process to be used regarding the ethics complaints. The respondent breached the moderate duty of procedural fairness it owed to the applicant in its review of the two complaints. In the case of the applicant's complaint, it was procedurally unfair to fail to provide him with the councillor's response to the complaint and to fail to give its reasons for the decision to dismiss it. The combination of these two deficiencies rendered it impossible for the applicant to know, with any certainty, why the respondent dismissed his complaint against the councillor. The respondent also breached its duty of procedural fairness by failing to demonstrate that it considered the applicant's response to the complaint. Because the respondent did not provide reasons for its decision to uphold the complaint, it could not show that it listened to the applicant before it made its decision. In this context, failing to provide responsive reasons for its decision was unfair.

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R v Brown, 2020 SKPC 32

Crugnale-Reid, August 28, 2020 (PC20032)

Criminal Law - Child Pornography - Possession - Sentencing
Constitutional Law - Charter of Rights, Section 12
Criminal Law - Mandatory Minimum Sentence - Constitutional Challenge

The two accused pleaded guilty to possession of child pornography contrary to s. 163.1 of the Criminal Code and were sentenced at the same time because their separate cases involved similar issues and each had brought a constitutional challenge to the mandatory minimum sentence of one year of imprisonment pursuant to s. 163.1(4) when the Crown proceeds by indictment. They argued that the mandatory minimum constituted cruel and unusual punishment and violated their s. 12 Charter rights. They asked that the court rule that it was unconstitutional and not apply it, and submitted that a fit sentence would be a suspended sentence with probation for 24 months. The Crown argued that a fit sentence was 12 months' incarceration followed by 24 months' probation. The accused Brown, a 43-year-old man, was found in possession of 702 images, of which 585 were duplicates and 117 were unique. The images were of young children, partially nude, posed with their sexual organs visible. He shared two images on Facebook. His pre-sentence report indicated that Brown, who did not have a criminal record, was at low risk to re-offend. He expressed remorse but did not show insight into his offending behaviour beyond limiting his time on the internet. He had had a difficult childhood and blamed his alcohol and drug abuse as the reason for his behaviour. He had a number of health problems including COPD, coronary artery disease and sleep apnea and had been diagnosed with major depressive disorder. He had been on disability for five years at the time the report was written. The accused Stout, a 47-year-old man, had been charged after he was seen at a public library watching videos of child pornography. When his house was searched, 67 images and five videos, all unique, were found on his devices. The children were nude or partially nude with sexual organs visible and some showed them engaged in oral, vaginal or anal intercourse with other children and adult men. The pre-sentence report advised that Stout had no prior criminal convictions and was at low risk to reoffend. He was unemployed, lived with his brother and had a seven-year relationship with his fiancÃ©, both of whom continued to support him. He accepted responsibility for his actions and but did not have realistic strategies to prevent offending in the future. He was willing to participate in sex offender programming.
HELD: The accused were each sentenced to one year of imprisonment with two years' probation subject to very detailed conditions. The court found that these were fit and proportionate sentences in the circumstances of these accused and was satisfied that deciding the constitutional question would not impact the sentences, and thus the constitutional issue was moot. The offences were serious, constituting sexual offences against children. The moral culpability of each accused was high.

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R v Kitchener, 2020 SKPC 38

Daunt, September 30, 2020 (PC20033)

Criminal Law - Sentencing - Aboriginal Offender
Criminal Law - Assault - Assault with a Weapon - Sentencing

The accused pleaded guilty to assault with a weapon, resisting arrest and two counts of mischief under $5,000. He was 18 at the time of the offences and had been drinking with his adopted brother who talked him into robbing a 7-Eleven so they could purchase drugs. Acting under his brother's instruction, the accused entered the store carrying a concealed bat. The brother pretended that the accused was trying to hurt him and solicited help from the store clerk. This change confused the accused and he pulled out the bat and smashed things in the store, left the store, smashed a car's windshield and then ran away. A police dog tracked him and when the police were trying to arrest him, he refused to comply with their orders. He served 99 days in pre-sentence custody. The accused, a member of the Shoal Lake First Nation, had been apprehended by Social Services at the age of two and spent his childhood living in 20 different foster homes until he was 14, when he began residing in group homes and youth custody facilities. His parents abused alcohol and his mother died when he was 13. He started using cannabis at six and alcohol at 12 years of age followed by use of many different drugs. The accused had a youth record for robbery in 2015 and theft, possession of a weapon and drug possession in 2017. Diagnosed with ADHD, reactive attachment disorder and schizophrenia, the accused was homeless at the time of the offences and unconnected with any community resources, and thus not taking the medication needed to manage his psychiatric condition. Because of his mental illness and cognitive disability, the accused was not able to understand the consequences of his actions. Since being released on bail, the accused lived at and received programming through Community Living and Homeward Bound Outreach. The manager of the latter advised that he had become a different person since he entered the program. The author of the pre-sentence report advised that the accused received monthly injections to manage his schizophrenia and was also receiving financial support from the Saskatchewan Assured Income for Disability program. He had stopped drinking and doing hard drugs but continued to use cannabis, which the staff of Homeward Bound supported as they believed it helped him stay away from more destructive substances. The accused was attending high school and hoped to complete grade 12 this year. He was also able to reconnect with his Aboriginal culture through Homeward Bound. The Crown argued that the accused should receive an 18-month custodial sentence followed by 24 months' probation because of his youth record, continued use of cannabis and his refusal to take addictions counselling and to take responsibility for his behaviour. The pre-sentence report assessed him at high risk to re-offend. Defence counsel submitted that a combination of time served, a

conditional sentence order and probation would best achieve the objectives of sentencing. She argued that the Gladue factors should be taken in to account, as well as the facts that he committed the offences while intoxicated and encouraged by his cousin. His most significant risk factors, homelessness and drug abuse, were being addressed in the community. If imprisoned, the accused would lose his placement at Homeward Bound and disability income. Although a conditional sentence was not available for the offence of assault with a weapon, it was available for the others. The accused had accumulated enough time in pre-sentence custody to punish him for the assault and a conditional sentence would be appropriate to the other offences.
HELD: The accused's sentence was time served followed by supervision in the community subject to a probation order. The court found that the sentence would hold him accountable by requiring him to make amends to his victims, foster his rehabilitation and protect society by supporting his stability in the community. Part of the sentence was restitution in the amount of $320 for the damaged windshield. It found that the Gladue factors and the accused's mental illnesses and addictions mitigated his moral culpability.

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