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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Cases by Name

***R v Johnson*, 2024 SKCA 58**

McCreary Caldwell Schwann, 2024-06-05 (CA24058)

Criminal Law - Procedure - Plea - Expunging Guilty Plea
Criminal Law - Application to Expunge Guilty Plea

The appellant had pled guilty to several offences including, but not limited to, making and uttering counterfeit money contrary to ss. 449 and 452(a) of the *Criminal Code*. Several months after the appellant pled guilty, she was contacted by the Canadian Border Security Agency (CBSA) informing her that she might be inadmissible to Canada. The appellant subsequently sought to withdraw her guilty pleas on the grounds that they were uninformed because she did not understand the collateral immigration consequences of her pleas. HELD: The appeal was dismissed. The appellant did not prove that she was not informed of the collateral immigration consequences of her guilty pleas. A plea is uninformed if the accused person was unaware of a legally relevant collateral consequence. In *R v Wong*, 2018 SCC 25, a two-step test for expunging an uninformed guilty plea was formulated. The

Bankruptcy and Insolvency - Conditional Discharge - Discharge

Charter of Rights - Search and Seizure - Reasonable and Probable Grounds

Civil Procedure - Case Management - *King's Bench Act*, Section 4-1

Civil Procedure - Class Actions - Intervenor Status

Civil Procedure - Costs - Solicitor and Client Costs

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Civil Procedure - Intervenor Status

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Civil Procedure - Solicitor-Client Costs

Civil Procedure - *Subpoena Duces Tecum* - Application to Quash

Civil Procedure - Summary Judgment

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Constitutional Law - *Charter of Rights*, Section 11(a), Section 11(b), Section 24(1) - Unreasonable Delay - Stay of Proceedings

Constitutional Law - *Charter of Right*s, Section 11(b) - Delay

framework involves two discrete steps: whether the accused was misinformed about sufficiently serious information; and whether that lack of information resulted in prejudice. In this case, the appellant's own evidence indicated that, at the time of the guilty pleas, she knew that being convicted of certain criminal offences carried the possibility that the CBSA might attempt to deport her. This knowledge fell squarely within what was required to understand the relevant collateral immigration consequences of a guilty plea. The appellant knew that, as a permanent resident, there was a possibility of serious immigration jeopardy resulting from certain criminal convictions, including the risk of being removed from Canada. Accordingly, the appellant was sufficiently informed of the collateral consequences of her pleas.

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***R v J.D.*, 2024 SKCA 59**

Barrington-Foote Tholl Jackson, 2024-06-12 (CA24059)

Criminal Law - Defences - *Charter of Rights* - Delay
Criminal Law - Appeal - Sexual Assault - Sentence
Criminal Law - Appeal - Offences Against Persons - Sexual Assault

The appellant was convicted of sexual assault. His application to stay the charge for delay, alleging a breach of his s. 11(b) *Charter* rights, was dismissed at trial. The trial judge considered the appellant's absence of remorse as an aggravating factor. He was sentenced to 18 months in custody (12 months in secure custody followed by six months of community supervision) followed by a one-year probation. The appellant appealed the conviction, arguing the delay caused a breach of his *Charter* rights. He also argued that the trial judge erred in considering the lack of remorse as an aggravating factor. The Court of Appeal (court) had to review two issues: whether the trial judge erred by failing to find a *Charter* breach for delay and whether the trial judge erred in treating an absence of remorse as an aggravating factor.
HELD: The court dismissed the conviction appeal and the *Charter* argument, stating that the delay in this matter was not markedly longer than it reasonably should have been. The court allowed the sentencing appeal and removed the probation period after the custody and community supervision periods. The standard of review for the issue of delay under the *Jordan* principles is correctness (*R v Pastuch*, 2022 SKCA 109; *R v Spencer*, 2022 SKCA 135). Section 11(b) of the *Charter* guarantees the right to a trial within a reasonable time. This right is essential to ensure a fair and efficient criminal justice system. In *R v Jordan*,

Constitutional Law - *Charter of Rights*, Section 11(b) - Delay - Stay of Proceedings

Constitutional Law - *Charter of Rights*, Section 11(b) - Delay - Stay of Proceedings - Trial Within Reasonable Time

Constitutional Law - *Charter of Rights*, Section 88- Search and Seizure

Costs - Solicitor and Client

Criminal Law - Assault - Sexual Assault

Criminal Law - Aggravated Assault - Sentencing - Dangerous Offender

Criminal Law - Appeal - Offences Against Persons - Sexual Assault

Criminal Law - Appeal - Sexual Assault - Sentence

Criminal Law - Application to Expunge Guilty Plea

Criminal Law - Bestiality

Criminal Law - Breakkand Enter Dwelling House and Commit Robbery

Criminal Law - *Controlled Drugs and Substances Act* - Possession for the Purpose of Trafficking - Sentence Appeal

Criminal Law - *Controlled Drugs and Substances Act* - Possession for the Purposes of Trafficking - Conviction - Appeal

Criminal Law - Dangerous Offender Application - Dangerous Offender - Long-term Supervision Order

2016 SCC 27, the Supreme Court established a presumptive ceiling of 18 months for the completion of trial in Provincial Court. If the delay exceeds the ceiling, it is presumed to be unreasonable, and the burden shifts to the Crown to establish the exceptional circumstances to justify the delay. The delay calculation includes both the time from the charge being laid to the trial's conclusion (total delay) and the delay attributable to the defense (defense delay). The net delay is determined by subtracting the defense delay from the total delay. Exceptional circumstances may justify a delay that exceeds the presumptive ceiling. These circumstances include discrete events that are unforeseen and unavoidable, such as obtaining crucial evidence or dealing with unexpected challenges. The trial judge has the discretion to determine whether there has been a breach of the right to trial within a reasonable time. They consider the specific facts and circumstances of the case, including the complexity of the case, the actions of the parties, and any exceptional circumstances. In assessing the reasonableness of the delay, the trial judge balances the interests of the accused, the interests of society, and the complexity of the case. They consider factors such as the length of the delay, the reasons for the delay, the prejudice suffered by the accused, and the impact on public confidence in the justice system. If a breach of the right to a trial within a reasonable time is found, the appropriate remedy may include a stay of proceedings, which terminates the prosecution. The trial judge has the discretion to determine the appropriate remedy based on the circumstances of the case. The net delay in this matter was 12 months and 16 days. The court found the delay was below the presumptive ceiling, and that the defense did not also make meaningful and sustained efforts to expedite the proceedings. The standard of review for sentences is deferential (*R v L.V.*, 2016 SKCA 74). The court could intervene if the trial judge handed down an unfit sentence or made errors in applying the sentencing principles, such as failing to consider a relevant factor or erroneously considering mitigating and aggravating factors such that they impact sentence. The court removed the probation period that would have followed the custody and supervised community custody terms. The court reasoned that the probation period would not serve the requirements of sentencing enumerated in s. 38(1) of the *Youth Criminal Justice Act* because the appellant was already subject to conditions for a lengthy period and did not have compliance issues with them.

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***616471 Saskatchewan Ltd. (Aalbers Agro) v Aalbers*, 2024 SKCA 60**

Caldwell Barrington-Foote Schwann, 2024-06-12 (CA24060)

Practice - Pre-trial Procedure - *Viva Voce* Hearing
Practice - Pre-trial Procedures - Interim Preservation of Property

Criminal Law - First Degree Murder

Criminal Law - Indignity to Human Remains

Criminal Law - Long-term Offender Application - Long-term Supervision Order

Criminal Law - Long-term Offender Designation

Criminal Law - Pornography - Child Pornography

Criminal Law - Procedure - Mistrial

Criminal Law - Procedure - Plea - Expunging Guilty Plea

Criminal Law - Procedure - Reopening Trial

Criminal Law - Sentencing - Child Pornography

Criminal Law - Sentencing - Dangerous Offender - Determinate Sentence - Long-term Supervision Order

Criminal Law - Sentencing - Dangerous Offender - Reasonable Expectation of Eventual Control - Long-Term Supervision Order

Criminal Law - Sentencing - Long-term Offender - Determinate Sentence - Long-term Supervision Order

Criminal Law - Sentencing - Sentencing Principles

Criminal Law - Sentencing - Sexual Assault - Dangerous Offender

This appeal involved the legal repercussions flowing from the dissolution of an intergenerational, large-scale family farming operation. The family farm was initially operated by the parents, who later included their sons and grandchildren in the operations. In May 2019, the appellants commenced an action asserting various contractual and equitable claims related to real and personal property connected with the farming operations. Pending trial, a Court of Queen's Bench judge was asked to address issues pertaining to ownership of land, farm machinery, equipment, harvested crops and personal property so that the parties could continue farming. A *viva voce* hearing took place to address five specific issues related to those matters, leaving other questions for the trial. As part of the pretrial proceeding, the judge also considered an application for an interim preservation order with respect to grain sale proceeds. The appellants were appealing the *viva voce* decision, asserting that the trial judge decided matters that exceeded the five questions that were to be determined by the *viva voce* hearing and made errors of fact and law.

HELD: The appeal was partly allowed. The Court of Appeal (court) set aside the interim preservation order and the order that the balance of the miscellaneous property on NW 15 and SW 15 belonged to the respondent parents. All other parts of the appeal were dismissed. (1) The trial judge's decisions on the five stated questions were not intended, and did not purport, to finally resolve any of the appellants' claims. In this case, the judge answered the five questions in a way that was intended to be definitive only in the sense that it would allow the parties (and third parties) to rely on the answers to the extent necessary to permit the continued operation of the family farm, pending the trial. These findings were, however, interim in relation to the matters at issue in the consolidated action. The trial judge made no decisions as to beneficial ownership of land or other assets or as to the significance of how the farm was financed and operated. As such, all the potential bases for the claims that the parties had asserted in relation to beneficial ownership, vesting orders, damages and other relief, including as to the assets listed in the five questions, remained in play. (2) The trial judge did not err in determining that Armand Aalbers (Armand) was the registered owner of NW 15. The certificate of title for this land was filed as an exhibit at the hearing which confirmed that Armand was the registered owner. As such, the judge had no difficulty concluding that Armand Aalbers was the owner of that quarter section of land. The appellants did not appeal, object to, or seek clarification of the meaning of the reference to ownership in this or any of the other questions posed by the judge. The trial judge also did not err in failing to address the numerous arguments the appellants had raised in relation to the conclusiveness of Armand's title and the related

Criminal Law - Sentencing - Sexual Interference

Criminal Law - Sentencing - Weapons

Criminal Law - Sexual Assault - Sentencing

Criminal Law - Sexual Interference - Touching for Sexual Purpose - Female under 16

Criminal Law - Sexual Touching of a Minor

Criminal Law - Weapons

Criminal Procedure - Trial Delay - Stay of Proceedings

Debtor and Creditor - Mortgage - Foreclosure

Employment - Labour Relations - Grievance Arbitration - Judicial Review

Family Law - Appeal - Custody and Access - Variation

Family Law - Child Custody and Access - Variation - Change in Circumstance

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

Family Law - Custody and Access - Previous Agreement

Insurance - Contract Law - Interpretation - Appeal

Insurance - Property Insurance - Exclusion - Appeal

allegations made in their statement of claim. The finding by the judge as to who was the registered owner of NW 15 amounted to nothing more than confirmation of a fact that was not in dispute and did not limit the ability of the appellants to seek the relief identified in their statement of claim. (3) The trial judge did not commit any palpable and overriding error in addressing the ownership of funds held in trust by Ceres Global. The judge found the necessary facts to answer the limited question of the legal ownership of these funds. It remained open to the appellants to ask the judge who hears the trial to reach a different conclusion, including in relation to the credibility findings on which they are based, grounded on the evidence admitted at trial. (4) The trial judge did not commit a palpable and overriding error in making findings about the ownership of the CR9090 combine and the four Twister Bins. The trial judge had concluded that she had sufficient evidence to make findings about the ownership of the CR9090 combine and the four Twister bins. While the appellants agreed that there was sufficient evidence to make those findings, they contended that the trial judge should have reached a different conclusion. In doing so, they alleged errors of fact and mixed fact and law, reviewable on the palpable and overriding standard. The court was not persuaded that the judge committed such error. In addition, it would be open to the appellants to lead more or better evidence and to argue that different findings should be made at trial in relation to the CR9090 combine, and how those and any other relevant facts bore on the question of beneficial ownership of these assets. (5) The trial judge erred in the determination of the ownership of machinery and equipment. Since a determination of ownership of machinery and equipment was one of the stated purposes of the *viva voce* hearing, it fell to the parties to make their case on a balance of probabilities. Simply because the appellants failed to establish their case for ownership, it did not logically follow that ownership accrued to the parents by default. If the parents claimed an ownership interest in those items, they had to establish their entitlement on a balance of probabilities. (6) There was no error in the judge's findings on grain and crop ownership. The findings of fact that resulted in the trial judge's conclusion on these issues were for the judge who would hear the trial of the consolidated action to finally decide, based on the evidence admitted and arguments presented therein. (7) The trial judge erred in granting an interim preservation order in relation to the proceeds from the sale of the grain. The trial judge offered no analysis of whether the parents had identified a meaningful risk of irreparable harm, nor did she assess the balance of convenience.

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Labour Law - Arbitration - Judicial Review - Standard of Review

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

Leave to Appeal - Extension of Time - Long-term Supervision Order

Mortgages - Foreclosure - Order *Nisi* - Foreclosure - Summary Judgment - Availability

Municipal Law - Assessment Appeal

Practice - Pre-trial Procedure - *Viva Voce* Hearing

Practice - Pre-trial Procedures - Interim Preservation of Property

Practice - Standing - Intervenor Status

Statutes - Interpretation - *Criminal Code*, Section 161

Tax Enforcement - Possession Order - Procedure

Cases by Name

616471 Saskatchewan Ltd. (Aalbers Agro) v Aalbers

CGC Holdings Ltd. v Saskatoon (City)

Economical Mutual Insurance Company v Brock Stock Farm Ltd.

Keep, Re (Bankrupt)

***R v Laird*, 2024 SKCA 61**

Caldwell McCreary Kalmakoff, 2024-06-13 (CA24061)

Charter of Rights - Search and Seizure - Reasonable and Probable Ground
Constitutional Law - *Charter of Rights*, Section 11(b) - Delay
Constitutional Law - *Charter of Rights*, Section 8 - Search and Seizure
Criminal Law - *Controlled Drugs and Substances Act* - Possession for the Purposes of Trafficking - Conviction - Appeal
Criminal Law - *Controlled Drugs and Substances Act* - Possession for the Purpose of Trafficking - Sentence Appeal

The appellants were convicted of possessing fentanyl for the purpose of trafficking and had been sentenced to a term of imprisonment of 8 years. The appellants alleged that the trial judge erred in determining that the police had grounds to lawfully arrest them without a warrant and to lawfully conduct a search of the vehicle in which they were travelling. The appellants also asserted that the trial judge erred by holding that their rights under s. 11(b) of the *Charter of Rights* had not been violated by the length of time it took their matters to proceed to conclusion.
HELD: The appeals against the appellants' conviction and sentences were dismissed. (1) The trial judge did not err in concluding that the warrantless arrest of the appellants was lawful. To comply with s. 8 of the *Charter*, a search conducted by state actors mustbe authorized by law, the law itself must be reasonable, and the search must be carried out in a reasonable manner. Section 495(1)(a) of the *Criminal Code* grants police the power to arrest individuals without a warrant if, on reasonable grounds, the police believe the person has committed or is about to commit an indictable offence. The arresting officer must honestly believe that the suspect has committed (or is about to commit) the offence in question and the officer's belief must be objectively reasonable in the circumstances. In this case, the court saw no basis to interfere with the trial judge's factual findings about the officer's credibility and reliability, or his determinations about the weight to assign to their evidence. The conclusions reached by the trial judge in resolving the material differences in the accounts of the police officers were well supported by the evidence and his reasons for coming to those conclusions revealed no incorrect application of legal principles or any misunderstanding of the substance of the evidence. Furthermore, the court was also satisfied that when the information that the arresting officer had available to him (which included his own observations, the appellants' statements and responses to his questions, and the information he learned about the appellants' criminal history) is viewed cumulatively, in context, and through the lens of a person with similar training and experience, the officer's subjective belief that the appellants had a controlled substance

other than marijuana in their possession was objectively reasonable. (2) The trial judge did not err in concluding that there was no violation of the appellants' right to trial within a reasonable time. For matters tried in Provincial Court, the presumptive ceiling for a reasonable time from charge until the actual or anticipated end of trial is 18 months. In determining whether that time in a given case exceeds the presumptive ceiling, any delay that is waived by or otherwise attributable to the defence is subtracted from the total period under consideration, and likewise for delay attributable to exceptional circumstances that arise from discrete events. Any portion of the delay caused by discrete exceptional events that the Crown and the system could reasonably have mitigated is not to be subtracted. In this case, the events that gave rise to the Crown's application to reopen its case, and the resultant delay, were not unforeseeable or unavoidable developments, or the product of anything that lay outside of the Crown's control. Also, there was no basis on the evidence to attribute 180 days of "overall" or non-case-specific delay to the exceptional circumstance of COVID-19. Nevertheless, subtracting the delay attributable to the conduct of the defence, interim judicial deliberation and discrete exceptional circumstances from the total delay left a remaining net delay of 547 days, which was exactly 18 months. There was also nothing in the record that would support a finding that the appellants took meaningful steps to address delay during the course of the trial or that they made any effort – let alone a sustained one – to expedite the proceedings. There was nothing in the record that even hinted at a concern on their part about delay until they filed their application under s. 11(b) of the *Charter*, which they only did after the trial judge had found them guilty. Accordingly, there was no basis to find that the appellants' s. 11(b) rights were violated. (3) The trial judge did not err in determining the appellants' sentences. The trial judge thoroughly canvassed what he viewed as being the mitigating factors for each of the appellants. There was no basis to conclude that he failed to consider any relevant mitigating factor, that he considered any of them in an improper fashion, or that he was unreasonable in the weight he assigned to them. The sentences they received were also in line with sentences imposed on similar offenders for similar offences committed in similar circumstances. The sentences were not demonstrably unfit.

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***Economical Mutual Insurance Company v Brock Stock Farm Ltd.*, 2024 SKCA 62**

Leurer Caldwell Dawson (*ad hoc*), 2024-06-14 (CA24062)

Insurance - Contract Law - Interpretation - Appeal
Insurance - Property Insurance - Exclusion - Appeal

In February 2016, the roof of a building owned by the respondent collapsed, causing damages for which it claimed against the appellants. The respondents were granted summary judgment for their losses. The appellants argued that their policy did not cover the respondent's losses.
HELD: The appeal was partly allowed. The summary judgment was set aside and the issue as to what part, if any, of the respondent's claimed losses might constitute resultant damages was remitted to the Court of King's Bench. All other arguments relating to the trial judge's findings were dismissed. (1) The trial judge did not err in finding that wind was a contributing cause of the roof's collapse. There were no material omissions in the judge's review of the evidence. There was also no palpable, let alone overriding, error in the judge's analysis of the evidence. (2) The judge did not improperly restrict her analysis. The appellants' argument was premised on a misapprehension of the judge's reasons. (3) The trial judge did not err in concluding that the damage was caused directly by breakage of an apparatus. The intent behind the exclusion policy would appear to be that the policy would not generally cover damages caused directly or indirectly by dampness but would respond when such damages were caused by dampness that was directly caused, for example, because a water pipe burst. Understood in this way, the exception to the exclusion would operate when the rupture of pipes or breakage of the apparatus was the cause of the dampness or dryness to atmosphere and other issues. The interpretative approach of the appellants was one that was open and led to the conclusion that the exclusion did not apply. (4) The trial judge did not directly decide that the corrosion to the truss plates fell within the scope of the deterioration exclusion. There were several difficulties with the judge's conclusion that the resultant damages exception to the exclusion operated to permit the respondents full recovery of their claim. The trial judge did not also address the issue of what part, if any, of the respondent's loss might be insured by the policy. As a result, it was impossible for the Court of Appeal to determine what part, if any, of the respondent's claimed losses might constitute resultant damages within the meaning of the exception to the deterioration exclusion.

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***Rizo v Kendic*, 2024 SKCA 64**

McCreary Tholl Drennan, 2024-06-25 (CA24064)

Family Law - Custody and Access - Previous Agreement
Family Law - Child Custody and Access - Variation - Change in Circumstance
Family Law - Appeal - Custody and Access - Variation
Family Law - Custody and Access - Best Interests of Child - Primary Residence

Following a series of contentious interim applications after their separation, the parties entered into a consent judgment respecting property, parenting and support matters in September 2019. In March 2021, the petitioner applied to vary the order such that their daughter would reside with her primarily during the school weeks and she would have primary decision-making authority in several respects for their daughter. This application was denied by a Court of Queen's Bench judge. In appealing the decision, the appellant submitted that the trial judge erred, among other ways, by failing to find that a material change in circumstances had occurred following the judgment.

HELD: The appeal was allowed. The court also ordered that the appellant would have sole decision-making authority respecting all matters affecting the child. The court further ordered that the child reside in the primary care of the appellant and made other parenting orders. (1) The trial judge erred by failing to find a material change in circumstances had occurred. For the threshold of material change to be met, a child's circumstances must be "altered in a fundamental way" from the status quo at the time of the prior order. In this case, the trial judge did not focus on the child's circumstances following issuance of judgment. Instead, he grounded his decision on the inability of the parties to make decisions respecting the child and that the mere passage of time following the judgment did not constitute a material change in circumstance. The trial judge's factual findings, and his acceptance of the appellant's evidence that the child was having medical and psychological challenges following the judgment, substantiated that a material change in the child's circumstances had occurred. There was additional evidence of the material change in the two years that had elapsed post-trial. (2) The trial judge erred in his consideration of the status quo and failure to address other statutory factors relating to the child's circumstances and best interests. Section 16(3) of the *Divorce Act* provides that the status quo is but one factor to be considered in a best interest analysis. It is not statutorily enshrined as having more significance or prominence than any other enumerated factor. The reasons provided by the trial judge indicated that he elevated the status quo to a dominant if not paramount factor in his best interest analysis. By erroneously deferring to the historic parenting arrangement, the trial judge failed to meaningfully consider the child's need for stability, the strength of the child's relationship with each of the parents, the parties' ability to promote the other parent, the parties' respective plans for the child's care and the ability of the parties to communicate on matters affecting the child. (3) There were several reasons why it was appropriate for the court to make a final determination without the need to remit the matter for a retrial. The parties had been through one trial and had endured significant financial and emotional cost. The court also had a complete picture of the child's circumstances since the trial decision. The trial judge's findings of fact, which remained undisturbed on appeal, supported the conclusion that a material change in the child's circumstances had occurred following the judgment, which opened the door to a fresh consideration of her best interests by the court.

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***CGC Holdings Ltd. v Saskatoon (City)*, 2024 SKCA 65**

Jackson, 2024-06-28 (CA24065)

Municipal Law - Assessment Appeal
Civil Procedure - Leave to Appeal

The prospective appellant applied for leave to appeal the decision of the Assessment Appeals Committee of the Saskatchewan Municipal Board (committee). The committee had overturned portions of decisions of the Board of Revision for the City of Saskatoon.
HELD: The application was dismissed. (1) The prospective appellant had not demonstrated a meaningful doubt about the correctness of the committee's decision. In determining whether leave to appeal should be granted, there are two main questions to be determined: first, whether the proposed question is of sufficient merit to warrant the attention of the Court of Appeal and second, whether the proposed question is of sufficient importance to warrant the attention of the Court of Appeal. Leave should be denied if:

(a) the proposed question will give rise to an appeal that is *prima facie* frivolous or vexatious, (b) the proposed question will give rise to an appeal that is prima facie destined to fail, having regard to the applicable standard of review and other considerations; (c) the answer to the proposed question will not have a material impact on the bottom line of the committee's decision. In determining whether the proposed question is of sufficient importance to warrant determination by the Court of Appeal, the court considers the following: (a) whether the answer to the proposed question has significant consequences for the proposed appellant or the proposed respondent; (b) whether the proposed question transcends the particular in its implications; (c) whether the proposed question raises a point of significance to the law of property assessment, to the larger assessment regime or to the administration of justice more generally; and (d) whether the proposed question raises a new or uncertain or unsettled point of law or jurisdiction. In this case, the court was not persuaded that the prospective appellant's ground of appeal relating to the atypical sale of the Comfort Inn raised a meaningful doubt that the committee erred in law. The court also found that the prospective appellant did not raise any legal point of such importance to the integrity of the property tax system or the place of the committee in the system to warrant the court's intervention. The court did not find any error warranting appellate intervention in the committee's finding that a presumption of correctness of a sales verification form applies to a sales verification form completed by someone other than a person who owns, uses, occupies, manages or disposes of the property. Further, in the court's view, there was no meaningful doubt about the correctness of the committee's decision regarding the process for verifying a sale. There was also no basis to take on the prospective appellant's appeal based on the standard of review applied by the committee.

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***R v Bear*, 2024 SKCA 66**

Jackson, 2024-06-28 (CA24066)

Leave to Appeal - Extension of Time - Long-term Supervision Order
Criminal Law - Aggravated Assault - Sentencing - Dangerous Offender
Criminal Law - Dangerous Offender Application - Dangerous Offender - Long-term Supervision Order
Criminal Law - Sentencing - Dangerous Offender - Determinate Sentence - Long-term Supervision Order

The accused had pled guilty to committing an aggravated assault and breaching a recognizance order. When he entered his guilty plea, he had a criminal record with 53 convictions, including a number of violent offences. The Crown at the time applied to have him designated a dangerous offender, which was declined by the Provincial Court. The appellant did not appeal the designation or sentence but applied to extend the time to permit him to appeal the length of his long-term supervision order.
HELD: The application was refused. (1) The applicant did not meet the established criteria for the court granting an extension of time to appeal the long-term supervision order. In determining whether to exercise discretion to extend the time to appeal a dangerous offender designation, the court is to consider the following: (a) Did the applicant have a bona fide intention to appeal before the time for appeal expired? (b) Has the applicant satisfactorily explained why he did not exercise his right of appeal within the prescribed time? (c) Would the respondent be unduly prejudiced by an extension of time? (d) Is there merit in the proposed appeal, which is to say does it raise a reasonably arguable issue? (e) Do the interests of justice weigh in favour of extending the time for appeal? In this case, the court believed the applicant did not have a bona fide intention to appeal when the appeal period expired. The proposed

appeal did not raise a reasonably arguable issue. The court also concluded that the interests of justice did not weigh in favour of extending the time for the applicant to appeal the length of his long-term supervision order.

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***Xiao-Phillips v Thomson*, 2024 SKCA 67**

McCreary Jackson Kalmakoff, 2024-07-03 (CA24067)

Administrative Law - Appeal - Standard of Review
Civil Procedure - Discovery of Documents - Third Party Records
Civil Procedure - *Subpoena Duces Tecum* - Application to Quash

The parties in this case were practicing lawyers who acted for different clients in litigation that arose from a contested election on the Carry the Kettle First Nation. During the litigation, it was alleged that the appellant was not properly retained by the party for which he purported to act, and that he had failed to provide that party with competent advice. This led to charges against the appellant and a disciplinary proceeding before the Law Society of Saskatchewan (law society). As part of his defence in the disciplinary proceeding, the appellant sought to obtain disclosure of records the respondents had in their possession and served the respondents with subpoenas to compel production of the records. The respondents applied to the Court of King's Bench to quash the subpoenas and their applications were granted. This was the decision being appealed by the appellant.
HELD: The appeal was allowed. (1) The chambers judge erred by applying the wrong legal standard to her assessment of whether, or to what extent, the subpoenas should be quashed. There are several bases upon which a subpoena issued by a court may be quashed. Among others, these include where the witness has no material evidence to give and where the documents subpoenaed are not relevant. Where a subpoena is challenged on either of these bases, the issuing party must establish that the witness or documents are likely to provide evidence relevant to the material issues. In this case, the trial judge lost sight of what was at issue in the proceeding to which the subpoenas related, which was an application before the disciplinary committee of the law society that had yet to be decided. In assessing the likely relevance and the breadth of the evidence the subpoenas sought to obtain, the chambers judge approached the issue as though the subpoena application were before her. She made the same error with respect to the claims of privilege. It was for the committee panel to make any determinations about the likely relevance of the documents for which production was sought, and about any claims of privilege relating to those documents. (2) There was no basis on which to quash the subpoenas. In determining whether third party records should be disclosed, the onus is on the party seeking disclosure of the records to show that the party subpoenaed possesses records that are likely to relevant to issues at play at the trial or hearing. In this case, all the appellant needed to show in opposing the application to quash the subpoenas was that the evidence he sought was material to the disclosure application. Based on the evidence before the chambers judge, the appellant cleared that hurdle. There was also nothing in the record that supported the conclusion that the subpoenas issued to the respondents were obtained for an improper purpose. Nor did the record support a finding that the sheer number of documents requested or the cost of producing them was so oppressive as to amount to an abuse of process. To the extent that the subpoenaed records could relate to privileged communication, the matter was properly addressed by the committee in the context of the disclosure application.

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***Yashcheshen v Saskatchewan Government Insurance*, 2024 SKKB 69**

Popescul, 2024-04-19 (KB24070)

Civil Procedure - *King's Bench Rules*, Rule 11-28
Civil Procedure - Case Management - *King's Bench Act*, Section 4-1

The applicant was declared a vexatious litigant in previous decisions of the court, which was upheld by the Court of Appeal. This meant the applicant had to seek leave of the Court of King's Bench before bringing any new application to that court. The applicant brought five applications for leave in different judicial centres against Saskatchewan Government Insurance (SGI). The court combined all those leave applications and conducted a case management proceeding to handle them. The court had to decide how to address the five applications for leave to ensure proper administration of justice and compliance with the vexatious litigant order in place for the applicant. The court provided an order outlining the steps and how the applicant should bring her applications for leave. HELD: The court emphasized the need to avoid multiple proceedings, which could increase litigation costs and complexity, and yield inconsistent results (See *Canadian Pacific Railway Company v Kelly Panteluk Constructions Ltd.*, 2020 SKCA 123 at para 53). It is an abuse of the court's process to commence multiple actions between the same parties dealing with the same subject matter (See *Onion Lake Cree Nation v Stick*, 2018 SKCA 20). Therefore, case management by a single judge was deemed necessary to prevent potential abuse of the court's process. Under s. 4-1 of *The King's Bench Act*, the Chief Justice can coordinate and assign judges to manage specific cases. The court's inherent jurisdiction includes controlling its processes, especially concerning vexatious litigants (See *Barth v Saskatchewan (Social Services)*, 2021 SKCA 41). Rule 11-28 of *The King's Bench Rules* also codifies the court's inherent jurisdiction to declare someone vexatious and prohibit them from bringing an action to the court without prior leave. The court's authority for case management also comes from its inherent jurisdiction, designed to help the parties move toward resolution and make any orders regarding vexatious litigants. Considering all the above, the court ordered that the applicant's applications be managed by the Associate Chief Justice of the court; any future applications for leave must include a comprehensive affidavit detailing the proposed claim and previous related litigation; and Local Registrars were directed to forward all such applications to the Associate Chief Justice.

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***R v A.E.R.*, 2024 SKKB 90**

Crooks, 2024-05-17 (KB24087)

Criminal Law - Sexual Interference - Touching for Sexual Purpose - Female under 16

Criminal Law - Sexual Touching of a Minor
Criminal Law - Sentencing - Sexual Interference
Statutes - Interpretation - *Criminal Code*, Section 161
Criminal Law - Bestiality

This case centred around sexual abuse by a mother of her four-year-old daughter. The accused had been convicted at trial of sexual assault, sexual touching of a person under the age of sixteen years, production and distribution of child pornography, and making arrangements with a person to commit an offence under ss. 151 or 152 of the *Criminal Code* (Code) with respect to a person under the age of sixteen years. The accused also pled guilty to committing bestiality and entered guilty pleas on two charges under s. 145(5) of the Code for breaching her release order. The Crown proposed a custodial sentence of 8 years and 11 months and among other things, a no-contact order with the victim. The defence proposed a sentence of seven years.
HELD: The court imposed a sentence of eight years and 11 months. The court also imposed a prohibition order under s. 161 of the Code. (1) The fundamental purpose of sentencing is to ensure respect for the law and to maintain a just, peaceful and safe society. An appropriate sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In determining an appropriate sentence, the Supreme Court in *R v Friesen*, 2020 SCC 9, set out a non-exhaustive list of factors to consider: likelihood to reoffend; abuse of a position of trust or authority; duration and frequency; age of the victim; degree of physical interference; and victim participation. In this case, the court determined that a significant sentence was required to meet the principles of denunciation and deterrence given the seriousness of the offences, the young age of the victim, the accused's position of authority, the harm caused to the victim and the community, along with the accused's high moral blameworthiness. (2) Imposing a prohibition order under s. 161 of the Code is discretionary. There must be an evidentiary basis to conclude that the accused poses a risk to children and the terms of a prohibition order are a reasonable attempt to minimize that risk. In this case, the court determined that the nature and circumstances of the accused's offences and the information set out in the pre-sentence report provided an evidentiary basis to conclude that the accused posed a risk to children. The court was also satisfied that imposing conditions aimed at restricting her opportunities to have contact with adults with a sexual interest in children or with children themselves would be a reasonable measure to attempt to minimize the risk.

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***Paynton (Village) v Cramer*, 2024 SKKB 98**

Danyliuk, 2024-05-22 (KB24094)

Landlord and Tenant - Appeal - Possession Order - *Residential Tenancies Act*
Tax Enforcement - Possession Order - Procedure

The plaintiff village took tax enforcement proceedings against the defendant and obtained title to the defendant's property in December 2021. The village did nothing to obtain possession of the property until June 2022. The village filed three applications without notice to obtain vacant possession. The initial application resulted in a fiat wherein the court asked whether it had jurisdiction

to make the order, or whether the plaintiff should have brought proceedings under *The Residential Tenancies Act*. Instead of filing submissions, the village re-filed a second application without notice, and a third, which the court considered here.
HELD: The court directed that the matter must proceed with a notice of application in chambers. The court directed the plaintiff to personally serve the defendant with proper notice of the application, supporting material (including a new affidavit) and a copy of the court's fiat, along with serving and filing a proper brief of law in support of its application. The village needed to examine how a possession order was properly obtained in tax enforcement proceedings where it had obtained title to land.

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***R v D.G.*, 2024 SKKB 102**

Zerr, 2024-05-24 (KB24101)

Constitutional Law - *Charter of Rights*, Section 11(a), Section 11(b), Section 24(1) - Unreasonable Delay - Stay of Proceedings
Constitutional Law - *Charter of Rights*, Section 11(b) - Delay
Criminal Procedure - Trial Delay - Stay of Proceedings
Constitutional Law - *Charter of Rights*, Section 11(b) - Delay - Stay of Proceedings - Trial Within Reasonable Time

The accused was charged with sexual assault and sexual touching. The accused subsequently applied for a judicial stay of proceedings, arguing that his right to be tried within a reasonable time had been violated under s. 11(b) of the *Charter of Rights*.
HELD: The application was granted. (1) In *R v Jordan*, 2016 SCC 27, the Supreme Court of Canada sets out the framework within which to determine a s. 11(b) application: (a) calculate the total delay, which is the period from the charge to the actual or anticipated end of trial; (b) subtract defence delay from the total delay, which results in the "net delay"; (c) compare the net delay to the presumptive ceiling, in this case 30 months; (d) if the net delay exceeds the presumptive ceiling, it is presumptively unreasonable. To rebut the presumption, the Crown must establish the presence of exceptional circumstances. If it cannot rebut the presumption, a stay will follow; (e) subtract delay caused by discrete events from the net delay for the purpose of determining whether the presumptive ceiling has been reached; (f) if the remaining delay exceeds the presumptive ceiling, the court must consider whether the case was particularly complex such that the time the case has taken is justified and the delay is reasonable; and (g) if the remaining delay falls below the presumptive ceiling, the onus is on the defence to show that the delay is unreasonable. In this case the total delay was 1, 201 days. The court found two periods of defence delay totalling 100 days, which meant the net delay in this case was 1,101 days. The court further found only 70 days attributable to discrete exceptional circumstances, which left a delay of 1,031 days. The remaining delay exceeded the presumptive ceiling.

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***R v Wangler*, 2024 SKKB 106**

Scherman, 2024-05-29 (KB24104)

Criminal Law - Sentencing - Weapons
Criminal Law - Weapons

The accused was charged with one count of trafficking in restricted weapons. A blended voir dire to address the issues of the voluntariness of the accused's statement and compliance with the accused's *Charter* rights resulted in a finding of voluntariness and no breach of *Charter* rights. The accused subsequently pled guilty to one count of trafficking in restricted firearms. The Crown sought an incarceration term of 4.5 to 5.5 years. The defence sought a conditional sentence of two years less a day to be served in the community.
HELD: The accused was sentenced to three years' incarceration. The court also issued ancillary orders, including prohibiting the accused from possessing any prohibited firearm or ammunition for life. (1) The Supreme Court in *R v Hills*, 2023 SCC 2 held that a two-stage inquiry was to be adopted in which: (a) at stage one, the court first determines a fit and proportionate sentence for an offence in question having regard to the sentencing objectives and principles stated in the *Criminal Code*; and (b) at stage two, the court decides whether a stated mandatory minimum requires a sentence that is grossly disproportionate when compared to the fit and proportionate sentence determined at stage one. The stage one analysis determines what would be the appropriate sentence for the offender given: (a) the gravity of the offence charged; (b) the circumstances and facts surrounding the offence in question; and (c) the degree of responsibility and the personal circumstances of the offender. In this case, the evidence demonstrated that the accused knew he was committing the crime of trafficking in restricted weapons and that it was possible, indeed perhaps probable, that the handguns he trafficked in were on their way to criminals. There were multiple handguns involved, which was an aggravating factor. The circumstances in which the accused trafficked the handguns to a person he barely knew for money, and on other occasions trafficked in three other firearms, also moved the gravity of his offence to well above the lower end of the spectrum for the offence charged. The accused's responsibility for his crime of trafficking in firearms was also significant. While the court had regard to the facts that the accused pleaded guilty, was remorseful, appeared to be at little or no risk of offending and was well along the path of rehabilitation, the appropriate sentence for the accused for the offences he committed, in the circumstances he did, and in light of his personal circumstances, was three years of imprisonment in a federal penitentiary. (2) The court declined to consider the constitutional challenge. The court does not need to determine *Charter* challenges to the constitutionality of minimum sentences if the court finds that the appropriate sentence for the offender's offence was equal to or exceeded the mandatory minimum sentence set in the *Criminal Code*. The court's finding that the appropriate penalty was equal to or more than the mandatory minimum sentence made the constitutional challenge moot.

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***Keep, Re (Bankrupt)*, 2024 SKKB 110**

Elson, 2024-05-30 (KB24108)

Bankruptcy and Insolvency - Conditional Discharge - Discharge
Bankruptcy - Conditional Discharge - Factors
Bankruptcy - Discharge Application

The bankrupt in this case sought an absolute discharge from bankruptcy. The unsecured creditor objected on the grounds that the bankrupt: (1) was responsible for excessive unsecured liabilities; (2) failed to keep usual and proper books of account; (3) continued to trade after becoming aware of his insolvency; (4) failed to account for any loss or deficiency of assets; (5) gave an undue preference to a creditor; and (6) had been found guilty of fraud or fraudulent breach of trust.
HELD: The court granted discharge subject to certain conditions. (1) Under Section 172(2) of the *Bankruptcy and Insolvency Act* (BIA), once a fact under Section 173 of the BIA is found, the court is limited to one or more of three possible dispositions: (a) refusal of the discharge; (b) suspension of the discharge for whatever period is though proper; or (c) requiring the bankrupt to comply with a condition of his discharge. The court can make this order on proof of any of the following facts: the bankrupt has been guilty of any fraud or fraudulent breach of trust; the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible; the bankrupt omitted to keep such books of account as are usual and proper in the business carried on by the bankrupt; the bankrupt continued to trade after becoming aware of being insolvent; the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities; and the bankrupt has given an undue preference to any of the bankrupt's creditors within the three months preceding the date of the bankruptcy. In this case, the court was of the view that the bankrupt was not able to show that he was not responsible for the disproportion between his liabilities and his assets. Despite the bankrupt's awareness of potential liability under the personal guarantee, he freely acknowledged that he allocated proceeds of sale to other payees. The evidence about these allocations lacked specificity and corroboration. The bankrupt also failed to account for the loss or deficiency of assets to meet liabilities. All other facts under s. 173 of the BIA were not established.

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***R v Fertuck*, 2024 SKKB 113**

Danyliuk, 2024-06-12 (KB24105)

Criminal Law - Procedure - Reopening Trial
Criminal Law - Procedure - Mistrial

The defendant was charged with first-degree murder. The evidence phase of this trial was closed. In this application, the defendant requested to provide further evidence regarding the firearm issue or, alternatively, a grant of a mistrial. The court had to decide whether to reopen the trial to allow the defendant to call further evidence and on what terms, or whether the court should grant a mistrial.
HELD: The Court dismissed the application. There was no basis in fact, evidence, or law to reopen the trial or grant a mistrial. The trial judge has the discretion to reopen a trial, which must be exercised judicially (See *R v Scott*, [1990] 3 SCR 979). The defendant proposed to run a ballistics analysis on the rust on the firearm in evidence. The court concluded the defendant had had enough opportunities during the evidence phase of the trial to bring such evidence. Furthermore, his proposal would not be able to challenge the forensic ballistics evidence in this trial as there was no link between the two. Grant of a mistrial should only be awarded in the clearest of cases where there has been a fatal issue, such as damaging the fair trial process, that cannot be remedied in any other way (See *R v Charles*, 2015 SKQB 381). The central issues in an inquiry for a mistrial would be whether the trial was fair in the eyes of a reasonable person, considering all the relevant circumstances of the case, whether the alleged issues damage the fairness of the trial and whether any remedies are available. The court analyzed the parties' submissions and the court's records and ruled there was no basis for granting a mistrial.

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***R v Fertuck*, 2024 SKKB 114**

Danyliuk, 2024-06-14 (KB24106)

Criminal Law - Indignity to Human Remains
Criminal Law - First Degree Murder

The defendant was charged and found guilty of first degree murder and indignity to the human remains of the victim. The victim disappeared in 2015, and her body was never found. In an undercover police action known as a “Mr. Big” operation, the defendant confessed to the murder of the victim. The undercover investigation, cell phone data, the discovery of the murder weapon, and issues of credibility and nature of confession were central issues at this trial. The issues before the court were whether the defendant planned and deliberately murdered the victim and whether he intended to improperly or indecently interfere with the victim’s remains.
HELD: The court ruled that the defendant planned and deliberately murdered the victim, constituting the offence of first-degree murder. The defendant was also found guilty of indignity to the human remains. Per s. 235(1) of the *Criminal Code*, the Crown must prove the identity of the accused, the date, time, and place of the offence, that the accused caused the death unlawfully, had the required state of mind for murder, and that the murder was planned and deliberate. Under s. 182(b) of the *Criminal Code*, the Crown must prove the identity of the accused, the date, time, and place of the offence, that the accused knew the body was dead, that the accused interfered improperly or indecently with the human remains, and that the accused intended to do so. The court reviewed all the material evidence in this trial extensively and concluded that the evidence provided proof beyond a reasonable doubt that the

defendant was guilty of the charges. The court also applied the law about undercover police investigations for a confession according to the *R v Hart*, 2014 SCC 52, and *R v Mack*, 2014 SCC 58, cases considering the reliability and credibility of the defendant's confessions to the police. The court noted that other conforming and corroborating evidence in this trial, such as the firearm evidence, supported the Crown's case. The victim's body was never found. However, the court relied on numerous cases from the Supreme Court and others in concluding that the lack of a body was not fatal to the Crown's case (See, for example, *R v Pritchard*, 2008 SCC 59). From the totality of the evidence in the trial, the court was satisfied beyond a reasonable doubt that the defendant was guilty of first degree murder and indignity to human remains.

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***R v Kouman*, 2024 SKKB 116**

Crooks, 2024-06-20 (KB24116)

Criminal Law - Sexual Assault - Sentencing
Criminal Law - Sentencing - Child Pornography
Criminal Law - Sentencing - Sentencing Principles
Criminal Law - Pornography - Child Pornography

The accused had been convicted of sexual assault on a person under 16 years and making child pornography. The court had to determine the appropriate sentence for the accused.
HELD: The court imposed a custodial sentence of 101 months less 1,650 days. The court also imposed a prohibition order and other ancillary orders. (1) Section 718 of the *Criminal Code* sets out the following objectives of sentencing: (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct; (b) to deter the offender and other persons from committing offences; (c) to separate offenders from society, where necessary; (d) to assist in rehabilitating offenders; (e) to provide reparations for harms done to victims or to the community; and (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims or the community. Section 718.01 also requires that the Court give primary consideration to the objectives of denunciation and deterrence in the abuse of a person under 18 years old. In *R v Friesen*, 2020 SCC 9, the Supreme Court set out a number of factors to consider in determining an appropriate sentence: (a) likelihood to reoffend; abuse of a position of trust or authority; duration and frequency; age of the victim; degree of physical interference; and victim participation. In this case, the accused purchased a 26-ounce bottle of alcohol for two minors while he remained sober. He drove the minors to an isolated location and encouraged sexual activity between the two minors. The accused also videotaped the sexual assault on the victim and showed a complete disregard for the victim's well-being and safety. It was also aggravating that the accused took multiple videos of the incident which were then shared online. Given the seriousness of the offences, the age of the victim, the high moral blameworthiness of the accused and the harm caused to the victim, a significant sentence was required to meet the primary considerations of denunciation and deterrence. A significant sentence was also required to reflect the accused's degree of responsibility and demonstrate proportionality to the gravity of the offence.

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***First National Financial GP Corporation v Churko*, 2024 SKKB 118**

Robertson, 2024-06-20 (KB24113)

Civil Procedure - Summary Judgment
Mortgages - Foreclosure - Order *Nisi* - Foreclosure - Summary Judgment - Availability
Civil Procedure - Summary Judgment - Foreclosure Proceedings
Debtor and Creditor - Mortgage - Foreclosure

The decision addressed an application by the plaintiff for summary judgment in the form of an order for foreclosure of the mortgaged property, dismissal of the counterclaim and costs.
HELD: The court granted the plaintiff's application for summary judgment on its claim but dismissed the application to dismiss the defendant's counterclaim. (1) Rule 7-5 (1) of *The King's Bench Rules* requires the court to be "satisfied that there is no genuine issue requiring a trial with respect to a claim or defence" or "the parties agree to have all or part of the claim determined by summary judgment and the court is satisfied that it is appropriate to grant summary judgment." In this case, the essential facts had been established by the materials filed and there was no trial required. (2) A plaintiff in a foreclosure action must prove by evidence that: the parties entered into a mortgage agreement, the property is subject to the mortgage agreement, and there has been a material default in the mortgage agreement. In this case, the parties entered into a mortgage agreement and the mortgage was registered against title to the property. The mortgage term had ended two and a half years earlier. The plaintiff was owed the mortgage balance and no payment had been made. There was also no viable defence to preclude granting the application for summary judgment. (3) The counterclaim raised genuine issues that required trial. In the court's view, the alleged misconduct raised in the counterclaim might help to establish the tort of intimidation. The defendant also stated his intent to add a cause of action of the tort of retaliation. While this would require an amendment to pleadings, the court had regard to that additional potential basis for the defendant's claim.

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***Public Service Alliance of Canada v Saskatchewan Gaming Corporation*, 2024 SKKB 120**

Brown, 2024-06-21 (KB24115)

Employment - Labour Relations - Grievance Arbitration - Judicial Review
Administrative Law - Arbitration - Collective Agreement - Interpretation of Agreement
Administrative Law - Arbitration - Judicial Review
Labour Law - Arbitration - Judicial Review - Standard of Review

This was an application for judicial review of a grievance arbitration filed by the applicants. At issue in the grievance arbitration was

whether the respondent contravened two consecutive collective agreements when it engaged in two mass lay-offs of bargaining unit members in March 2020 and December 2020 because of the COVID-19 pandemic. This was done without prior consultation between the parties. An arbitrator had found that the respondent did not breach its consultation obligations. The applicant sought an order quashing the arbitrator's decision and remitting the matter back to him for reconsideration.
HELD: The application was dismissed. The reasonableness standard of review requires the reviewing court to answer two questions: whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision. In this case, the arbitrator's award had rationale, internal consistency, logically applied the relevant provisions within the framework of the affected legislation and collective agreements within the milieu of the COVID-19 pandemic and the relationship of the parties, and properly chose the appropriate facts to focus on within that context to ascertain the conclusion. The arbitrator's conclusions were also justified with reference to the reasons he gave and justified in the light of the legal and factual context before him.

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***Egger v Waisman*, 2024 SKKB 121**

Scherman, 2024-06-24 (KB24117)

Civil Procedure - Solicitor-Client Costs
Civil Procedure - Costs - Solicitor and Client Costs

The applicants sought an award for costs on a solicitor-client basis. The applicants claimed solicitor-client costs in the order of $300,000 were justified by scandalous, outrageous or reprehensible behaviour on the part of the respondents. In the alternative, they sought a substantially enhanced discretionary award of costs.
HELD: The court awarded the applicants costs of $305,371.75 and taxable costs of their application on the basis of three times column three of the Tariff of Costs. (1) In determining the availability of solicitor-client costs, the guiding principles are as follows: (a) solicitor and client costs are awarded in rare and exceptional cases only; (b) solicitor and client costs are awarded in cases where the conduct of the party against whom they are sought is described variously as scandalous, outrageous or reprehensible; (c) solicitor and client costs are not generally awarded as a reaction to the conduct giving rise to the litigation, but are intended to censure behaviour related to the litigation alone; (d) solicitor and client costs may be awarded in exceptional cases to provide the other party complete indemnification for costs reasonably incurred. In this case, the court found that the conduct of the respondents was unreasonable and reprehensible. This was also an exceptional case, in part related to the fact that the result obtained from the applicants' applications equally benefitted both factions. The aspect of the respondents' conduct in the proceedings that the court viewed as reprehensible increased unnecessarily the solicitor-client costs incurred by the applicants in achieving a result of benefit to both sides. In view of these and other factors to be considered in a discretionary award under Rule 11-4 of *The King's Bench Rules* (complexity and result of the proceedings, the importance of the proceeding in bringing an end to the conflict and the respondents' conduct in the proceedings), the court found an appropriate enhanced costs award to be 75% of the solicitor-client costs incurred in respect of all proceedings prior to the application for solicitor-client costs.

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***M.L.R.P. v Canada (Attorney General)*, 2024 SKKB 122**

Currie, 2024-06-25 (KB24118)

Practice - Standing - Intervenor Status
Civil Procedure - Intervenor Status
Civil Procedure - Class Actions - Intervenor Status

The plaintiffs alleged that Aboriginal women had been and were being sterilized without proper or informed consent through tubal ligation procedures conducted after they gave birth. The plaintiff subsequently sought to have the action certified as a class action as against only the Saskatchewan Health Authority (SHA). Amnesty International Canada (AIC) and the Native Women's Association of Canada (NWAC) also applied for leave to intervene in the application for certification.
HELD: The court dismissed the applications of AIC and NWAC for leave to intervene at the certification hearing. NWAC's application as it related to any other hearing was also dismissed. (1) The applicants did not establish sufficient interest to show their involvement was warranted or that the outcome of the proceeding would be improved by their involvement. The granting of intervenor status is discretionary and should be exercised sparingly. An applicant seeking to be made an intervenor must address the following: (a) a sufficient interest in the outcome of the matter must be shown such that their involvement is warranted; (b) there must exist the reasonable prospect that the process will be advanced or improved by their addition as an intervenor; (c) as an intervenor, they cannot seek to increase the number of issues the parties themselves have included in the proceeding; (d) adding them as an intervenor must meet the goals and objectives identified by Rule 1-3 of *The King's Bench Rules* such that the issues raised by the litigation will be heard with reasonable dispatch and the matter will not be overwhelmed with procedure by virtue of their inclusion as an intervenor; (e) adding them as an intervenor must not unduly prejudice one of the parties; and (f) the intervention should not transform the court into a political arena. The court is not bound by any of these factors in determining an application for intervention but must balance these factors against the convenience, efficiency and social purpose of moving the case forward with only the persons directly involved in the proceeding. In this case, the court was not satisfied that the contribution of AIC and NWAC as to common issues would advance or improve the process. Further, the court was not persuaded that, as intervenors with respect to common issues, AIC and NWAC would make contributions that would not be available without their participation. As a result, there was no reasonable prospect that the process would be advanced or improved in relation to the common issues by their intervention. There was also no reasonable prospect that the process would be advanced or improved in relation to preferable procedure by the intervention of AIC or NWAC. While the steps proposed to be taken by AIC and NWAC would add to the proceedings and delay the matter reaching the certification hearing, it was not likely that the matter would be overwhelmed by these procedures. Also, while the intervention of AIC or NWAC, or both, might lead to increased media attention, the court did not accept the suggestion that the intervention of either applicant would transform the court into a political arena. In the end, the court concluded that permitting AIC or NWAC to intervene would not advance or improve the certification process. The social purposes on which their interests were based were being addressed by the plaintiffs. The areas in which they wished the

court to be informed were being addressed by the plaintiffs. Permitting either party to intervene would serve only to add delay and complication to the proceedings, and their intervention was not warranted otherwise.

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***R v Blacksioux*, 2024 SKKB 124**

Mitchell, 2024-06-28 (KB24119)

Criminal Law - Sentencing - Long-term Offender - Determinate Sentence - Long-term Supervision Order
Criminal Law - Long-term Offender Application - Long-term Supervision Order
Criminal Law - Long-term Offender Designation
Criminal Law - Break and Enter Dwelling House and Commit Robbery

The accused was convicted of breaking and entering, discharging a firearm without lawful excuse, and resisting a peace officer. The Crown subsequently brought an application to declare the accused a long-term offender and have him sentenced in accordance with s. 753.1(3) of the *Criminal Code*.
HELD: The accused was designated a long-term offender and sentenced to 11 years' incarceration less 70.5 months of remand credit. The accused was also sentenced to long-term supervision for a period of 10 years. (1) Under s. 753(1.1) of the *Criminal Code*, an accused may be designated as a long-term offender and made subject to a long-term supervision order if the court is satisfied that: (a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted; (b) there is a substantial risk that the offender will reoffend; and (c) there is a reasonable opportunity of eventual control of the risk in the community. In this case, the court was persuaded that a custodial sentence of 11 years was a fit and proper sentence. The court was also persuaded that there was a real and substantial risk that the accused would offend violently. Based on past performance, the court also determined that the prospects for the accused successfully integrating into the community did not look promising. As a result, the accused met all criteria to be designated a long-term offender. (2) The accused's sentence was proportionate to the gravity of the offences and the degree of responsibility of the accused. In determining an appropriate sentence, the court must consider the fundamental purpose of sentencing set out in s. 718 of the *Criminal Code*, which is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions having one or more of the following objectives: (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct; (b) to deter the offender and other persons from committing offences; (c) to separate offenders from society, where necessary; (d) to assist in rehabilitating offenders; (e) to provide reparations for harms done to victims or to the community; and (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims or the community. In this case, the accused had committed very serious offences that posed a grave risk to the physical and psychological wellbeing of the victims. The home invasion was planned, and the degree of violence imposed on the victims was substantial. The accused also committed these offences less than a month after he was released from prison following a 45-month custodial sentence for a string of convenience store robberies. There were systemic and background factors associated with Aboriginal communities in Saskatchewan that diminished the accused's moral culpability somewhat. In view of the aggravating and mitigating factors, a global sentence of 11 years was an appropriate sentence. (3) Based on information provided in the accused's forensic

psychiatric assessment, a 10-year long-term supervision order was appropriate.

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***R v Adam*, 2024 SKPC 16**

Kovatch, 2024-06-07 (PC24019)

Criminal Law - Sentencing - Dangerous Offender - Determinate Sentence - Long-term Supervision Order
Criminal Law - Sentencing - Sexual Assault - Dangerous Offender
Criminal Law - Sentencing - Dangerous Offender - Reasonable Expectation of Eventual Control - Long-Term Supervision Order
Criminal Law - Assault - Sexual Assault

The accused was designated a long-term offender in 2007 following a conviction of sexual assault and sentenced to six years' incarceration followed by eight years of supervision under a long-term supervision order. The accused was, however, not designated a dangerous offender at the time. In February 2016, the accused was convicted of a breach of the long-term supervision order for being in a place where young children were present and having contact with those young children. In 2022, the accused was again convicted of sexual assault of a minor and breach of the long-term supervision order. The Crown then made an application to designate the accused a dangerous offender.
HELD: The accused was designated a dangerous offender and sentenced to 94 days at a federal penitentiary followed by a long-term supervision order for a period not to exceed 10 years. (1) The presumption for a dangerous offender designation had been met. Under s. 753(1.1) of the *Criminal Code*, if the court is satisfied that the offence for which the offender is convicted is a primary designated offence for which it would be appropriate to impose a sentence of imprisonment of two years or more, and that the offender was convicted previously at least twice of a primary designated offence and was sentenced to at least two years of imprisonment for each of those convictions, the presumption for a dangerous offender designation is met unless the contrary is proven on a balance of probabilities. In this case, the accused remained a significant risk to reoffend sexually. He had been convicted of a further offence of sexual assault and would be sentenced to a further term of at least two years. There was no evidence to suggest that the accused was not a danger to reoffend. (2) The court was satisfied that the public would be adequately protected by a determinate sentence and a long-term supervision order. Under s. 753 (4.1) of the *Criminal Code*, a judge must impose an indeterminate sentence for a designated dangerous offender unless satisfied that a lesser measure would adequately protect the public against the commission by the offender of murder or a serious personal injury offence. In this case, the court was not convinced that the accused and his three convictions in 17 years met the narrow but high standard for an indeterminate sentence. The court concluded that the accused had made significant progress since his conviction in 2007. The court also concluded that for a period of time, the accused was being successfully managed and supervised within the community and the public was not at risk during that time. The court believed that if the accused were supervised as he was prior to the COVID pandemic, he would further improve and be safely managed in the community.

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