The Law Society of Saskatchewan Library's online newsletter highlighting recent case digests from all levels of Saskatchewan Court. Published on the 1st and 15th of every month.

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***R v Kwon*, 2024 SKCA 50**

Barrington-Foote Tholl Drennan, 2024-05-09 (CA24050)

Criminal Law - Appeal - Grounds - Unreasonable/Unsafe Verdict
Criminal Law - Appeal - Reasons for Judgment
Criminal Law - Evidence - Credibility

The appellant was convicted of sexual assault against A.D. under s. 271 of the *Criminal Code* and sentenced to three years of incarceration. This was the accused's second trial for the same offence; his initial conviction was overturned, and a new trial was ordered in a previous Court of Appeal case (see: *R v Kwon*, 2020 SKCA 56). There were three main issues in this appeal. First, the appellant argued that the trial judge misapprehended the evidence, relied on assumptions not grounded in the evidence, and mishandled his defence of an honest but mistaken belief in communicated consent. Second, the appellant argued the verdict was unreasonable and that other reasonable inferences were consistent with innocence. Third, the

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appellant raised issues with the manner of language interpretation (he did not speak English) and the trial judge's assessment of witness credibility by relying on that interpretation and translation.
HELD: The Court of Appeal (court) allowed the appeal, quashed the conviction, and entered an acquittal for the appellant. The court found that the trial judge misapprehended the appellant's evidence about A.D.'s consciousness during the drive home and the sexual encounter. The trial judge misunderstood the appellant's testimony and failed to consider relevant aspects of it properly. This included errors in interpreting his statements through an interpreter, where nuances and exact meanings might have been lost. The trial judge also relied on assumptions about typical human behaviour in sexual encounters that were not supported by the evidence and led to improper conclusions about the appellant's and A.D.'s actions. These assumptions were deemed illogical and unwarranted, constituting palpable and overriding errors. Furthermore, the trial judge did not adequately consider the appellant's defence of honest but mistaken belief in consent. The trial judge found that the appellant was reckless or willfully blind to A.D.'s incapacity to consent due to her level of intoxication. The court determined that this analysis was flawed due to the underlying errors in assessing the appellant's evidence and the context of his actions.

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***Friedrick v Kelturn Drywall Ltd.*, 2024 SKCA 54**

Kalmakoff McCreary Drennan, 2024-05-22 (CA24054)

Contract - Interpretation
Contract Law - Formation

This case involved the interpretation of a retirement agreement. The appellant was an employee of the defendant. He participated in a Retirement Compensation Arrangement (RCA) established by the employer in 2011. Between 2012 and 2014, he directed that his annual bonuses be contributed to the RCA. When his employment was terminated in 2017, he sought additional payments from the RCA, claiming that the employer was required to make contributions beyond the bonuses. The plaintiff argued that the employer must contribute more to the retirement plan. The chambers judge ruled that such an obligation did not exist under the agreement. On appeal, The Court of Appeal (court) had to review the RCA to decide whether the chambers judge erred.
HELD: The chambers judge's interpretation was correct. The court reviewed the agreement and concluded that the parties used the term "contribution" differently than in its ordinary sense. The

Contracts - Breach of Contract - Non-payment

Contracts - Damages - *Quantum Meruit*

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Criminal Law - Admissibility of Statements - Voluntariness of Statements

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Criminal Law - Manslaughter

Criminal Law - Sentencing

concept of parties creating their "own dictionary" has been endorsed in Saskatchewan in *Mosten Investments LP v The Manufacturers Life Insurance Company (Manulife Financial)*, 2021 SKCA 36, and now in the current case. The court also reviewed the retirement agreement according to the *Income Tax Act*. The method of contribution that the parties intended to create was a tax deferral vehicle. The review of the agreement, its relationship with the provisions of the *Income Tax Act*, and principles of contract interpretation led the court to conclude that the employer was not obligated to pay anything extra to the employee and the bonus contributions to the retirement plan were the correct approach under the contract between the parties.

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***R v Dumba*, 2024 SKKB 42**

Robertson, 2024-03-11 (KB24068)

Charter of Rights - Exclusion of Evidence
Criminal Law - Admissibility of Statements - Voluntariness of Statements

The defendant applied to exclude his statement from evidence, arguing that his rights under s. 10 of the *Charter* were breached. The Crown applied to admit the evidence, arguing the statement was given voluntarily. The defendant faced several charges related to sexual offences involving a minor. The court had to decide whether the defendant's right to counsel was breached, making his statement inadmissible, or whether the Crown had proven that the defendant provided his statement voluntarily.
HELD: The court dismissed the defendant's application, concluding that the defendant's right to counsel was not breached, and granted the Crown's application because the Crown established that the defendant's testimony was given voluntarily. The defendant argued that his right to counsel was breached under section 10 of the *Charter*. He alleged that he did not fully understand his rights or was misled into believing that contacting Legal Aid was his only option. The defendant has the burden of proof, on a balance of probabilities, to prove a *Charter* breach. On the other hand, the Crown had the burden of proof to establish that the defendant provided his statement to the police voluntarily, without any coercion or undue influence. The court found that the defendant had the capacity and opportunity to fully understand his rights to counsel. He was a university graduate with an extensive teaching background, and he was sober and free from mental impairment when he was at the police station. He also asked to call Legal Aid, and at his subsequent requests to call lawyers, the police provided him with the opportunity. Turning to the Crown's application, the Court referenced the leading authority of *R v Oickle*, 2000 SCC 38 regarding the admissibility of statements. That case provided the framework for determining

Criminal Law - Sentencing - Aboriginal Offender

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Damages - Breach of Contract

Damages - Punitive Damages - Grounds

Family Law - Best Interests of Child

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Family Law - Child in Need of Protection - Apprehension - Protection Hearing - *Child and Family Services Act*

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Family Law - Jurisdiction

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Landlord and Tenant - Appeal - Grounds - Error of Law/Findings of Fact

Landlord and Tenant - Appeal - Possession Order - *Residential Tenancies Act*

Landlord and Tenant - Appeal - *Residential Tenancies Act*

the voluntariness of a statement made by an accused to a person in authority. The legal test is a two-step inquiry. The first step has three factors: was the statement made 1) without threat or promise by the authority; 2) in an atmosphere free from oppression; and 3) by an accused with an operating mind? The second step invites the court to consider whether the police used impermissible trickery, which would shock the community. The case of *R v Stanley*, 2017 SKQB 367 at paras 13 and 14, provided definitions and analysis for each factor of the *Oickle* case. The court reviewed the manner in which the statement was given to the police and concluded that the defendant voluntarily gave the statement. The Crown's application was granted.

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***Norwood Developments Ltd. v Paquette*, 2024 SKKB 47**

Goebel, 2024-03-20 (KB24038)

Contracts - Breach - Damages - Implied Term - Workmanlike Manner
Contracts - Breach of Contract - Non-payment
Contract - Interpretation
Contract Law - Breach - Damages
Contract Law - Repudiation
Real Estate - Residential Property - Breach of Contract - Negligence

The proceeding involved a dispute over a contract signed in July 2013 respecting the construction of a residence in Warman. In June 2015, the plaintiff sued the defendants for the outstanding balance of the fee payable under a written contract. The defendants defended that claim and countersued the plaintiffs, alleging breach of numerous express and implied terms of the contract. The defenders claimed that these breaches alleviated their obligation to pay any remaining fee owing under the contract and entitled them to damages related to their time and the cost to remedy numerous deficiencies.
HELD: The defendants were held to be in breach of contract for failing to pay the outstanding contract price. The plaintiff was liable for damages reflecting the reasonable costs to remedy the deficiencies that fell within the plaintiff's responsibility under the contractual arrangement. The court awarded general damages of $100,000 to the defendants to be set off as against the outstanding management fee payable to the plaintiffs. (1) The plaintiff was obligated under the contract to ensure that the home was constructed in accordance with the designs, identify deficiencies and arrange for their reasonable remediation in accordance with the defendants' instructions and at the defendants' cost. When interpreting a contract, an adjudicator should: (i) determine the intention of the parties in accordance with the language they have used in the

Landlord and Tenant - Possession

Landlord and Tenant - *Residential Tenancies Act* - Director of Office of Residential Tenancies - Order - Appeal

Mortgages - Foreclosure

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Real Estate - Residential Property - Breach of Contract - Negligence

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Statutes - Interpretation - *Act respecting First Nations, Inuit and Métis children, youth and families*

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Torts - Negligence - Duty of Care

written document, based upon the "cardinal presumption" that they have intended what they have said; (ii) read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective; (iii) read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract; and (iv) read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed. In this case, there was no doubt that both parties clearly intended to form a contract, believed that they had done so, and took the position that they had a valid and enforceable contract. While some of the provisions in the written contract were inconsistent and legally meaningless, these provisions were not essential to the issues in dispute or the interpretation of the contract as a whole. None of the other provisions contradicted the understanding that the plaintiffs were responsible for building the residence. It was also possible to extract the contractual intentions of the parties from the language utilized in the contract, extrinsic evidence, contextual factors and the commercial purpose for the contract, with a reasonable degree of certainty. Taking into account the wording of the contract, the factual matrix surrounding the execution and the commercial purpose for the transaction, a reasonable person would objectively understand that the fee paid to the plaintiff was in consideration for the plaintiff managing the construction of the home to completion, including the scheduling and oversight of tradespersons to ensure that their work was completed in accordance with the defendants' directions and designs. (2) The court did not agree that the contract had been repudiated. For a contract to be repudiated, the conduct which amounts to repudiation and whatever consequences flow from it must be of a serious nature vis-à-vis the content, obligations, and purposes of the contract. Where the conduct of a party, through words or actions, amounts to a total and unjustified rejection of its contractual obligations before those obligations fall due and the effect of the anticipatory breach would deprive the innocent party of all or substantially all of the benefit it would derive from the contract, then the innocent party may elect to accept the other party's repudiation and is thereafter relieved of any further obligations under the contract. In this case, the communication by the plaintiff did not show an intent to avoid contractual obligations. The home was also substantially complete and habitable by the date the defendants resumed possession. There was also no provision in the contract that allowed the defendants to withhold payment until all deficiencies were remedied. In addition, there was no consensus ad idem with respect to a later proposal that the final installment would be used as a holdback. (3) The plaintiffs did not breach the contract by failing to complete the residence in one year. There was no contractual obligation to complete the construction of the home within a year (as pled in the counterclaim) or by Christmas 2014 (as argued at trial). Considering all the evidence, the plaintiff did not breach the "time of the essence" provision of the contract. The court was unable to find that their work obligations or holidays unduly contributed to a delay in the completion of the residence any more than the communication problems and mid-construction changes initiated by the defendants may have

done. (4) The plaintiff breached the implied term of the contract by failing to provide its services in a proper and workmanlike manner. In all contracts for the performance of services, there is an implied term that the work will be carried out in a proper and workmanlike manner and the workmen employed on the work must be possessed of the ordinary amount of skill possessed by those exercising their trade. The plaintiff in this case was responsible to ensure that the construction was consistent with the architectural designs, that the supplies purchased through them were of good quality and that any work completed by the tradespersons under their scope of responsibility was completed to the implied standard. Several specific issues at the home (uneven floor on the second level, ticking sound emanating from the venting in the master bedroom, bowed wall in the kitchen, sloping tile floor in the walkout level, cracking stucco and improperly installed flashing) which fell within the plaintiff's scope of contractual responsibility did not meet the implied term of proper and workmanlike manner. (5) The court determined that the defendants were entitled to damages reflecting the reasonable cost to remediate the uneven floor in the lower level of the home, the uneven floor in the upper level of the home, the ticking sound in the ductwork, the flashing and stucco and the bowed wall in the kitchen. The table and invoices did not, however, provide a breakdown of each alleged deficiency but had them grouped with other work for which the plaintiff was not contractually liable. While this made the quantification of damages incapable of mathematical certainty, it remained possible to assess same with reasonable accuracy. The plaintiff was also entitled to judgment for damages by reason of the defendants failing to pay the contract price.

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***Ragetli v Dufresne*, 2024 SKKB 66**

Labach, 2024-04-18 (KB24069)

Family Law - Division of Family Property - Jurisdiction
Family Law - Jurisdiction

This case dealt with the issue of the Saskatchewan Court of King's Bench's jurisdiction over the parties' family law matters according to the *Divorce Act*. The parties were married in Manitoba. The respondent took a job in Saskatchewan, and the parties moved to this province. After 11 months, the applicant moved back to Manitoba. Later, the respondent moved to Manitoba as well. The only family property they had in Saskatchewan was the proceeds from the sale of the family home, which remained in trust with a lawyer in Regina. The applicant filed an application seeking an order that Saskatchewan had jurisdiction to hear the matter under the federal *Divorce Act* and to deal with the parties' family property under *The Family Property Act* of

R v Sideen

Ragetli v Dufresne

Tuttle v Ermine

Yeoman v Universal Realty Ltd.

Saskatchewan. The court had to decide whether it had jurisdiction over this matter and whether it could deal with the parties' family property.
HELD: The court dismissed the application because it did not have jurisdiction to hear the application. Manitoba was the proper jurisdiction. Under the *Divorce Act*, the parties must have habitual residence in a particular province for at least one year before the commencement date of a divorce proceeding. This statutory requirement cannot be modified or waived by the parties or the courts. This requirement binds the court, and the court cannot assume jurisdiction unless the parties comply with it. The inquiry into the issue of "habitual residence" is a question of fact, and the court considers all the circumstances of the case. Generally, habitual residence is "established by residing in a place for an appreciable amount of time with a settled intention." The Court of King's Bench reviewed the Divorce Act amendments and court cases about the issue of "habitual residence" before and after those amendments came into force and concluded that the previously used term "ordinarily resident" and "habitually resident" are synonymous. This conclusion led the court to state that the applicable caselaw on this issue from before the amendments is still good law. The burden of proof for this issue is a balance of probabilities. The court found that the applicant did not satisfy the court on a balance of probabilities that either of the parties lived in Saskatchewan as their habitual residence on the day of commencing their proceedings. On the issue of family property, provincial legislation applied. Since *The Family Property Act* does not have a provision about jurisdiction, the court relied on *The Court Jurisdiction and Proceedings Transfer Act* (CJPTA) and the authority case of *Hunter v Hunter*, 2005 SKCA 76 to resolve the issue of jurisdiction concerning the family property. Under this legislation, the respondent was ordinarily living in Saskatchewan (unlike the *Divorce Act*, the CJPA does not have a minimum time requirement). However, "just because a court has jurisdiction to hear an issue does not mean that the court must hear the issue." A court can decline its jurisdiction if a court in another jurisdiction is a more appropriate forum to deal with the matters. The court considered the factors set in section 10(2) of the CJPTA in its decision to decline jurisdiction in this case, finding that it would be more convenient and cost-effective for the parties to deal with their family property matters in Manitoba because they both lived in Winnipeg and would be working on their divorce, parenting, and support issues in the court in Winnipeg. The court also considered that the Manitoba courts could offset the parties' properties in Manitoba and Saskatchewan and decide which provincial laws should apply. The court also noted that having Manitoba deal with all the parties' legal issues would avoid a multiplicity of legal proceedings and the risk of conflicting court decisions. Furthermore, this would also ease the issue of enforcement of a decision. In totality, all of the factors in favour of the Manitoba court hearing these matters aligned with the goal of fair and efficient working of the Canadian legal system as a whole.

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***M.J.H. v R.R.O.*, 2024 SKKB 70**

Schatz, 2024-04-23 (KB24071)

Family Law - Best Interests of Child
Family Law - Child Custody and Access - Best Interests of Child

The petitioner, M.J.H., sought to enforce a parenting order that granted him the primary residence of their daughter, A.H., and requested a police assistance order to enforce this. Additionally, he sought to have the respondent, R.R.O., found in contempt of court for not ensuring A.H.'s return to his residence. A.H., who is nearly 17, expressed a desire to stay with her mother, the respondent, due to conflicts and lack of respectful communication at the petitioner's home. Despite attempts by A.H. to communicate her feelings to her father, he refused to engage, leading to this application. The court had to consider whether the existing court order granting M.J.H. primary residence of A.H. should be enforced through a police assistance order and whether the respondent (the mother) should be held in contempt for failing to ensure A.H.'s compliance with the parenting order.
HELD: The court denied both of M.J.H.'s applications. The court conducted the best interests of the child analysis by considering the factors set out in section 16 of the *Divorce Act*. The court focused on A.H.'s best interests, considering her age, maturity, and expressed preferences. At nearly 17, A.H.'s views were given significant weight. The court determined that enforcing the order through police intervention would likely harm A.H.'s relationship with her father rather than improve it. The court also found that the respondent encouraged A.H. to discuss her feelings with her father and suggested family counselling. These actions demonstrated that the respondent was not intentionally non-compliant with the court order. The court ordered that the parties engage in at least six family counselling sessions to address the underlying issues and improve communication. The court also ordered a Children's Voices Report to formally document A.H.'s wishes regarding her living arrangements, which would inform future court decisions.

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***R v Sideen*, 2024 SKKB 79**

Kilback, 2024-05-08 (KB24076)

Criminal Law - Appeal of Sentence
Criminal Law - Appeal - Crown - Sentence

The defendant was convicted of refusing to provide a breath sample under s. 320.15(1) of the *Criminal Code*. At sentencing, the trial judge gave the defendant credit for a pre-sentence provincial driving suspension, reducing the mandatory 12-month driving

prohibition to nine months. The Crown appealed, arguing the trial judge erred in interpreting that a provincial driving suspension could serve as sentencing credit. The court needed to determine whether a pre-sentence provincial driving suspension can be credited against a post-conviction driving prohibition under the *Criminal Code*.
HELD: The appeal was allowed. The trial judge's decision to credit the pre-sentence suspension was found to be an error. The mandatory 12-month driving prohibition was imposed to take effect from the sentencing date. The trial judge had applied *R v Basque*, 2023 SCC 18, which allowed credit for pre-sentence driving prohibitions under common law. The judge gave the defendant credit for the 90 days he was ineligible to drive due to the provincial suspension under subsection 148(5)(a) of *The Traffic Safety Act*. The provisions for driving prohibition have been amended since the *Basque* decision. The Crown argued that s. 320.24(5.1) of the *Criminal Code*, which specifies that a driving prohibition takes effect on the day it is made, prevents such credit. The court found that s. 320.24(5.1) clearly indicates that Parliament intended mandatory driving prohibitions to be served prospectively, not retrospectively. This section "displaced the common law discretionary authority to grant credit for a pre-sentence driving prohibition." Therefore, time served on a pre-sentence driving suspension under *The Traffic Safety Act* (ss.148(5)(a)) cannot be deducted when imposing a post-conviction driving prohibition under s. 320.24 of the *Criminal Code*.

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***Bank of Nova Scotia v Lavigne*, 2024 SKKB 83**

Gerecke, 2024-05-10 (KB24080)

Mortgages - Foreclosure
Mortgages - Foreclosure - Order *Nisi*
Real Property - Foreclosure - Valuation

This was an application for order *nisi* for sale by real estate listing for mortgage foreclosure. The court had to assess the valuation evidence filed on behalf of the bank.
HELD: The court dismissed the application. (1) The valuation evidence filed by the plaintiff was unsatisfactory. In assessing valuation evidence on any application for an order nisi, the court considers the following: (a) the value must be expressed as an opinion; (b) the valuator's credentials must be provided; (c) current sales must be referenced in the valuation report; (d) the valuation report must set out the characteristics of the property being valued; (e) adjustments must be made between the property being valued and the comparable sales; (f) any unusual assumptions must be set out in clear fashion; (g) an opinion from a realtor should be attached to an affidavit sworn by the realtor; and (h) little is achieved by including unsold listings in a valuation report. In this case, the comparative market analysis (CMA) report filed by the bank was entirely unsworn, no credentials were provided concerning the realtor who wrote the CMA report, and no proper opinion of value was expressed. The CMA report relied upon was nearly a year old and no adjustments were made to the sale that it referenced. It was also unaccompanied by any explanation of why the property's interior could not be inspected, and it stated that the value was subject to change. The CMA report fell woefully short of any reasonable expectations for valuation evidence.

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***R v Mohamed*, 2024 SKKB 84**

Klatt, 2024-05-10 (KB24081)

Criminal Law - Evidence - Circumstantial Evidence
Criminal Law - Manslaughter

The defendant was charged with second degree murder in connection with the shooting of the victim in Regina. The evidence in the case was entirely circumstantial, with no direct witnesses to the shooting. The surveillance camera footage showed the defendant in the vicinity of the crime scene minutes before the shooting happened and his vehicle leaving the area shortly after the shooting. The gun used in the crime was never recovered. There were other suspects involved who were seen on the surveillance camera footage. Various witnesses provided accounts of their interactions with the victim and the suspects on the night of the incident. The court reviewed the facts to see whether the defendant was a principal or an aider in the shooting death of the victim. If so, the court needed to determine whether he had the requisite intent for second degree murder, and if not, whether he was guilty of manslaughter.
HELD: The court concluded that the defendant's actions in this matter made him guilty of manslaughter. The court carefully reviewed the circumstantial evidence, including the surveillance footage and the testimonies of witnesses. The credibility and reliability of witness statements were evaluated, especially in light of the circumstantial nature of the evidence. The defendant was found guilty of manslaughter for aiding an unlawful act resulting in the death of the victim. The court reviewed the legal elements of second degree murder and manslaughter and their application to this case. An accused is presumed innocent until the Crown proves each element of the charged offences beyond a reasonable doubt. This burden is always on the Crown and never shifts to the accused. The standard of reasonable doubt must be based "on reason and common sense and should be logically connected to the evidence" (or the absence of evidence). When a case consists of circumstantial evidence, the court "must be satisfied beyond a reasonable doubt that the accused's guilt is the only reasonable inference that can be drawn from the circumstantial evidence". The court has "to decide whether any proposed alternative explanation is reasonable enough to raise a doubt" about such evidence. The court found that the evidence in this case did not establish second degree murder, but it satisfied the required elements for the charge of manslaughter. In helping the other suspects in the case to harm the victim, the defendant formed a common intention to carry out an unlawful act, which he ought to have known would create a risk of bodily harm to the victim.

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***J.L.B.L., Re*, 2024 SKKB 88**

Goebel, 2024-05-15 (KB24086)

Family Law - Child in Need of Protection - Apprehension - Protection Hearing - *Child and Family Services Act*
Statutes - Interpretation - *Child and Family Services Act*, Section 37
Statutes - Interpretation - *Act respecting First Nations, Inuit and Métis children, youth and families*

The child involved in the proceeding was apprehended in the hospital shortly after birth and had been in the care of the Ministry of Social Services (ministry) ever since. Child protective services were provided to the mother's First Nations community by Mistahi Sipiy Child and Family Services Inc. (MSCFS). The evidence established that the child had no parent willing or able to care for him, and the mother had no connection to her First Nation. The child was closely bonded to his current foster parent. There was no indication in the evidence as to whether the foster caregiver was asked whether she would be interested in acting as a person of sufficient interest for the child, or whether she would be willing to adopt the child. The court determined whether the ministry's recommendation of a long-term wardship order under s. 37(3) of *The Child and Family Services Act* (CFSA) until the child reached the age of 18 was appropriate. MSCFS did not oppose the recommendation.
HELD: The matter was adjourned with leave for the ministry to serve and file evidence exploring all of the options under s. 37 of the CFSA, and the impact of each on the child's best interests. The court did not have sufficient evidence to fully canvass the options prescribed by s. 37 through a best interests of the child lens.

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***Payne v Saskatoon Housing Authority*, 2024 SKKB 92**

Currie, 2024-05-22 (KB24090)

Constitutional Law - Validity of Legislation
Landlord and Tenant - Appeal - *Residential Tenancies Act*
Landlord and Tenant - Appeal - Possession Order - *Residential Tenancies Act*
Landlord and Tenant - *Residential Tenancies Act* - Director of Office of Residential Tenancies - Order - Appeal
Landlord and Tenant - Appeal - Grounds - Error of Law/Findings of Fact

The applicant was a tenant of the respondent. By a decision dated November 20, 2023 issued under *The Residential Tenancies Act, 2006*, a hearing officer ordered that possession of the rental premises be granted to the respondent. The applicant filed notice of appeal with the Court of King's Bench and with it, among other documents, he filed an application for an order declaring as unconstitutional statutory provisions establishing the requirement to file a certificate of payment of rent on an appeal of a possession order.
HELD: The court declared the provision constitutional. (1) The court's core jurisdiction, in relation to reviewing a decision of a lower

court or a tribunal, includes judicial review but does not include appeal. Appeals are statutory, and legislatures are empowered to create, modify and eliminate rights of appeal, all without affecting the court's core jurisdiction. The core jurisdiction is the inherent, common law jurisdiction of the court. (2) The court deemed that judicial review was available and appropriate in this case. In determining whether judicial review is appropriate, the court should not only consider the available alternatives, but also the suitability and appropriateness of judicial review in the circumstances. In this case, the statutory appeal remedy was patently not an adequate remedy, since the applicant could not use it. Judicial review was the only avenue available to the applicant for review of the possession order. The court also deemed judicial review available on questions of fact and on questions of mixed fact and law. Judicial review was not, however, available on questions on law. (3) The certificate requirement was not unconstitutional. The requirement did not eliminate the applicant's right of access to the Court of King's Bench, as he was entitled to apply to the court for judicial review of the possession order.

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***Payne v Saskatoon Housing Authority*, 2024 SKKB 95**

Currie, 2024-05-22 (KB24093)

Administrative Law - Appeal - Order of Office of Residential Tenancies - Questions of Law or Jurisdiction
Administrative Law - Judicial Review Application
Administrative Law - Judicial Review - Standard of Review - Reasonableness
Landlord and Tenant - Appeal - Possession Order - *Residential Tenancies Act*
Landlord and Tenant - Appeal - *Residential Tenancies Act*
Landlord and Tenant - Possession

The applicant was a tenant of the respondent. By a decision dated November 20, 2023, issued under *The Residential Tenancies Act, 2006*, a hearing officer ordered that possession of the rental premises be granted to the respondent. The applicant/appellant filed an appeal with the Court of King's Bench and with the Notice of Appeal, filed, among other documents, an application for judicial review of the hearing officer's decision.
HELD: The application was granted. (1) The court considered the hearing officer's decision unreasonable. Under the provisions of the Act, the hearing officer was to engage in a two-step analysis in deciding whether to grant a possession order. The first step was to determine whether the respondent had established a legal basis for a possession order. The second was to determine whether granting a possession order would be just and equitable in the circumstances. In this case, the hearing officer determined that the Housing Authority had established a legal basis for a possession order. However, the hearing officer's explanation of why granting a possession order would be just an equitable was simply a recitation of the conclusion on the first step of the analysis. There was no indication in the hearing officer's written decision of his having gone beyond that legal basis to a consideration of what would be just and equitable in the circumstances. This approach could not be characterized as reasonable. In addition, the hearing officer failed to consider circumstances that were in evidence before him and that related to the equitable consideration.

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***Calder (Rural Municipality No. 241) v Ducks Unlimited Canada*, 2024 SKKB 99**

Layh, 2024-05-23 (KB24095)

Real Property - *Conservation Easements Act*

The defendants, Ducks Unlimited Canada (DUC) and two families owning land in the RM, entered into conservation easements to preserve the natural state of two parcels of land. When DUC proceeded to register the easements against the title to the land, the RM sought to have the easement agreements declared "invalid" because they would "adversely affect the interests" of the RM, citing *The Conservation Easements Act* as authority. The RM was concerned about the potential for DUC to undertake work detrimental to roads and argued that the effect of such easements diminished land values, affecting assessment values for municipal tax purposes. The court determined whether the RM's interests would be adversely affected by the conservation easements over the land.
HELD: The RM's application was dismissed with costs. The RM's concerns about the ambiguity of DUC's possible management plans did not "adversely affect" the RM to render the easement agreement invalid. The agreement stated that all enhancement activities were conditional on regulatory approval. The RM failed to prove that its interests would be harmed or impaired by the easement agreements. If DUC were to undertake any "works" under *The Water Security Agency Act*, the RM had standing to seek the involvement of the Water Security Agency to resolve potential damage to the RM's interests, to seek damages in a civil action and/or to pursue a summary conviction against DUC.

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***Buena Vista (Village) v Garner*, 2024 SKKB 100**

Baldwin, 2024-05-24 (KB24096)

Practice - Standing
Real Property - Boundary Dispute

The applicant village brought an originating application seeking declaratory and other relief related to the boundaries of certain parcels of land on Last Mountain Lake. The land was initially surveyed in 1882 and was the subject of grants by the federal Crown to individuals. The respondents were the registered owners of the parcels. The provincial Crown was served with notice of the originating application but took no part in the proceedings. The applicant took the position that the bed and shore of the lake belonged to the provincial Crown, not to the respondents. The applicant asked the respondents to agree to the formalization of the

preliminary plan of survey as a final plan of survey for submission to Information Services Corporation (ISC). The respondents disagreed, arguing that they owned portions of the bed and shore of the lake as part of the parcels, and there was no disagreement between them on boundaries. They also argued that the applicant had no personal or public interest standing to make an application under s. 21 of *The Land Surveys Act, 2000* for the court to determine the boundary.
HELD: The court dismissed the applicant's originating application. The applicant did not establish that it had any legal or other interest at stake that would be affected by a determination of the boundaries of the parcels. There was no disagreement among the respondent landowners as to the boundaries of the parcels. The only other potential owner of any of the land contained in the parcels was the provincial Crown, which had not taken part in the proceedings. The village was not an owner of any of the property and sought relief for the provincial Crown that the provincial Crown did not seek for itself.

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***R v Daigneault*, 2024 SKKB 103**

Stahl, 2024-05-24 (KB24102)

Criminal Code - Using Firearm in Commission of Indictable Offence - Sentencing
Criminal Law - Firearms Offences - Possession of a Firearm
Criminal Law - Firearms Offences - Possession of Restricted Firearm with Ammunition
Criminal Law - Firearms Offences - Possession of Restricted Weapon
Criminal Law - Sentencing
Criminal Law - Sentencing - Aboriginal Offender
Criminal Law - Sentencing - Sentencing Principles

During a traffic stop involving the accused, the accused shot at two Royal Canadian Mounted Police (RCMP) officers before exiting and running from the scene. The accused was eventually located in a Saskatoon motel room three days later, and subsequently arrested after a standoff with police which included the use of a crisis negotiator. The accused pled guilty to discharging a firearm with intent to prevent arrest, possessing a loaded restricted firearm without a license, failing to comply with a release order condition not to possess any firearms and possessing a firearm while prohibited from doing so. The Crown sought a sentence of 13 years' imprisonment while the accused suggested an appropriate sentence was a global sentence of seven to nine years in prison.
HELD: The accused was sentenced to an 11-year incarceration term. (1) Sections 718 to 718.2 of the *Criminal Code* set out the fundamental purposes and principles that guide the court. A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. When determining the gravity of the offence, the court identifies three important considerations: (i) the nature and comparative seriousness of the offence, (ii) the circumstances of its commission, and (iii) the harm caused by it. A court imposing a sentence must also take into consideration the following principles: a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh; an offender should not be deprived of liberty if fewer restrictions may be appropriate in the circumstances; and all available sanctions, other than imprisonment, that are reasonable in the

circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders. In this case, the court was satisfied that the accused's *Gladue* factors (personal circumstances) did not substantively impact or affect his moral culpability. The court found the following to be aggravating factors: his criminal record; his deliberate use of discharging a firearm in an unprovoked attack in order to resist arrest; his illegal and prohibited possession of a firearm and the type of firearm, in this case a 9mm handgun, which is a lethal weapon; that he was on a release order at the time of the offences; that he ran from the scene and was not apprehended until three days later when he was arrested in Saskatoon after a police standoff; that he placed police, civilians and community members at serious risk by shooting at police officers; and that the offences had profound impact on the officers involved, as well as the Tri-Community (La Ronge, the Lac La Ronge Indian Band, and Air Ronge) as a whole. The court found the following to be mitigating factors: that the accused entered a guilty plea; that the accused expressed remorse to the writer of the Pre-Sentence Report, as well as the court, and apologized to the officers and his family for his actions; and that the accused's lived experience and addictions were impacts from the colonial project. The court determined that the 11-year sentence was appropriate considering denunciation, deterrence, protection of the public, rehabilitation, parity, proportionality, the accused's personal circumstances, the application of his *Gladue* factors, the nature of the offences and circumstances of the case at bar, his possession and use of the prohibited weapon, as well as the significant impact on the officers and the Tri-Community.

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***Yeoman v Universal Realty Ltd.*, 2024 SKKB 101**

Danyliuk, 2024-05-27 (KB24100)

Landlord and Tenant - Appeal - Grounds - Error of Law/Findings of Fact
Landlord and Tenant - Appeal - Possession Order - *Residential Tenancies Act*
Landlord and Tenant - Appeal - *Residential Tenancies Act*
Landlord and Tenant - Possession

The appellant appealed a decision of the Office of Residential Tenancies granting possession to the respondent pursuant to ss. 69 and 70(6) of *The Residential Tenancies Act, 2006*. The Court of King's Bench had to determine, among other issues, whether the hearing officer's reasons were sufficient and whether the hearing officer gave due and proper consideration to s. 70(6) of *The Residential Tenancies Act, 2006*.
HELD: The appeal was allowed. (1) The reasons expressed by the hearing officer in his decision were insufficient as a matter of law. It is a basic duty of an adjudicator to provide adequate reasons. The parties to a dispute must be able to read the decision and understand why they succeeded or failed. They must be able to know what the adjudicator considered, and whether he or she failed to consider some evidence or argument. The evidence and arguments heard should be summarized. The hearing officer should state what evidence is accepted or rejected and why. The hearing officer should delineate any factual findings made. The hearing officer should apply the law to that factual matrix and come to transparent conclusions which explain to the litigants why the decision is as it is, and which permit meaningful appellate review. In this case, there was no detail regarding the evidence and submissions

received from the parties. (2) The hearing officer did not give due and proper consideration to s. 70(6) of *The Residential Tenancies Act, 2006*. Under that provision, the hearing officer may make any order the hearing officer considers just and equitable in the circumstances. It is insufficient to give "lip service" to the assessment of whether the granting of relief is just and equitable. There must be an actual, meaningful analysis of the situation. In this case, the hearing officer's decision was anything but an actual and meaningful analysis. It appeared to be a rote statement, something designed to facially comply with a legal requirement that was more avoidance than anything else. Further, the evidence provided by the tenant was not mentioned in the hearing officer's decision regarding s. 70(6). There was no true, substantive consideration of equitable principles and factors pursuant to s. 70(6). The decision also provided no rationale as to why the hearing officer felt it was just and equitable to grant an order for possession of the leased premises. The hearing officer did not apply the proper test, which led to an analysis that was entirely lacking, which, in turn, was an error of law.

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***Heidecker v Campbell*, 2024 SKKB 104**

Hildebrandt, 2024-05-27 (KB24097)

Contract - Breach of Contract - Damages
Contracts - Damages - *Quantum Meruit*
Contract - Offer - Acceptance - Breach
Damages - Breach of Contract
Damages - Punitive Damages - Grounds
Practice - Application for Summary Judgment - Disposition Without Trial
Torts - Negligence - Duty of Care

In May 2016, the plaintiffs engaged the first defendant to assist them to locate property, as they were interested in relocating to Saskatchewan to be closer to their daughter. The plaintiffs subsequently made an offer to purchase a triplex property in Osler, Saskatchewan. The offer was accepted, but was conditional on, among other things, the sale of the plaintiffs' Ottawa home by August 2016. The contract also included an option clause enabling the sellers to show the property and receive offers from third parties. However, the sellers were obligated to give notice to the plaintiffs if another offer was accepted to give the plaintiffs 48 hours to remove the conditions to complete the purchase. The sellers of the property received and accepted another offer, but the first defendant failed to open an email attachment providing notice of this accepted offer. By the time the first defendant contacted the seller's realtor, the 48-hour notice on the property had expired and the contract between the sellers and the plaintiffs had been terminated. The plaintiffs eventually came to Saskatchewan in August 2016 and purchased a larger standalone home in Warman, which they took possession of in October 2016. In the interim period, they resided with their daughter. The plaintiffs claimed damages in negligence and breach of contract against the defendants. They also sought an order for summary judgment, pursuant to Rules 7-2 and 7-5 of *The King's Bench Rules*. The second defendant denied vicarious liability for the actions of the first

defendant. The first defendant did not accede to the quantum of damages or expenses claimed by the plaintiff.
HELD: The court granted the application for summary judgment against the first defendant and awarded special damages in the amount of $9,401.29 together with pre-judgment interest. However, the court dismissed the claim against the second defendant. (1) The court was satisfied that there were no genuine issues requiring a trial and that it was able to draw the necessary findings of fact and apply the law to those facts based on the affidavit and other documentary evidence available. As a result, the matter could be determined by summary judgment. (2) The second defendant did not owe a duty of care to the plaintiffs. The court was not persuaded that the interactions between the plaintiffs and the second defendant could be viewed as establishing a proximate relationship to ground a duty of care on the part of the second defendant. There was also no causal link between the suggestions by the second defendant's agents to the plaintiffs and any alleged damages on the part of the plaintiffs. (3) On the issue of damages, the court considered that the plaintiffs were seeking to punish the first defendant and gain a windfall for themselves rather than merely seeking to be put in the position they would have been in but for the breach, in keeping with the legal principles governing damages. Based on the evidence, the plaintiffs simply elected to buy the superior home and were looking to pass on the cost to the defendants. This choice rendered the increased purchase price and the mortgage related costs too remote and called into question their efforts at mitigating their loss. Based on the principle of betterment, i.e. the measure of the extent to which a plaintiff has been placed in a position more advantageous than the position enjoyed by the plaintiff before the breach, it was reasonable and just to decline to award the increased purchase price of the Warman home, along with other related costs. The plaintiffs were, however, entitled to reduced costs for the following: travel, lawnmower, snowblower, and freezer. As the defendant did not object, the plaintiffs were also entitled to the costs for extra packing and storage as well as post office box rental and mail forwarding during the transition period. (4) The plaintiffs were not entitled to damages for mental and emotional distress. While the court appreciated that the plaintiffs were disappointed and angry as a result of the situation, this did not, on the evidence before the court, constitute a mental or emotional disturbance that "rises above the ordinary" encountered in the challenges of life.

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***Brown v HCC Group of Companies Ltd.*, 2024 SKKB 105**

Rothery, 2024-05-28 (KB24103)

Civil Procedure - Consolidation
Civil Procedure - Application to Strike Statement of Claim - No Reasonable Cause of Action
Civil Procedure - Pleadings - Amendment - Application to Strike
Civil Proceeding - Pleadings - Amendment
Practice - Amendment to Pleadings - Statement of Claim - Adding a Defendant - Discretionary Order
Practice and Procedure - Parties - Adding Parties - Statement of Claim - Amendment - Same Transaction or Occurrence

The applicant commenced his claim against the respondent in December 2021, seeking damages for breach of an oral contract, and alternatively, fraudulent or negligent misrepresentation, and unjust enrichment. The respondent denied any contractual relationship with the applicant and asserted that the applicant was an employee of Hamilton Construction Corp. (Construction). Construction

subsequently commenced a trespass action against the applicant, claiming that the applicant intentionally sabotaged and damaged a large piece of mining equipment. Construction also sued the applicant for wrongfully and unlawfully detaining three other pieces of mining equipment. In July 2022, the applicant filed a defence to Construction's claim and a counterclaim pertaining to the monies owed to him by Construction. In August 2023, the applicant filed applications to amend his claim by adding Construction and HCC Mining and Demolition Inc. as parties. The applicant also sought to consolidate the action commenced against him by Construction. The respondents filed an application to strike out the applicant's original claim on the basis that it disclosed no reasonable cause of action and that it was frivolous, vexatious and an abuse of the court's process. The applications were adjourned *sine die* with the consent of the parties.

HELD: The application to amend the statement of claim and consolidate the actions was granted. The respondent's application to strike the applicant's claim was dismissed. (1) The applicant's claim disclosed a cause of action. The allegations in the applicant's claim pertained to breach of an oral agreement, fraudulent and/or negligent misrepresentation, and unjust enrichment. These were all established causes of action. All material facts necessary for each of these causes of action had also been properly pled. There was no basis for the respondents to allege that the applicant's claim against it disclosed no cause of action. (2) The applicant's claim was not frivolous, vexatious or an abuse of court process. Where both sides have filed affidavit evidence, a strike application is not the appropriate place to resolve conflicts in the evidence or make credibility findings. The presence of conflicting evidence on a material point means it is not plain and obvious that the claim is devoid of all merit and, where that is so, an application to strike the claim cannot succeed. This was the situation here. The applicant's claim could not be referred to as frivolous or vexatious. There was a genuine issue regarding who the parties were that the applicant was providing services for. (3) Amending the applicant's statement of claim would not prejudice either party. Amendments are allowed to enable the court to determine the true points of controversy that require a judicial determination. Parties should also make amendments to their pleadings that are necessary to determine the real question in issue. Amendments to pleadings can also be allowed whenever they can be made without injustice to the other side. In this case, the corporation the applicant provided services for was an issue in his claim. There was also no evidence filed to support an allegation of material prejudice. While the respondent asserted that the applicant's action was statute-barred, that was a matter to be determined at trial. (4) The court considered consolidation to be appropriate. Under Rule 3-81 of *The King's Bench Rules*, a court may order that two or more claims or actions be consolidated for any reason the court considers appropriate, including that two or more claims or actions have a common question of law or fact or arise out of the same transaction, occurrence or series of transactions or occurrences. Deciding whether to consolidate actions requires the court to consider several factors, including: the extent to which there are common claims and disputes; the possibility that consolidation may save time and resources in both pre-trial procedures and at trial; and the potential prejudice to parties that may arise from consolidation. In this instance, the issue of whether and to whom the applicant supplied services was the crucial matter in both lawsuits. The claim and counterclaim in each action arose out of the same series of transactions. The witnesses to each action were the same individuals. Counsel for the corporations alleged that consolidation could cause prejudice, but this was unwarranted. Consolidation of the two actions in this case was appropriate as it would prevent the possibility of inconsistent verdicts.

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***Tuttle v Ermine*, 2024 SKKB 107**

Crooks, 2024-05-28 (KB24098)

Crown - Proceedings Against the Crown
Insurance Law - *Automobile Accident Insurance Act* - Jury Trial

On February 21, 2018, the defendant was driving impaired and was involved in a collision with the plaintiff. The plaintiff sued in tort to recover damages relating to her injuries. Saskatchewan Government Insurance (SGI) was added as a third party to the action. The plaintiff opted to proceed by way of a jury trial, and SGI applied to have the jury demand notice struck. The issue was whether SGI was the Crown and entitled to the protections under *The Proceedings Against the Crown Act, 2019* (PACTA).
HELD: The application was granted. The court determined that SGI, as an agent of the Crown, was entitled to the procedural immunity available to the Crown under PACTA. There was no question that SGI was an agent of the Crown by operation of s. 6(1) of *The Saskatchewan Government Insurance Act, 1980* (SGI Act) and s. 17(2) of *The Crown Corporations Act, 1993* (CCA). Any powers exercised under the SGI Act were solely as an agent of the Crown. All property of SGI was deemed to be property of the Crown. There is also an express provision under s. 14 of the PATCA that prohibits jury trials against the Crown. Further, s. 22 of the CCA permits a Crown corporation to be sued with respect to liabilities in tort only to the extent to which the Crown is subject pursuant to the PATCA. Considering the statutory framework in its entirety, s. 14 of the PATCA applied to SGI through the extension of the protection provided under s. 22 of the CCA.

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***Piapot First Nation v Crowe*, 2024 SKKB 108**

Morris, 2024-05-30 (KB24099)

Civil Procedure - Interlocutory Injunction
Civil Procedure - Interlocutory Injunction - Damages
Civil Procedure - Motions to Strike Pleadings - Interlocutory Injunctions
Injunction - Interlocutory Injunction - Requirements

The underlying dispute between the parties in this case concerned the applicant's ability to administer land on behalf of its membership. In September 2023, the applicant's Chief and council passed a band council resolution (BCR) requiring that all leasing and occupation of its treaty land entitlement (TLE) and specific claims reserve land be administered through the applicant's Land and Resources Department through the issuance of permits pursuant to the *Indian Act*. On April 29, 2024, the applicant commenced an action against the respondents and sought an interim injunction on a without notice basis, which was granted. The applicant thereafter applied for an interlocutory injunction. Both parties sought to strike or disregard certain evidence filed by the other.
HELD: The application was granted. (1) An applicant seeking interlocutory injunctive relief must establish: (a) that their action

presents a serious issue to be tried; (b) that there is a meaningful risk of them suffering irreparable harm if injunctive relief is not granted; and (c) that the balance of convenience, as between them and the respondents, favours granting the relief sought. In this case, the applicant's position that the respondents had no lawful right to possess and administer the TLE/specific claims reserve land appeared to be well-supported. The applicant's claim was neither frivolous nor vexatious. The applicant's contention that the respondents committed the tort of trespass by entering upon TLE/specific claims reserve land for the purpose of intimidation presented a serious issue to be tried. In addition, the applicant's claim in nuisance also presented serious issues to be tried. (2) The applicant was found to have established a meaningful risk of irreparable harm. With respect to undermining its membership's confidence in the Chief's and council's ability to govern Piapot, such harm was not remediable through damages. The same was also true with respect to the reputational damage which could result in lost opportunities for Piapot to permit land. While the lost rent from existing permits may be quantifiable, an eventual damages award carried a substantial risk of a hollow victory, given the significant rent involved and the potential inability to obtain the amount awarded from the respondents. (3) The balance of convenience favoured granting injunctive relief. Based on the evidence, the authorities and the provisions of the *Indian Act* reviewed by the court, the court was satisfied that the applicant had a relatively strong case in its underlying action against the respondents. It was also more likely that the applicants would suffer irreparable harm if injunctive relief were not granted and they ultimately prevailed than that the respondents would suffer irreparable harm if injunctive relief were granted and they ultimately prevailed.

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***Larson v Liberty Land Corporation*, 2024 SKPC 23**

Agnew, 2024-05-16 (PC24016)

Civil Procedure - Limitation Period
Civil Procedure - Point of Law - Clarification - Limitation Period

In 2008, the applicant invested in three mortgages related to undivided interests in land sold by the defendant. Payments were received satisfactorily until the mortgages matured in 2013. The applicant reinvested in the same way, continuing to receive payments until 2018. In 2018, she discovered she only had two mortgages registered, not three, due to an administrative error by the defendants. The main issue before the court was whether the claim was barred by the limitation period under *The Limitations Act*.
HELD: The limitation period for claims is two years from when the claim is discovered. An action starts when the court issues a summons. The issuance of summons crystallizes the date for the purposes of the limitation period, meaning the limitation period stops running. The claim in this case was submitted in September 2021, and a summons was issued in December 2021, both after the limitation period's expiration. The limitation period began on December 31, 2018, when the first missed payment would have been noticed, and expired on December 31, 2020. This meant the applicant should have started her claim and obtained a summons before that date. The court concluded that the action commenced after the limitation period expired and was therefore dismissed. Of note in this case was the delay (around two months) between the applicant's filing the claim with the court and the date of issue of the summons. In Provincial Court, a summons is issued after a judge has reviewed the plaintiff's application. The case of *Bakaluk v*

McGregor, 2003 SKKB 386 (*Bakaluk*) indicates that if the limitation period expires between the date of filing the claim and the issue of the summons, the limitation period stops running only if the plaintiff has done all that is required of them for the action to commence, regardless of when the summons is issued. However, if the plaintiff has not done all that is required, such as in a situation where the claim is rejected and the plaintiff has to resubmit it, the limitation period continues to run until the deficiencies are met, the claim is resubmitted, and a summons is issued (See *Metcalfe v 101102382 Saskatchewan Ltd.*, 2018 SKCA 84). In the instant case, the plaintiff did not explain the delay of two months. The burden of proof of addressing the delay is on the plaintiff. The plaintiff also has the burden of seeking relief if a delay is out of their control, even by providing a simple statement. If the delay is caused by the plaintiff, or if the plaintiff does not seek relief for delay that was out of their control nor provide any explanation about the delay, the ordinary rules of limitation period apply. Relief, per *Bakaluk*, would not be available to stop the limitation period in such situations.

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***R v C.D.S.*, 2024 SKPC 19**

Lang, 2024-05-17 (PC24015)

Criminal Law - Sentencing - Sentencing Principles
Constitutional Law - *Charter of Rights*, Section 12 - Cruel and Unusual Punishment

The court addressed the issue of an appropriate sentence for the defendant and an answer to his Charter arguments. The defendant was convicted of communicating with a person under the age of 18 to obtain sexual services for consideration, contrary to section 286.1(2) of the *Criminal Code*. The incident happened during a family gathering in Regina. The court had to review whether the mandatory minimum sentence of six months' imprisonment under section 286.1(2)(a) of the *Criminal Code* violated section 12 of the *Charter*, which protects against cruel and unusual punishment.
HELD: The court refused to apply the mandatory minimum sentence, finding it unconstitutional. Instead, the defendant was sentenced to a six-month conditional sentence order, followed by 18 months of probation, with various conditions for rehabilitation and community safety. The court applied the principles of sentencing from the *Criminal Code* as listed in sections 718 to 718.2. In deciding on an appropriate sentence, the court must consider each case's aggravating and mitigating factors. In the current case, the aggravating factors were: the victim was a minor, the offence occurred within the safety of the victim's home, and the emotional impact on the victim. The mitigating factors in this matter were: the defendant's difficult upbringing and history of abuse, the diagnoses of autism and ADHD, no prior criminal record, and the brief and non-physical nature of the incident. As for the *Charte*r challenges raised by the defendant, the court examined whether the mandatory minimum sentence was grossly disproportionate. The Court relied on the Supreme Court's decisions in *R v Hilbach*, 2023 SCC 3 and *R v Hills*, 2023 SCC 2 to analyze the constitutionality of the mandatory minimum sentence and the possible breach of this offender's s. 12 *Charter* rights. The court found that the mandatory minimum sentence was unconstitutional based on similar cases (previous court decisions with similar situations) and the specific circumstances of this case. Those legal references and their comparison with the current case showed the gross disproportionality of the minimum sentence against the defendant. The court also considered the possibility of a conditional

sentence under section 742.1(a) of the *Criminal Code*, and the relevant factors for such sentences from *R v Proulx*, 2000 SCC 5. These precedents showed that a conditional sentence was available in this case.

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