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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Eye Hill (Rural Municipality) v Saskatchewan (Energy and Resources), 2023 SKCA 120

Leurer Jackson Caldwell, 2023-11-01 (CA23120)

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Bankruptcy - Creditors - Priorities

The appellant Rural Municipality (RM) appealed a determination that the Ministry of Energy and Resources (ministry) had priority to undistributed receivership proceeds. The chambers judge ruled that the receivership proceeds were payable to the ministry in priority to property taxes owing to the RM on the basis that: 1) orders made in failed proceedings did not affect the subsequent receivership proceedings, and 2) the ministry was not a creditor and its claim was not provable in bankruptcy.
HELD: There was no error in law in the chambers judge's conclusion, and the appeal was dismissed.

Civil Procedure - *King's Bench Rules*, Rule 5-49

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***E.Y. v B.A.*, 2023 SKCA 124**

Jackson Caldwell Kalmakoff, 2023-11-16 (CA23124)

Appeal - Family Law
Family Law - Interim Parenting Orders - Supervised Access
Family Law - Joint Decision-Making Orders

The appellant appealed a review of her supervised parenting arrangement governing access to her child. The appellant claimed the chambers judge had erred in law and in fact by failing to consider cultural factors in his decision and sought decision-making authority on behalf of the child.
HELD: The appeal was dismissed. The sole issue properly before the court on appeal was whether the chambers judge erred when he declined to: 1) vary the extent of the appellant's visits and 2) vary the imposed terms of supervision. These issues had been wholly overtaken by subsequent orders and events at the Court of King's Bench. The application for joint decision-making authority was dismissed, as it was not properly before the court.

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***R v Barre*, 2023 SKCA 129**

Caldwell Kalmakoff Drennan, 2023-11-24 (CA23129)

Criminal Law - Appeal - First Degree Murder
Criminal Law - Appeal - Jury Instructions
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The appellant was convicted of constructive first degree murder after a jury trial. The jury concluded that the death was caused while the offence of unlawful confinement occurred. The appellant and a second male knocked at the door of the victim's house and were let in. The appellant approached the victim and asked him for the $20 owing for a purchase of methamphetamine. The victim told the appellant that he did not have the money. Shortly after, the second male pulled out a shotgun from under his clothing and passed it to the appellant, who then pointed the gun at the victim. The second male went to take the television as payment instead. The appellant then fatally shot the victim, saying something like, "that's what you get." A witness in the house estimated that the whole

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Sale of Land - Unregistered Equitable Interest

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Statutes - Interpretation - *Change of Name Act, 1995*, Section 25

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incident lasted 10 to 15 minutes but conceded that she was not sure. She did not see the shooting. During the trial, the Crown took the position that the victim was physically and psychologically confined from the moment that the gun was produced. Defence trial counsel argued that the confinement had to be a discrete event not subsumed in the killing, and that the mere presence of the firearm did not necessary mean that the victim was confined. Counsel met with the trial judge to discuss the draft jury charge. Defence counsel voiced concerns about the wording. The final charge to the jury included as an element that the appellant committed the offence of unlawfully confining the victim, and that the unlawful confinement and murder of the victim were part of the same series of events. The trial judge followed the Canadian Judicial Council (CJC) model jury instructions. The appellant argued that the jury charge was inadequate because it did not include that the confinement of the victim had to be distinct from and not subsumed in the killing. The Court of Appeal (court) determined whether the jury was properly instructed on whether the confinement and killing were discrete events arising out of the same transaction.
HELD: The court dismissed the appeal, quashed the conviction for first degree murder, and substituted a conviction for second degree murder. The appellant could be properly convicted of second degree murder. The court found that the charge to the jury did not let the jury know that it had to decide whether the confinement and killing were distinct. Such instruction was necessary, given the live issues at trial. The jury's finding that the appellant murdered the victim was unaffected by the flaw in the jury charge. An accused person is entitled to a properly, not perfectly, instructed jury (*R v Theodore*, 2020 SKCA 131). In assessing the adequacy of a jury instruction, the court considered whether the charge left the jury with an understanding of the factual issues to be determined, the legal principles relating to the issues and the evidence, the position of the parties, and the evidence relevant to the position of the parties on the legal issues. In order for an accused to be found guilty of constructive first degree murder, the case law was clear that the act that constituted the underlying offence and the killing must not be one and the same. Acts of confinement must go beyond the acts causing death (*R v Smith*, 2015 ONCA 831). The court noted that there was no clearly defined length of time that a person had to be confined against their wishes to engage s. 231(5)(e). However, when a confinement was brief, the key question was whether it was distinct from the killing. Here, the court agreed with the appellant that it was a live issue as to whether the jury could reasonably find two distinct acts in the killing and confinement, which may have been part of the same transaction, or that the confinement was part of the killing. The trial judge was required to leave this issue with the jury. The evidence on the timing and nature of the confinement in relation to the killing was "ambiguous at best." The jury was only instructed to look to the temporal connection of whether the confinement and killing arose in "the same series of events" or were part of the "same transaction," an instruction that failed to alert the jury to the fact that a confinement entirely subsumed in the act of killing would not engage s. 231(5)(e). The court

noted that the CJC model instructions were merely a starting point for crafting instructions and had to be tailored to the specific facts of the case.

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***R v Stonechild*, 2023 SKCA 130**

Schwann Tholl Kalmakoff, 2023-11-27 (CA23130)

Criminal Law - Motor Vehicle Offences - Impaired Driving - Conviction - Application for Leave to Appeal
Statutes - Interpretation - *Criminal Code*, Section 839

The applicant appealed to the Court of King's Bench the trial decision convicting him of impaired driving, operating a vehicle with an excessive blood alcohol level, dangerous driving, and mischief. The judge sitting as a summary conviction appeal judge dismissed his appeal. Here, the applicant sought leave of the Court of Appeal (court) to appeal. At trial, the allegation was that the applicant drove a pickup truck dangerously on a road and then through a canola field, causing damage to the crop. The only live issue at trial was identity. By the time police arrived on scene, the vehicle had been abandoned. The applicant and another person were found hiding a short distance away. The Crown's eyewitness did not know the applicant but had brief interactions with the vehicle and its occupants. Circumstantial evidence tied the applicant to the vehicle, and the Crown argued that the applicant admitted to police that he had been the driver. The applicant testified that the other occupant was driving, and vice versa. The trial judge rejected the evidence given by the applicant and the other occupant and concluded that the Crown proved that the applicant was guilty beyond a reasonable doubt. The court decided whether to grant leave to appeal under section 839 of the *Criminal Code*.
HELD: The court denied the application for leave to appeal. The applicant's proposed grounds of appeal failed to meet the "compellingly meritorious" standard. Leave to appeal against a summary conviction was limited to questions of law alone. The court did not have jurisdiction to interfere with the King's Bench decision unless the applicant could identify either a significant or compellingly meritorious error of law in it. The applicant argued that the trial judge erred by concluding that his alibi had been fabricated in the absence of independent evidence of fabrication, and by effectively treating that finding as conclusive proof of his guilt. The court found that this was not a fair reading of the trial decision: the trial judge made her determination on the basis of the evidence as a whole.

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***Regina Sexual Assault Centre Inc. v Cogent Chartered Professional Accountants LLP*, 2023 SKKB 269**

Klatt, 2023-09-13 (KB23245)

Civil Procedure - Pleadings - Application to Strike Statement of Claim - Want of Prosecution - Delay
Civil Procedure - *Queen's Bench Rules*, Rule 4-44

The defendant (applicant) sought an order pursuant to Rule 4-44 of *The Queen's Bench Rules* to dismiss the claim commenced by the plaintiff (respondent) on the basis of delay. The plaintiff's claim related to fraudulent activities of its former employee. The defendant was the respondent's auditor at the time. The plaintiff's 2018 statement of claim was grounded in negligence, breach of contract, and breach of fiduciary duty. The former employee was convicted of theft of $772,899 and was sentenced to jail with a restitution order. The defendant received no response to its numerous requests for particulars beginning in December 2018. The defendant did not provide the plaintiff with notice of its intent to bring the application to strike for delay before filing it. The plaintiff replied to the application to strike by providing a reply to the request for particulars. A statement of defence was not yet filed. The court considered whether to dismiss the claim under Rule 4-44 for delay, including whether: 1) the delay was inordinate; 2) the delay was inexcusable; and 3) despite the inordinate and inexcusable delay, whether it was in the interests of justice that the case proceed to trial.
HELD: The court denied the application to strike for delay. The court was satisfied that despite the inordinate and inexcusable delay, it was in the interests of justice that the action be permitted to proceed. The court considered Rule 4-44 for whether the delay was inordinate and inexcusable, and that it was not in the interests of justice for the claim to proceed. The court cited *International Capital Corporation v Robinson Twigg & Ketilson*, 2010 SKCA 48 (*ICC*) as a framework for the analysis. 1) The respondent conceded, and the court accepted, that there had been an inordinate delay. 2) The respondent also conceded, and the court accepted, that the delay was inexcusable. The respondent was completely unresponsive to the numerous requests from the applicant's counsel seeking a reply to the request for particulars. 3) The court found that despite the inordinate and inexcusable delay, that it was in the interests of justice that the case proceed to trial. The court considered the factors in *ICC*, including: a) the prejudice the defendant would suffer in mounting its case if the matter went to trial; b) the length of the inexcusable delay; c) the stage of the litigation; d) the impact of the inexcusable delay on the defendant; e) the context in which the delay occurred; f) the reasons offered for the delay; g) the role of counsel in causing the delay; h) the public interest; and i) other factors. a) The court could not conclude that the prejudice was so serious that the applicant could not defend its claim. This was even though the fraud was discovered over seven years ago and the claim was filed over five years ago. b) More than four years had elapsed from the date the request for particulars was sent to the date of the application to strike. The court noted that much of the follow-up correspondence from the applicant's lawyer was unanswered. This factor weighed slightly in favour of striking the claim. c) The litigation had barely commenced. The statement of defence had not been filed. d) There was no evidence of any effect of the delay on the applicant. e) The applicant tried to move the matter forward, but the numerous requests for a response went largely unanswered. This factor weighed only somewhat in favour of striking the claim. f) There was no explanation offered by the

respondent's lawyer for the delay. The executive director of the respondent stated that she was waiting to hear back from the lawyer about next steps in the lawsuit. g) There was no evidence from the respondent's lawyer for whether he was responsible for the delay. While counsel's inaction cannot defeat a striking application, it was part of the analysis. Here, this factor weighed significantly in favour of permitting the action to continue. h) The court considered the public sources of funding received by the respondent, and the fact that the public had an interest in seeing the claim of negligence disposed of on its merits if the theft was undetected because of errors of an auditor that the respondent was statutorily obliged to retain. This weighed slightly in favour of allowing the claim to continue. i) The court considered all of the factors that inform the interests of justice branch of the analysis to conclude that it was close to the line. The lack of communication from the respondent's lawyer was unacceptable. Despite the inordinate and inexcusable delay, it was in the interests of justice that the action be permitted to proceed.

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***Riben v Riben*, 2023 SKKB 217**

Morrall, 2023-10-16 (KB23204)

Civil Procedure - Amendment to Statement of Claim
Enforcement of Money Judgments - Preservation Order

The plaintiffs commenced an action seeking damages, the return of farmland and a declaration of ownership of farm equipment. The claim involved a dispute between the parties over the purchase of farmland. The litigation was now at the discovery phase. Here, the plaintiffs brought an application to amend the statement of claim to add a plaintiff, and a request that the court grant a preservation order preventing the defendants from disposing of farm equipment until the action had been decided. The court determined whether: 1) to grant an order amending the statement of claim; 2) a preservation order should be granted; and 3) costs were appropriate. HELD: 1) The court granted all proposed amendments to the statement of claim. Rule 3-72(1) of *The Queen's Bench Rules* sets out the requirements for a party to amend a statement of claim. The threshold for amending pleadings was generally low, and the court was not concerned with the negligence or carelessness of the omission in the initial pleadings provided that the amendment "can be made without injustice to the other side." There was an award of costs against the plaintiffs to compensate the defendants for the extra preparation to defend against the new aspects of the claim. 2) The court dismissed the plaintiffs' application for a preservation order. The defendants asserted that granting the order would prevent them from managing their farm operations based on the needs of their business. The court cited s. 5 of *The Enforcement of Money Judgments Act* for the court's authority to grant a preservation order. In *Custom Foundations Ltd. v Welcome Homes Ltd.*, 2017 SKQB 148, the court set out a three-prong test for granting a preservation order: a) if the action is successful, will it result in a judgment or order in favour of the plaintiff? b) if a preservation order is not granted would the enforcement of such a judgment or order likely be ineffective as a result of the defendants dealing with the property? and c) will the action be prosecuted without delay? The court found that there was little dispute that if the action were successful, it would result in a judgment in favour of the plaintiff. The court noted that there was no evidence of the defendants having any interest in dissipating any of the assets to move away from farming, or that they were selling disputed agricultural equipment to pay for an unrelated project. The only evidence before the court was that the defendants purchased newer equipment

to replace their old equipment to be able to operate their farm more effectively. There was no evidence that replacing equipment in this manner would make enforcement of any potential judgment even partially ineffective, or that there was any loss of value that could render a judgment less effective. The court found that the evidence was clear that the defendants would continue to have sufficient assets to satisfy any judgment that might be made. Even though it was not necessary, the court analyzed the third part of the test to find that the plaintiffs had met their burden in demonstrating that they were prosecuting the claim without delay. 3) The mixed success of the applications disentitled both parties from receiving costs.

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***R v Rouse*, 2023 SKKB 233 (not yet published on CanLII)**

Robertson, 2023-11-01 (KB23218)

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

The accused sought a stay of proceedings, claiming delay constituted a breach of s. 11(b) of the *Charter*. The accused was charged with touching for a sexual purpose contrary to section 151 and sexual assault contrary to section 271 of the *Criminal Code*.
The Court considered whether the charges should be stayed for delay.
HELD: The application was dismissed. When delay attributable to defence was deducted, the time period from the date of charge to the anticipated end of trial did not exceed the 30-month limit. The charges were laid on January 2, 2021 and the trial was scheduled to end on February 9, 2024. This total time period exceeded the superior court 30-month limit for jury trials by 221 days. Delay attributable to the defence must be removed from the calculation. Delay by defence must be either expressly waived or caused solely by defence conduct. Four weeks would have been sufficient time to review disclosure and obtain instructions. Further days spent reviewing disclosure were attributed to defence delay. The defence expressly waived delay over a period of 133 days. Delay because the defence's lawyer is not available for dates available to the Crown and court is attributable to defence delay. The total time attributable to defence delay was 493 days. Even if the limit had been exceeded, it would have been necessary to consider that at least part of the delay was attributable to the aftereffects of the COVID-19 pandemic as an extraordinary event.

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***DW Earnshaw Excavating v 7-Eleven Canada Inc.*, 2023 SKKB 252**

Bergbusch, 2023-11-27 (KB23234)

Statutes - Interpretation - *Builders' Lien Act*, Section 56(9)
Practice - Application for Payment of Funds Out of Court

The applicant sought an order for payment of funds out of court, relying on s. 56(9) of *The Builders' Lien Act* (BLA). The applicant requested direction from the court about the process for lien claimants to prove their lien claims. The applicant proposed that the funds be paid out on a *pro rata* basis to all lien claimants with valid claims. The other lien claimants argued that no such instruction was necessary because the court file already contained sufficient evidence establishing the validity and amount of the lien claims. In 2019, the respondents paid nearly $60,000 into court, complying with a court order under s. 56(2) of the BLA. This order limited the respondent's liability to the affected lien claimants to the amount paid into court, and discharged the lien claims from the respondent's title. By operation of law, the liens then became a charge on the amount that was paid into court instead of registered against the respondent's title, leaving the claimants to prosecute their claims against the respondent for unpaid balances. The lien claimants included the applicant subcontractor retained by a general contractor to build a convenience store. The total amount claimed by all lien claimants was much more than the amount paid into court. The court decided the following issues: 1) Did s. 56(9) of the BLA authorize the court to determine the validity of the lien claims and order payment out of court; 2) was service on the respondent contractor required for this application; 3) should the time for setting the matter down for trial be extended; and 4) was the applicant entitled to common carriage costs?
HELD: The court dismissed the application for payment of funds out of court. 1) Section 56(9) of the BLA did not apply to this situation. Section 56(9) applied where a lien claimant whose registered claim of lien or written notice of a lien had been vacated was not able to prove his claim. The section did not provide a mechanism for the court to determine the validity of lien claims. Here, the applicant sought a court order confirming that its lien claims had been proved. The court added that the relief sought by the applicant could only be granted after the court determined who was entitled to the money and what the proportionate share was. The court noted that the applicant could apply for summary judgment under Rule 7-2 of *The King's Bench Rules*. 2) Notice was required. The court would not have granted the application even if s. 56(9) applied because there had been no notice of the application in accordance with *The King's Bench Rules*. The court noted that the respondent contractor had not been served with any court applications or other documents since it failed to attend mediation in 2019. A party failing to attend mediation in non-family law proceedings is not prohibited from taking any further step in the proceeding. 3) The application to extend the time for setting the matter down for trial was adjourned, sine die, returnable to chambers on 14 days' notice. 4) There was no award of costs. Given the outcome of the application, the court did not address the application for common carriage costs.

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***Kreiner v Kadon Industries Ltd.*, 2023 SKKB 263**

Bardai, 2023-12-05 (KB23242)

Civil Fraud - Elements
Sale of Land - Unregistered Equitable Interest

The primary issue was whether the plaintiffs had an equitable unregistered interest in lands registered in the name of the defendant

that ought to be recognized. In 1953, the land was sold but sale of the land was never recorded at the Land Titles Office and there was never a formal deed or transfer. A cabin was built on the quarter section and interest in the cabin was sold. The only record of the transaction was a notarized letter. As a general rule, parties are entitled to rely on what is registered on title, but the plaintiffs may be afforded protection if fraud is established.
HELD: There was no falsehood, reckless or otherwise, and fraud was not established. The loss to the plaintiffs was a loss arising from their own inaction. As a result, the plaintiffs did not have an equitable interest and the land belonged to the defendant.

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***Simmonds v 101148623 Saskatchewan Ltd.*, 2023 SKKB 270**

Currie, 2023-12-13 (KB23246)

Civil Procedure - Independent Medical Evaluation
Civil Procedure - *King's Bench Rules*, Rule 5-49
Statutes - Interpretation - *King's Bench Act*, Section 6-12

The plaintiff claimed against two defendant corporations and the defendant. She claimed damages arising from an incident in which the defendant assaulted her in the defendant corporations' commercial premises. She provided a written report by a registered psychologist to the defendants and to the court outlining an opinion that because of the assault, the plaintiff suffered from severe PTSD. Here, the defendant corporations applied under s. 6-12 of *The King's Bench Act* and Rule 5-49 of *The King's Bench Rules* for an order requiring the plaintiff to undergo an independent medical examination (IME). The plaintiff opposed the application on the basis that requiring her to complete a second psychological examination would exacerbate her PTSD. The court determined: 1) whether the psychologist's report was admissible; and 2) whether an IME should be ordered.
HELD: The court ordered an IME under s. 6-12 of *The King's Bench Act* and did not admit the doctor's report in evidence on this application. 1) The opinion contained in the report was not properly before the court on this application, so the court did not consider it. The court did not consider the factual content either, because it was not provided under oath. The doctor had not been qualified by the court to give opinion evidence on this application according to the requirements in *R v Mohan*, [1994] 2 SCR 9 (QL). The plaintiff relied on s. 22 of *The Evidence Act* for the court to exercise its discretion to admit the report into evidence without proof of the expert's qualifications. The court noted that while the report included a detailed statement of the doctor's qualifications, the court also required a request to the court for qualification, with notice to the other party so that any issue regarding qualification could be reviewed. However, on this application the court noted that the fact that a registered psychologist diagnosed the plaintiff with severe PTSD was relevant. 2) The court ordered an IME to be conducted with respect only to the cause, extent and duration of the plaintiff's psychological injuries. The court reviewed the case law to find that ordering an IME depended on balancing the plaintiff's interest with the defendants' right to properly defend the claim. The plaintiff argued that she would risk suffering serious injury if required to submit to an IME. The court indicated that a first IME is almost routine, because it is independent. The court found that there was no clear or strong risk that the plaintiff would suffer injury from undergoing the proposed IME.

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***A.N.H. v Saskatchewan (Minister of Justice and Attorney General)*, 2023 SKKB 272**

Wildeman, 2023-12-15 (KB23247)

Civil Procedure - Judicial Review
Statutes - Interpretation - *Change of Name Act, 1995*, Section 25

The applicant challenged a decision by the Registrar of Vital Statistics (director) to register a change to the applicant's two children's names under *The Change of Name Act, 1995* (Act). The applicant sought a variety of relief against the Minister of Justice and Attorney General for Saskatchewan, eHealth Saskatchewan and the director, in addition to the children's mother. The applicant took issue with the mother's right to change the children's names and challenged the director's decision to change the children's names despite ongoing family litigation in British Columbia. In the court's view, this was an application for judicial review. The change of the children's names was connected to high conflict family litigation between the parents. The mother successfully obtained an order to relocate with the children to Saskatchewan. The applicant had been declared a vexatious litigant by both the British Columbia Supreme Court and Court of Appeal. The main reason the mother had applied to Vital Statistics to change the children's names was to protect the children's identities from internet searches that would associate the children with the family litigation and the applicant's behaviour. The court determined: 1) whether it had jurisdiction to hear the originating application; and 2) whether costs against the applicant were appropriate.
HELD: The court dismissed the originating application. It was not appropriate for the court to exercise supervisory jurisdiction over the application for judicial review, including determining the preliminary issue of the applicant's standing, until the administrative proceedings under the Act were exhausted. The court noted that the exercise of a court's supervisory jurisdiction in the context of a judicial review was discretionary. Applicants seeking judicial review were expected to exhaust remedies provided by the legislature before resorting to the court's supervisory jurisdiction. Here, s. 25(1) of the Act gave the director the authority to annul a change of name if satisfied that it had been obtained by fraud or misrepresentation. Section 28 of the Act also had a statutory appeal mechanism to the Court of King's Bench if the director annulled a change of name under s. 25. In the court's view, it was not appropriate to exercise supervisory jurisdiction before the administrative proceedings under the Act were exhausted. The preliminary issue of whether the applicant had standing to challenge the change to the children's names should be determined by the director in the first instance. 2) The court ordered costs against the applicant in the amount of $2,500. The court agreed with the mother that the applicant's materials were excessively lengthy, and that the applicant's approach to seeking relief in multiple forums served to unduly complicate and lengthen the matter.

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***Holliday v Saskatchewan Teachers Federation*, 2023 SKKB 273**

Bergbusch, 2023-12-15 (KB23248)

Civil Procedure - Amendments to Pleadings - Application to Strike
Civil Procedure - Application to Strike Statement of Claim - No Reasonable Cause of Action

The applicants (defendants) sought to strike a statement of claim on the basis that the claim did not disclose a reasonable cause of action. The claim was amended.
HELD: The claim in its amended form must be struck against all the defendants on the basis that it failed to disclose a reasonable cause of action and it was plain and obvious the claim was bound to fail. The amended claim: 1) referred to negligence but failed to allege the necessary material facts to establish each element of the tort; 2) failed to identify a professional standard of care or explain how any of the defendants had fallen short of any applicable standard; 3) listed various policies and laws without identifying a specific contravention; 4) requested remedies that are not forms of relief the court can grant; and 5) did not particularize what wrongs were committed by which defendants. However, the plaintiff should be given an opportunity to amend her pleadings against certain parties as a reasonable cause of action could be pleaded against them.

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***CIBC Mortgages Inc. v Remy Estate*, 2023 SKKB 277**

Gerecke, 2023-12-19 (KB23256)

Mortgage - Foreclosure - Application for Judicial Sale - Order *Nisi*

The plaintiff applied for an order *nisi* for sale by real estate listing. The plaintiff filed an appraisal of the property, in addition to a comparative market analysis prepared by a realtor. The court determined whether to grant the order *nisi* for sale by real estate listing.
HELD: The court dismissed the plaintiff's application because it was missing valuation evidence. The court's main concern was the comparative market analysis and the plaintiff's reliance on it. The comparative market analysis referred to no recent comparable sales; the sales it did include were from 2013 and 2016, and a conditional sale without a sale price from 2023. It contained no actual opinion of value. The court highlighted that valuation evidence was still expert evidence. If it did not meet the threshold of admissibility as expert evidence, it was likely no more than inadmissible hearsay. In the court's view, lawyers had a duty to do more than routinely file materials that did not approach an acceptable standard. Here, the court could not say where to set the upset price because the appraisal evidence was inherently unreliable and potentially lacking in relevance to the subject property. Counsel should have recognized and addressed this deficiency before filing the application.

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***R v St. Germaine*, 2023 SKPC 49**

Schiefner, 2023-10-17 (PC23048)

Criminal Law - Sexual Assault

The accused was charged with sexual assault. The complainant testified that she went to the accused's apartment hoping to stay with him for a while. She testified that when she got there, the accused implied that a sexual relationship would be required if she wanted to stay there, and then he proceeded to have sex with her without her consent. The accused denied any sexual assault occurred. He testified that the complainant falsely accused him of sexual assault because he refused to let her stay at his apartment if she was unable to pay rent. The accused had roommates from time to time, but for the most part lived alone. The accused had been diagnosed with autism and had an anxiety disorder. The complainant's aunts stayed with the accused for a couple of months at a time in the year prior to the allegation, and the complainant stayed with the accused and her aunts on those occasions as well. The aunts stopped paying rent when they stopped working, and the accused testified that he felt he was being taken advantage of. HELD: The court found the accused not guilty. The court found the testimony of both the complainant and the accused to be plausible, and was left with a reasonable doubt as to the accused's guilt.

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