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The proposed appellant sued the respondents for the damage caused by their alleged negligence. The appellant's mine was flooded and equipment was destroyed. The proposed appellant applied to amend their pleadings, claiming a cause of action against the respondents pursuant to s. 15 of The Environmental Management and Protection Act, 2002. The application was dismissed by a Queen's Bench judge (see: 2014 SKQB 421). The judge held that the section had no application to the facts as the plaintiff's mining operation did not meet the definition of "environment" in the Act. The proposed appellant applied for leave to appeal the decision.
HELD: The court gave leave to appeal. The matter was of sufficient importance to warrant consideration by the court and possessed sufficient merit in that the issue involves an uncertain point of law and may involve a reconsideration of the court's decision in Hoffman v. Monsanto.

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The prospective appellant applied for leave to appeal the dismissal by a chambers judge of his application for an order appointing a designated judge to hear a class action certification application. In relation to his application, the appellant had filed an affidavit of service indicating that the claim had been sent to Nissan Motor Co., Ltd. by registered mail addressed to an address in Japan. The chambers judge held that this was not proper service because article 10(a) of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention) does not provide an alternative method of service. Several reasons were provided for this conclusion. First, registered mail does not constitute valid service in Japan. Although Japan has not opposed article 10(a) of the Hague Service Convention, this does not mean that it has agreed that delivering a document by registered mail constitutes valid service. Second, Japan's decision to not object is not relevant because Saskatchewan has not allowed for service abroad by registered mail. Queen's Bench rule 12-12 sets out how service abroad may be effected pursuant to the Hague Service Convention, and this rule requires that a request for service abroad be made through the local registrar. The chambers judge held that an application for an order appointing a designated judge is only to be considered after an applicant has filed sufficient proof of proper service of the claim upon each defendant. Evidence of proper service on two of the defendants (Nissan North America and Nissan Canada) was sufficient, but due to the improper service upon Nissan Motor, the application was dismissed. The grounds of the proposed appeal were concerned with whether the judge had erred: 1) in finding that article 10 of the Hague Convention did not provide an alternative method of service; 2) in finding that the Queen's Bench Rules had superseded the Hague Convention; and 3) in holding that an order for a designated judge could not be made in these circumstances when s. 4 of The Class Actions Act occupied the field.
HELD: The court granted leave to appeal. Each of the issues were of law and of sufficient importance and merit for the court to consider.

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Richards Caldwell Ryan-Froslie, March 2, 2015 (CA15017)

Criminal Law – Appeal – Conviction
Criminal Law – Fraud

The appellant appealed his two convictions of fraud over $5,000 contrary to s. 380(1)(a) of the Criminal Code. One conviction resulted from the appellant taking $143,000 from a victim for the purpose of investing in a development project. The appellant never actually owned the land he said he was going to develop. The other conviction resulted from the appellant convincing the same victim to buy a $49,000 car for his use. The appellant argued that the trial judge made errors with respect to three findings of fact and that she reversed the burden of proof.
HELD: The appeal was dismissed. The appeal court dealt with the appellant's arguments as follows: 1) the trial judge did not err in concluding that the appellant advised the victim that he owned the land to be developed; 2) the trial judge did not err in concluding that the victim was told that money was needed to cover costs of physical work to be done on the land. The appellant's argument that he told the victim it was for engineering studies for work to be done after the land was sold was not supported by the evidence; 3) the trial judge did not err when she used the words "confession" to describe when the appellant told the victim he actually did not own the land; and 4) the trial judge did not reverse the onus; she properly required the Crown to prove that the monies were not used to develop the land.

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Whitmore, February 27, 2015 (CA15018)

Criminal Law – Assault – Sexual Assault – Appeal
Criminal Law – Defences – Mistake of Age
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The applicant was convicted of sexual assault contrary to s. 271 of the Criminal Code and invitation to sexual touching contrary to s. 152 of the Code. He was sentenced to three years less credit for remand time on the first offence and six months concurrent on the second. He appealed both his conviction and his sentence. The applicant raised the defence in his appeal that the trial judge erred in finding that the applicant knew that the complainant was under the age of 18. He then applied to the court under s. 684(1) to appoint counsel to represent him on his appeal.
HELD: The court granted the application. The court found the applicant to be impecunious and he had shown that the grounds of

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appeal were arguable. The applicant's defence, mistake of age, was complicated and was sufficiently complex to require court-appointed counsel and the court would benefit from the assistance of counsel. It was clear from the materials that the applicant had submitted that he was not capable of conducting the appeal with the complexity of the defence involved.

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Saskatchewan Medical Association v. Anstead, 2015 SKCA 19

Herauf, March 9, 2015 (CA15019)

Class Actions – Certification – Application for Leave to Appeal

The Saskatchewan Medical Association (SMA) sought leave to appeal the decision of a Queen's Bench judge certifying a class action, pursuant to s. 39(3) of The Class Actions Act. The judge found that the plaintiff's claim disclosed a cause of action and that all other requirements of s. 6(1) of the Act had been met. The proposed appellant argued that the judge's conclusions regarding the cause of action, common issue and preferable procedure should be reviewed. HELD: The court dismissed the application. The grounds of the proposed appeal were not of sufficient merit or importance to warrant determination.

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Richards, March 26, 2015 (CA15025)

Constitutional Law – Charter of Rights, Section 2(b)

The respondent was convicted in Provincial Court of assault causing bodily harm. A videotape of the incident was an exhibit at the trial. The conviction was quashed on appeal to the Court of Queen's Bench, and the Crown appealed on the ground that the appeal judge misapplied the principles of self-defence (see: 2014 SKQB 356). The applicants, the Regina Leader Post and CTV Regina, applied to have access to, and make copies of, a video made of the incident so that its contents could be broadcast or posted on the applicants' websites, consistent with s. 2(b) of the Charter of Rights. Neither the Crown nor the victim objected to the application. The respondent argued that the media should be allowed to view the video but not allowed to copy it for broadcast or dissemination because: 1) as his appeal is pending, the

matter is not at an end because there was the possibility of a new trial; 2) the media might broadcast only portions of the video, which could be misconstrued and he would be tried in the court of public opinion without recourse; and 3) the video could have the effect of denigrating the victim.
HELD: The court granted the application and gave permission to the applicants to view and to copy the video for the purpose of broadcast and dissemination, after applying the Dagenais/Mentuck test. The court found with respect to the respondent's objections that: 1) on the basis of the Crown's appeal, if it were to be successful, it would result in the restoration of the conviction, not a new trial. As no one had objected to the admissibility of the video, it would be put before a judge in a retrial in any case; 2) the media are entitled to present news stories as they see fit. The community counts on them to do their work responsibly and fairly. There was no basis here for moving away from these fundamental presumptions; and 3) the victim chose not to respond to the application, and there was no ground on which the respondent could make the argument on his behalf.

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Richards Caldwell Herauf, March 27, 2015 (CA15026)

Civil Procedure – Costs – Self-represented Litigants
Civil Procedure – Pleadings – Statement of Claim – Amendment

The appellants, who were self-represented, had sued the various respondents for damages on the basis of the torts of defamation and misfeasance in public office. The claim arose from a dispute between the appellants who were developing residential lots and the respondents who were council members of the Rural Municipality where the lots were located. The respondents applied to have the appellants' statement of claim struck on the ground that it disclosed no reasonable cause of action. The Queen's Bench judge struck the defamation claim but left the misfeasance in public claim in place (see: 2014 SKQB 9). The appellants then amended their statement of claim in accordance with the judge's recommendations. The respondents applied to strike the misfeasance claim on the ground that it was scandalous, frivolous and vexatious. The court granted the application and also awarded costs on a solicitor-client basis to the respondents. The appellants appealed the decision.
HELD: The appeal was allowed and the court awarded costs to the appellants. The court found that the chambers judge had erred on numerous grounds but most notably, he had dismissed the appellant's claim as disclosing no reasonable cause of action when the

respondents' application had been based on the argument that it was scandalous, frivolous or vexatious. The chambers judge also found that the claim was not adequately pled and failed to respect the previous judge's ruling with respect to the adequacy of the pleading as being relevant in his consideration. Because of their success, the appellants would not have to pay costs in any case, but the chambers judge had awarded solicitor-client costs against them without explaining the basis for doing so. The court held that the rule that self-represented litigants could not be awarded costs except for out-of-pocket expenses would no longer be followed as it created inequity. The court established a framework that would permit the courts to assess their costs. In this case, the appellants prepared their own written materials regarding the Queen's Bench applications. In the appeal, they filed a notice appeal, an appeal book, a factum and conducted legal research. They presented their own oral arguments at each level of court. The court awarded them costs that covered their out-of-pocket expenses, $1,000 in relation to the appellate proceedings and $500 in relation to the proceedings in Queen's Bench.

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Richards Caldwell Herauf, March 27, 2015 (CA15027)

Torts – Defamation - Pleadings
Civil Procedure – Costs – Solicitor-Client Costs
Civil Procedure – Pleadings – Statement of Claim – Striking Out – Appeal

The appellants brought an action against the respondent, alleging that he had defamed them. The appellants were developing residential lots within the Rural Municipality (RM) in which the respondent was the Reeve. A dispute arose regarding whether the appellant should bear the cost of realigning a road that encroached on their property or whether the RM should. At a public meeting, the respondent spoke words which the appellants alleged were defamatory in their statement of claim. The respondent applied to strike the statement of claim on the basis that it had not disclosed a reasonable cause of action and that it was frivolous, vexatious and scandalous. The chambers judge found that the claim should be struck on both grounds and ordered the appellants to pay costs on a double solicitor-client basis. The appellant's appealed the decision on both grounds and on the matter of costs.
HELD: The court dismissed the appeal with respect to the grounds but allowed the appeal on the matter of costs. The court upheld the chambers judge's decision to strike the claim on the ground that it

showed no reasonable cause of action, although his reasoning contained errors. The court expressly overruled the principle that a defamation claim could be struck if it does not reproduce verbatim the words alleged to be defamatory and stated that Berry v. Retail Merchants Association should no longer be followed. In this case, the appellants had failed to plead the extrinsic facts that would explain why the respondent's apparently innocent question and remarks at the meeting could be understood as defamatory. The chambers judge had not erred in finding that the statement of claim did not reveal a reasonable cause of action and must be struck. The judge had erred in awarding solicitor-client costs because he had not provided any explanation and failed to act judicially when he ordered costs on a double basis.

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Tomkins, January 27, 2015 (PC15010)

Criminal Law – Motor Vehicle Offences – Driving with Blood Alcohol Exceeding .08
Constitutional Law – Charter of Rights, Section 9, Section 10(b)

The accused was charged with impaired driving and driving while his blood alcohol exceeded .08. The defence alleged that numerous Charter violations had occurred and a voir dire was held. A police officer observed the accused driving at 70 km/h on a downtown street and failing to slow down when he turned onto another street. The officer activated his emergency lights and siren but the accused did not stop immediately and actually turned another corner so quickly that his rear wheel drove over the sidewalk. When the officer approached the vehicle, the accused put his hands and then his upper body through the driver's-side window. Because of this peculiar behavior the officer contacted the station to ask another officer to come with a roadside device. He then asked the accused to get out of his vehicle but did not advise him why. The officer then smelled alcohol coming from the accused. The accused began taking off his clothing and putting it on the ground. (He testified that he had done this and put his upper body out the window of the vehicle to make the officer more comfortable.) The other officer arrived and an ASD test was administered, which the accused failed. Based on this, the officer arrested the accused on the two charges, gave the police warning and the right to counsel, and made a breath demand. The accused indicated that he wanted to contact a lawyer, so when he was taken to the station, he gave the officer the name of a lawyer. The officer called but as it was 10:00 pm, he could only leave a message on

the office answering machine. This process was repeated again without success and the accused suggested another lawyer. The call was taken by an answering service and the person offered to try and find the lawyer. The accused was put on hold for 20 minutes. The officer entered the telephone room and checked the phone. He thought it was dead and hung up. The officer said that he thought that the accused was stalling the investigation but there was another hour left in which to take breath samples. The officer said that they had to hurry and called Legal Aid. The officer then transferred the call to the telephone room when a lawyer answered and yelled at the accused to pick up the phone. After consulting with the lawyer, the accused provided breath samples. He testified that he felt pushed and guided by the officer to talk to Legal Aid as if he had no choice. The defence argued that the breaches of the Charter were: 1) the accused had been detained when he was asked to get out of his vehicle and not informed of the reasons for his detention as required by s. 9; and 2) the accused had been denied his right to counsel as required by s. 10(b).

HELD: The court ruled on the voir dire as follows: 1) there had been no breach of the accused's s. 9 Charter right. The officer had reasonable grounds to detain the accused but failed to inform him of the reasons for his detention, which violated s. 10(a) of the Charter. Applying the Grant analysis, the court found that the serious nature of the offence weighed in favour of inclusion of the evidence obtained; and 2) there had been a breach of the accused's s. 10(b) right to counsel. The officer had unilaterally decided that the accused should speak to Legal Aid and failed to make any efforts to assist the accused to contact the lawyers of his choice other than calling law offices that he knew would be closed or to help him locate other lawyers. The officer showed a careless disregard or ignorance of the standard and to admit the evidence would bring the administration of justice into disrepute. The court ruled that the Certificate of Analysis would not be admitted.

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Meekma, March 9, 2015 (PC15029)

Criminal Law – Sentencing – Blood Alcohol Level Exceeding .08 – Curative Discharge

The accused applied for a curative discharge pursuant to s. 255(5) of the Criminal Code to the charge of driving over .08 contrary to s. 253(1)(b). The accused was a foreign national and would be ineligible for admission to Canada, pursuant to the Immigration and Refugee

Protection Act, if convicted. The accused was from Mexico and married to a Canadian. He said that he had a problem with alcohol when he lived in Mexico and had been in rehab for two months, six years ago. He began drinking again one year after moving to Canada. He attended AA once every one to two weeks when his work schedule allowed. He had no prior record in Canada or Mexico. At the time of his hearing, January 13, 2015, the accused had not drank alcohol since the week before Christmas. The only vive voce evidence at the hearing was from the accused himself. He tendered documentary evidence that he had attended 11 counselling sessions with an addictions counsellor.
HELD: The court applied guidelines from previous cases: 1) there was no actual injury or accident; 2) the primary motivation of the accused was to avoid deportation. He did not start attending AA meetings or counselling until one year after the offence and after the first trial date; 3) no treatment plan was proposed by the accused nor was there evidence of availability of counselling; 4) there was no evidence as to the accused's probability of success; and 5) the accused had no previous criminal record. The court concluded that the evidence fell short of establishing on a balance of probabilities that he was in need of curative treatment and that it would not be contrary to public interest that he be granted a discharge on conditions for that treatment. Medical evidence was not necessary but the court did hold that there should at least be some evidence from someone with expertise in the area. The deportation was a collateral consequence to be given consideration; however, inappropriate and artificial sentences cannot be imposed to avoid the collateral consequences. The accused did not satisfy the court that a discharge was an appropriate sentence.

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Lang, March 4, 2015 (PC15028)

Criminal Law – Assault with a Weapon
Criminal Law – Dangerous Offender – Long-term Offender – Criminal Code, Section 752.1(1) Assessment

The Crown sought a declaration that the accused was a long-term or dangerous offender. In that regard the Crown applied pursuant to s. 752.1(1) of the Criminal Code for an order that the accused be remanded to custody for the purposes of an assessment. The accused resisted the application. The predicate offence was an assault on three people with the threat to use a motor vehicle as a weapon, contrary to s. 267(a) of the Criminal Code.
HELD: For an assessment to be ordered the Crown must satisfy two

requirements: 1) that the offence is a serious personal injury offence; and 2) that there are reasonable grounds to believe that the offender might be found to be a dangerous or a long-term offender. The court determined the two requirements as follows: 1) the Court of Appeal had held that actual injury is not required. Once an accused is convicted of an indictable offence punishable by 10 years or more, the level of seriousness does not have to be assessed. The predicate offence was found to meet the requirement of "use or attempted use of violence". The offence also endangered the life of all three victims; and 2) the accused had 23 convictions between 2001 and 2010 with the only gap between offences being while he was incarcerated. He had four previous violent offences including robbery and assault with a weapon. The court held that it was within the realm of possibility that the accused would be found to be a long-term or dangerous offender. The court ordered the assessment and appointed the assessor.

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Anand, February 23, 2015 (PC15025)

Criminal Law – Robbery – Sentencing – Young Offender
Statutes – Interpretation – Youth Criminal Justice Act

The accused, a young offender, entered guilty pleas to one count of robbery contrary to s. 344 of the Criminal Code and one count of face masked with intent to commit an indictable offence contrary to s. 351(2) of the Code. With three other young offenders and one adult, the accused went into a grocery store wearing masks on their faces. The adult held an imitation BB gun to the head of the clerk. The group robbed the store of cash and various other items. The accused only took some cookies and a drink. The accused was 16, did not have a criminal record, had always attended school and was a good student. Her family background was strong and supportive. She had been compliant while on her undertaking since the offence. The victim still suffered from fear and anxiety, especially when he had to work alone. HELD: The court sentenced the accused to a three-month open custody and supervision order followed by 18 months of probation, subject to multiple conditions. The court noted that under the YCJA, proportionality principle had primacy in sentencing. In this case, although the accused was not the ringleader, she was responsible in that she knew what was going to happen and was an active participant in the offence. The court took into account that the accused had confessed, been cooperative with the police and had identified the other perpetrators and that she had complied with her previous court order. Regarding whether the accused would have been eligible for a

deferred custody and supervision order, the court found that, based on the psychological fear that the victim continued to suffer four months after the robbery, the accused committed an offence resulting in serious bodily harm and the court is thereby precluded from considering making a deferred custody and supervision order. Although the Crown had failed to prove that the accused intended to bring about the serious psychological harm to the victim, the court found that it was reasonably foreseeable that it would occur in the circumstances.

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R. v. Kaminsky, 2015 SKPC 39

O'Hanlon, March 11, 2015 (PC15031)

Criminal Law – Fraud – Sentencing

The accused pled guilty to a charge of fraud laid pursuant to s. 380.1(a) of the Criminal Code. She had worked as a contractor for Sentinel Financial and owned her own investment business. Of the investors that she assisted, ten people lost $659,700. These investors were unsophisticated and ranged in age from 52 to 86. The accused used her position with Sentinel to earn the trust and friendship of the investors and counselled them to invest in one company that did not exist and in another high-risk entity for which no one in the province was licensed to trade. Funds given to the accused for this investment went into her own bank accounts.
HELD: The accused was sentenced to imprisonment for four years and ordered to pay restitution. The accused cooperated with the police, pled guilty early and had no prior criminal record. She had abused a position of trust and spent $124,000 on the Shopping Channel and $5.8 million at a casino, which indicated an extravagant lifestyle in the absence of a gambling addiction. The court found that the accused had not expressed sincere remorse. The frauds occurred over a lengthy period and ten elderly people were defrauded.

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Chicoine, February 9, 2015 (QB15036)

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Criminal Law – Refusal to Provide Breath Sample – Approved Screening Device – Forthwith

The appellant appealed his conviction of failing to comply with a demand to provide a breath sample in an approved screening device contrary to s. 254(5) of the Criminal Code. The appellant's truck was observed travelling through a parking lot at a rate of speed officers concluded was too great. An officer noted the smell of alcohol from the appellant's breath. He admitted to consuming alcohol that evening. The appellant refused to provide a breath sample even after having the consequences of such explained to him. He was taken to the detachment and several unsuccessful attempts were made to contact the appellant's lawyer. He said he only wanted to speak to his lawyer and not any other lawyer. The trial judge held that the appellant's Charter rights were not violated. The appellant's grounds of appeal were that: 1) the trial judge erred in law by concluding that the appellant's s. 9 Charter rights were not infringed when he was detained by the police in the parking lot. The appellant argued that the right to random police stops did not apply to parking lots, but only applied to public roads; 2) the trial judge erred in law by concluding that the appellant's s. 10(b) rights were not violated when he was detained in the parking lot. The appellant argued that that there was a short delay between the time the police first encountered him to the time he was provided with the ASD demand; 3) the trial judge erred in law by not sufficiently addressing the issue of whether or not the appellant had a reasonable excuse for refusing to comply with the ASD demand. The appellant argued that he did not have to comply with the ASD demand because he wanted to speak with a lawyer first; 4) the trial judge erred in law by concluding that the appellant's s. 9 Charter rights were not infringed when he was held in police cells. The appellant was lodged in cells for 10 hours and 20 minutes; and 5) the trial judge's interventions throughout the trial process gave a reasonable apprehension of bias.
HELD: The appeal was dismissed. The court analyzed the issues as follows: 1) the police were not solely relying on s. 209.1 of The Traffic Safety Act to randomly stop the appellant in the parking lot. They had observed the appellant's fast driving that justified the police to interact with him. During the lawful interaction, the officer acquired a reasonable suspicion to give the ASD demand; 2) the appeal court found that the trial judge's conclusion that the five- to ten- minute delay before the ASD demand was as quickly as possible was supported by the evidence. The appellant was not entitled to his s. 10(b) right prior to compliance with the ASD demand; 3) the appellant was not illegally stopped and the demand was made forthwith. The right to counsel did not apply. Further, there was no evidence led by the appellant purporting to show that he believed he had a reasonable excuse for not complying with the ASD demand; 4) the trial judge found that the time in cells was necessary to prevent the continuation of the offence and for the safety of the public. The appeal court found

that this conclusion was reasonable and supported by the evidence. Also, even if there had been a breach the stay as a remedy was not certain. The breach would have taken place well after the refusal and there would be no connection between the breach and the charge; and 5) the trial judge refocused counsel on occasion to get to the point. The court concluded that a reasonably minded person sitting through the whole trial would not conclude that the appellant did not receive a fair trial.

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Tholl, February 18, 2015 (QB15043)

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Criminal Law – Motor Vehicle Offences – Evading Police, Section 249.1(1.1)
Criminal Law – Motor Vehicle Offences – Hit and Run, Section 252(1.1)

The accused was charged with the following Criminal Code offences: 1) evading police contrary to s. 249.1(1); 2) hit and run accident contrary to s. 252(1.1); 3) driving while impaired contrary to s. 255(1)(a); 4) driving while over .08 contrary to s. 253(1)(b); and 5) theft of a vehicle contrary to s. 333.1(1). A stay was entered on the impaired charge. The main issue was identity. The accused conceded that if he was found to be the driver, the Crown proved the fourth and fifth charges, but failed to prove all of the elements of the first two charges. The owner of the vehicle witnessed it being backed into another vehicle before driving away. Two officers located the stolen vehicle approximately 10 minutes after leaving the parking lot where the vehicle was stolen from. One officer observed the driver to be an Aboriginal male in his late twenties, wearing a white hat and white jacket. He indicated that he observed the driver for 15 seconds. The officer identified the accused at trial as being the person driving the vehicle. The police followed the vehicle and activated the police vehicle's lights and siren. The vehicle made no attempt to stop and after about five seconds accelerated to approximately 100 km/h and sped away. The officers went to the area where they believed they heard the loud muffler of the vehicle stop. Within 15 seconds they saw an Aboriginal male, in his late twenties, wearing a white hat and white jacket coming out of the alley. The officer indicated that he immediately recognized the male as the same person he had observed driving the stolen vehicle. The stolen vehicle was parked, with its headlights still on, in a driveway two to three houses down the alley the accused exited from. The issues at trial were: 1) did the Crown

prove the identity of the accused as the driver of the stolen vehicle; 2) did the Crown prove all of the elements of the offence pursuant to s. 249.1(1) of the Criminal Code; and 3) did the Crown prove all of the elements of the offence pursuant to s. 252(1.1) of the Criminal Code. HELD: The issues were determined as follows: 1) the court agreed with the accused that the officer would have only observed the driver of the stolen vehicle for a few seconds. The court also noted that there was other circumstantial evidence supporting the identification and concluded that the eyewitness identification in the matter was reliable. The eyewitness identification combined with the circumstantial evidence proved beyond a reasonable doubt that the accused was the driver of the vehicle when it drove through the intersection; 2) the only elements in issue regarding the evading charge were: whether the officers were in pursuit because they did not chase the accused once the lights and siren were activated; whether the accused was aware that he was being pursued; and whether the accused failed to stop in order to evade police. A previous case of the court held that the Crown must prove that the officers were "following with the intent to overtake". The court held that continuing to drive after the accused with lights and a siren can be an attempt to overtake because the officers still wanted him to stop. The officers were pursuing the accused. The accused was also found to be aware of the pursuit. He accelerated and made several turns after the lights and siren were activated. Further, there was no other plausible explanation than that the accused failed to stop in order to evade the police. The accused was found guilty of the first charge; and 3) the accused had the care and control of the vehicle when he backed into the other vehicle in the parking lot. The accused did not provide any evidence to rebut the presumption that he did not stop with the intent to escape civil and criminal liability. The accused was found guilty of the hit and run charge. The accused was found guilty of all charges except the impaired driving charge that was stayed.

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Brown, February 20, 2015 (QB15047)

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Family Law – Surname of Child
Statutes – Interpretation – Change of Name Act, Section 9
Statutes – Interpretation – Vital Statistics Act, 2009

The parties were 20 and 19 years old and had one child. They never lived together. When the child was born, the respondent sent a letter to the petitioner's counsel advising of the birth. The petitioner applied for shared parenting, joint custody and to have his surname be a part of the child's name. The petitioner was initially given parenting time every third day in the presence of the respondent and her mother so the child could be fed. The access was at a church. The petitioner objected to the admissibility of a four-way conference the parties held at the end of July 2014 where certain matters were agreed upon. The petitioner argued that the minutes were settlement discussions and were therefore privileged. On December 19, 2014 the petitioner was given increased access time. The child had been primarily cared for by the respondent and her mother. The petitioner applied pursuant to s. 9 of The Change of Name Act, 1995 for an order that the child's surname be hyphenated to include his surname and for an order providing proof that he was listed on the birth certificate as the child's father.
HELD: After reviewing case law the court concluded that there are two general situations where settlement discussions or settlement agreements may be permitted: when there is an agreed settlement with all matters agreed to, so the court could determine if that arrangement was an appropriate status quo to maintain; and when there is a compelling or overriding interest of justice reason to allow settlement discussions to be introduced. With respect to the four-way conference minutes, not all matters were agreed to. The court did not find an overriding interest of justice that would serve as sufficient justification to suspend the privilege of the settlement discussions. The settlement minutes were not admitted. Because the child was born to parents who did not cohabit, s. 3(2) of The Children's Law Act, 1997 provides that the petitioner was the child's sole custodian. The norm was for that situation to be maintained in the interim unless an exception to the norm was made out. An exception to the norm is when both parents have been fully engaged in parenting and it is in the best interests of the child for there to be a joint custody order in the interim. The court found that the situation was an exception to the norm because of the petitioner's desire to partake in parenting the child. It was found to be in the child's best interests that the petitioner and respondent have joint custody in the interim. The child's primary residence was to be with the respondent and she would continue to have sole decision making authority regarding the types of foods the child would be introduced to. The respondent did not include the petitioner's name as father when registering the child's live birth but she since agreed to do so and indicated that she had completed the necessary forms to register the change. The Vital Statistics Act, 2009 and Regulations confirm the importance of both parents participating

in the naming of their child. Specifically, where both parents complete the statement of live birth and cannot agree on the child's name, it is to be the hyphenated last names of the parents in alphabetical order. The respondent did not allow the petitioner to participate in completing the statement of live birth. Also, including the petitioner after the certificate of live birth has been filed did not trigger the operation of the naming provisions in The Vital Statistics Act because those provisions relate to the initial statement of live birth only. There was no evidence that the inclusion of the father's surname would detrimentally affect the child. The court noted that the child was very young and it would be the most appropriate time, if any, to change his name. It was determined to be in the best interests of the child that his name include both parents' surnames. The respondent was given the decision of the order of surnames if she provided her consent. If she did not provide her consent and the court order dispensing consent was necessary the petitioner could decide what order the surnames would be in.

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R. v. Lester, 2015 SKQB 53

Chicoine, February 17, 2015 (QB15048)

Criminal Law – Motor Vehicle Offences – Driving with Blood Alcohol Exceeding .08 – Conviction – Appeal
Constitutional Law – Charter of Rights, Section 8, Section 10
Constitutional Law – Charter of Rights, Section 24(2) – Appeal

The accused appealed his conviction by a Provincial Court judge of driving while his blood alcohol content exceeded .08. At trial, the defence had argued that the accused's ss. 8, 9 and 10 Charter rights had been breached and that the Certificate of Analysis should be excluded under s. 24(2). The trial judge held that no breaches had occurred, ruled the certificate admissible and convicted the accused. The accused appealed the judge's decision on the grounds that he erred: 1) in holding that the ASD demand was made forthwith; and 2) in holding that the Breathalyzer demand was made as soon as practicable. The charges had arisen after the accused had been seen by a police officer leaving a bar in mid-December, when drunk driving was common. The officer followed the accused's vehicle and noted that it was weaving. Based on these factors, the officer stopped the accused. The accused was slow in retrieving his licence and he and his passenger argued with the officer for about ten minutes regarding his reason for stopping them. The officer made the ASD demand about 14 minutes after the stop. The trial judge concluded the officer made the demand forthwith as the officer was patiently answering the accused's

questions and not acting hastily. After leaving his vehicle, the officer noted that the accused walked very carefully to the police cruiser and noticed the smell of alcohol from his breath only when the accused blew into the device. The accused failed the test. The officer did not make the Breathalzyer demand until 12 minutes later, whereupon he was read his right to counsel and given the police warning. The trial judge concluded that this demand was made as soon as practicable although the officer's testimony had not explained why there had been a delay in making the demand.
HELD: The court allowed the appeal on the conviction and because it was inappropriate to order a new trial, it acquitted the accused. It found with respect to the grounds of appeal that: 1) there was evidence to support the trial judge's finding that the officer had not formed a suspicion that the accused was impaired immediately after stopping him and that a lot of the officer's time was spent in answering the accused. When he formed his suspicion, there was only a few minutes between the demand and the test. Therefore the demand was made forthwith and there had been no breach of ss. 8 or 9 and the court dismissed this ground; and 2) the trial judge had erred in finding that the delay was reasonable as there was no evidence of what the officer did for the 12 minutes after the test. His failure to place the accused under arrest, the reasons for it and to inform him of his right to counsel were breaches of the accused's ss. 8 and 10 Charter rights. After applying the Grant tests, the court held that the Certificate of Analysis should be excluded.

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R. v. Forbes, 2015 SKQB 56

Megaw, February 19, 2015 (QB15051)

Criminal Law – Controlled Drugs and Substances Act – Possession for the Purpose of Trafficking – Cocaine
Constitutional Law – Charter of Rights, Section 11(b)

The accused was charged with possession of cocaine for the purposes of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act. The accused applied pursuant to s. 11(b) of the Charter to have the charge stayed on the basis that as three years had elapsed since she was charged, her right to trial within a reasonable time had been breached. The Crown agreed that an inquiry under s. 11(b) was necessary. The defence argued that the Crown had to accept full responsibility for the delay because it had not provided full and complete disclosure.
HELD: The court dismissed the application. The accused's s. 11(b) right had not been breached. In considering the factors for delay set

out in R v. Morin, it found that the first nine months of the period in question was attributable to negotiations between the defence and the Crown and that the accused had waived the delay. The court then allotted three months of the period to the inherent time requirements of the case. The court found that the accused's actions resulted in a delay of six months because the defence had not been proactive in taking issue with the level of disclosure. The Crown was found to be responsible for five months of the delay due to arranging for witnesses to be present at the preliminary hearing. The 13 months in bringing the matter to trial fell within what was normal for institutional delay and was exempted. The accused had been prejudiced by the delay. However, the delay, while lengthy, resulted primarily from the accused's waiver of time and then by the actions of the accused in not promptly dealing with disclosure concerns.

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R. v. Ramos, 2015 SKQB 57

Acton, February 23, 2015 (QB15054)

Criminal Law – Drug Offences – Possession for the Purpose of Trafficking – Joint Possession

The accused was charged with possession of cocaine for the purpose of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act (CDSA). The accused was the third person in a vehicle pulled over for speeding and she was laying down in the back of the cargo area with pillows and blankets. The driver indicated that he had borrowed the vehicle from a friend but looked blank when asked who his friend was. The driver was acting shocked and nervous and the accused would not make eye contact with the officer. A drug detection dog searched the area around the outside of the vehicle and zeroed in on the rear hatch of the vehicle. A hidden compartment containing two kilograms of cocaine was located. All three occupants of the vehicle were arrested and charged with trafficking. A second compartment was located later. To open the compartments a mechanic's magnet was required. There was a mechanic's magnet in the accused's purse located in the vehicle. The registered owner of the vehicle testified that she was approached to lease a vehicle to the accused in exchange for extra money. She indicated that the accused sometimes paid her the monthly lease and extra money.
HELD: The court was satisfied beyond a reasonable doubt that the guilt of the accused was the only reasonable inference that could be derived from the proven facts. The court found that most of the accused's evidence in chief was fabricated and contradicted in cross-examination. For example, she did not remember numerous trips to

Vancouver from Winnipeg. The accused had joint possession of the cocaine and the quantity was such that it was for the purpose of trafficking.

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R. v. Beaton, 2015 SKQB 58

Layh, February 20, 2015 Corrigendum March 30, 2015 (QB15052)

Criminal Law – Motor Vehicle Offences – Driving with Blood Alcohol Exceeding .08 – Appeal
Constitutional Law – Charter of Rights, Section 8, Section 9

The appellant appealed his conviction on the charges of driving with blood alcohol content exceeding .08 contrary to s. 253(1)(b) of the Criminal Code and driving while impaired by alcohol contrary to s. 253(1)(a) of the Code. The grounds of appeal were that: 1) the ASD used by the attending officer was not proven to be calibrated so that the fail test provided by it could not justify the appellant's detention or the taking of his breath sample. As a result, the appellant's ss. 8 and 9 Charter rights were breached; 2) the Certificate of Qualified Technician contained inaccuracies that the trial judge should not have permitted to be corrected by viva voce evidence given at trial; and 3) his breath samples were not taken as soon as practicable as required by s. 258(1)(c)(ii) of the Code.
HELD: The court dismissed the appeal. It held with respect to each ground that: 1) the trial judge had not erred in reaching her conclusion that the officer's use of the ASD was legitimate. Without real evidence of some degree of unreliability of the ASD, the officer was entitled to rely upon the test results to provide reasonable and probable grounds to demand a breath sample. The accused's Charter rights had not been breached; 2) the trial judge had legal authority to arrive at her decision that irregularities in the Certificate of Qualified Technician could be rectified. The officer's testimony at trial regarding the mistake he made in recording the time of the second breath sample and how he corrected it gave the judge the factual evidence to conclude that the mistake was properly explained; and 3) the trial judge had canvassed the reasons for the 15-minute delay between the breath demand made by the officer and the departure for the detachment and had accepted the officer's explanation for the delay as reasonable.
CORRIGENDUM dated March 30, 2015:
[1] A typographical error was noted in the judgment for this matter dated March 30, 2015 in para. 35 in that the corrected time should have been "2303". Accordingly, para. 35 shall be amended to read as follows:
>>> [35] The trial judge correctly considered the evidence that Cst.

Strang erred by inputting the time of 2203 and, through Cst. Strang's oral evidence, corrected the error to read 2303. She also found, and I agree with her finding, that in addition to the correction offered by viva voce evidence, the oral testimony provided by Cst. Strang was sufficient to prove the criteria under ss. 258. (1)(c) of the Criminal Code without relying upon the certificate to provide the requisite evidence of the correct timing of the two samples.
[2] The rest and residue of the judgment shall remain the same.

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R. v. Myers, 2015 SKQB 59

Barrington-Foote, February 19, 2015 (QB15053)

Criminal Law – Procedure – Mistrial

During a jury trial, a police officer, the lead investigator in the case, was called as the last Crown witness. During examination, the contents of a hitherto missing page from the officer's notes were revealed. The notes recorded a telephone conversation between the sister of the deceased victim and the officer. The sister told the officer that Lindsay Bigsky had threatened to kill the victim. Neither the Crown nor the defence was aware of the content of these notes, although both were aware that a page was missing prior to trial. The defence had requested the missing page from the Crown but it was not disclosed and both counsel had forgotten about it until the officer provided a copy when she testified at the trial. As result of the failure to disclose, the defence counsel, a Legal Aid lawyer, applied for a mistrial and if that request was not granted, she sought to withdraw for ethical reasons. Her office had acted for Mr. Bigsky in another criminal matter in which he had been charged with domestic assault against the victim. During the police investigation for the crime for which the accused was charged, Mr. Bigsky had been identified as a person of interest. He had been called as a Crown witness and testified that he had seen the victim on the day that she might have been killed but had checked into a detox centre that evening and had not left it until the following morning. An employee of the centre testified that the inmates were required to sign in and out and that Mr. Bigsky's signature on the form reflected that he had been there on the night in question.
HELD: The court granted the application and declared a mistrial. The Crown's failure to disclose the missing page was a breach of its obligation to disclose. The failure impaired the accused's right to make full answer and defence. The Crown led evidence at trial that was calculated to demonstrate that the possibility that Mr. Bigsky may have played a role in the death of the victim need not be considered

further. The knowledge that he had threatened her might have affected how the jury would have assessed his credibility. Further, the failure prevented an investigation into the alleged threat and affected the defence's trial strategy. The court accepted defence counsel's statement that they must be permitted to withdraw for ethical reasons; they could no longer continue representing the accused as they could not investigate the allegation contained in the missing page and could not cross-examine Mr. Bigsky.

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M. (S.L.) v. G. (J.R.), 2015 SKQB 60

Brown, February 26, 2015 (QB15058)

Family Law – Spousal Support – Variation
Family Law – Child Support – Variation

The petitioner and respondent executed an interspousal contract in 2004 prior to their divorce in 2006. There were five children of the marriage. Each of the parties brought applications to vary the child and spousal support obligations arising from their agreement and to decide other matters related to the agreement. The petitioner sought retroactive child support based upon her view that the respondent's income had increased and some of her children were still entitled to support, and that increased spousal support in accordance with the terms of the agreement was warranted. At the time of the petitioner's application, all but one of the children were over the age of 18. Another term of the agreement had provided that the family home should be sold when the youngest child turned 18, which occurred. The issue was whether the court could decide some or all of the issues in chambers on the basis of affidavits or whether they should be dealt with at pre-trial or trial.
HELD: The court found with respect to the petitioner's application for retroactive child support that more information was required, with the exception of the two oldest children, who were not children of the marriage at the time the petitioner made her application. Similarly, the issue of spousal support required more information. The court found that the petitioner was required to pay the respondent $20,000 regarding the family home, as the triggering event set by the agreement had occurred. The sum would be held in trust pending the determination of any support arrears.

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R. v. Spencer, 2015 SKQB 62

Smith, February 26, 2015 (QB15056)

Criminal Law – Child Pornography – Make Available
Criminal Law – Defences – Charter of Rights, Section 7, Section 11
Criminal Law – Mens Rea – Wilful Blindness

The accused was charged with making child pornography available to other persons through the internet contrary to s. 163.1(3) of the Criminal Code. He had already been convicted of being in possession of child pornography and he was sentenced to nine months incarceration plus three years on probation. The trial judge found the accused not guilty of the making available charge because he did no action and therefore did not have the necessary intention or mens rea for the s. 163.1(3) charge. On appeal to the Saskatchewan Court of Appeal, the trial judge's analysis respecting mens rea was overturned and the matter was remitted for a new trial. On appeal to the Supreme Court on a constitutional matter, it was agreed that the trial judge's analysis respecting mens rea required a new trial. All elements of the offence were conceded except for mens rea. The Crown argued that the accused knew the program he was using for obtaining child pornography was a file-sharing program, allowing anyone using the program to access the content downloaded by him. Alternatively, the Crown argued that the accused was willfully blind to the fact that it was a file-sharing program. The accused also brought a Charter motion arguing breaches of ss. 7 and 11.
HELD: The court recognized that appellate time is not factored into a s. 11(b) Charter analysis. The Crown contacted the accused shortly after the Supreme Court decision to set a trial date. The court reviewed the seven-and-a-half-year delay and concluded that there was no conduct on the part of the Crown or institutional delay that would warrant a stay pursuant to s. 11(b) of the Charter. The accused was interrogated at the police station and the beginning of the interrogation was inadvertently not recorded. The lost evidence was the basis for the accused's s. 7 application. The officer took notes at the interrogation and asserted that no more than a minute was not recorded, the beginning of the interrogation, which was mostly reading of charges and rights. The accused argued that five minutes was lost. The court preferred the evidence of the officer in that regard. Also, even if the accused's evidence was accepted, a s. 7 remedy would not be triggered because what was discussed was collateral to the charge. The accused argued that he did not fully understand the functionality of the program he was downloading from. He said he had no idea that others could access his downloaded content. The Crown tendered evidence showing the content that would be displayed when the program was downloaded onto a computer. The program warned of its file sharing. The trial judge concluded that the Crown had not proved beyond a reasonable doubt that the accused

consciously made available child pornography to others. The Court easily concluded that the accused was willfully blind to the file sharing though. The accused was found guilty.

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R. v. Siganski, 2015 SKQB 63

McMurtry, February 26, 2015 Corrigendum dated February 26, 2015 (QB15057)

Criminal Law – Sentencing – Conditional Sentence – Availability
Criminal Law – Sentencing – Fraud
Criminal Law – Sentencing – Forgery
Criminal Law – Sentencing – Pre-Sentence Report
Criminal Law – Sentencing – Sentencing Principles
Criminal Law – Sentencing – Uttering Forged Documents

The accused was convicted of five Criminal Code offences: 1) fraud over $5,000 contrary to s. 380(1)(a); 2) two counts of forgery contrary to s. 367; and 3) two counts of using a forged document as if it were genuine contrary to s. 368(1). The accused did not have a criminal record nor any addictions or other issues that may have contributed to his offending. A pre-sentence report concluded that he was a low risk to re-offend. The only risk factor mentioned was the accused's attitude towards the offences because he had difficulty accepting that he did anything wrong. He believed that he there was no harm because the real estate transaction was not completed. With respect to the fraud count, the accused altered a letter from Peace Hills Trust (PHT) so that it looked like the PHT was requesting 6 percent from the mortgagors, when it was going to go to the accused. The two forgery counts occurred when the accused added the words "lender fee: to be 6 percent of funded amount" to the letters of interest and commitment from PHT. He intended to deceive the mortgagors to believe that PHT was requesting the amount. The uttering forged documents counts resulted when the accused used the forged documents and later took the signature page off the altered document and attached it to the original document for PHT. Amendments to the Criminal Code in 2012 removed the availability of a conditional sentence order (CSO) for fraud prosecuted by indictment. These offences pre-dated the amendments and the accused sought a CSO.
HELD: The first condition of a CSO was met because the appropriate jail term would be less than two years. The Crown was requesting four to six months incarceration. The court considered the accused's risk to re-offend generally when considering whether a CSO would endanger the community. The accused was a low risk to re-offend and had not done so in the five years since the offences. The court determined that a CSO would not endanger the community. The court

considered the fundamental purposes and principles of sentencing. The offences were on the less serious end of the spectrum; the accused would only have received $15,937.50 if the transaction had concluded. The accused's degree of culpability and responsibility was high yet he only provided excuses and no real remorse for his conduct. The court concluded that a CSO would not be appropriate. The accused was sentenced to 90 days incarceration on each charge, to be served concurrently, and intermittently if the accused wished. If served intermittently it would be from 7:00 pm Friday to 8:00 pm Sunday each weekend. The accused was also subject to probation of six months, which included the statutory conditions, and a condition that he not use alcohol or drugs within the 24 hours prior to going to the Correction Centre.
CORRIGENDUM dated February 26, 2015: [36] The date at the top of this page previously read 2014 02 26. This date will change to 2015 02 26.

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Venture Construction Inc. v. Saskatchewan (Ministry of Highways and Infrastructure), 2015 SKQB 70

Barrington-Foote, March 3, 2015 (QB15063)

Civil Procedure – Pleadings – Statement of Claim – Striking Out
Civil Procedure – Queen's Bench Rule 7-9(2)(a)
Civil Procedure – Parties – Third Party Claim
Contracts – Privity – Implied Trust

The plaintiff Venture sued the defendant Government of Saskatchewan for various breaches of a contract between them that involved the plaintiff constructing a highway. The plaintiff subcontracted with the defendant Johnston Bros. to carry out a portion of the contract. Venture obtained an indemnity bond from Western Surety as required by its contract with the government. Johnston counterclaimed against Venture for failure to pay certain amounts related to the project. It also issued a third party claim against Western pursuant to the indemnity bond issued by the latter. Johnston claimed that it was entitled to recover the amount owed it by Venture directly from Western. Western applied for an order pursuant to Queen's Bench rule 7-9(2)(a) striking out Johnston's third party claim as disclosing no reasonable claim. It argued that Johnston was not a party to the bond and could not claim under it. Johnston and the government maintained that the bond provided that it would remain in force unless Venture paid for all labour and services and materials, which was intended to protect subcontractors. The bond created a trust with Johnston as a beneficiary, and it was entitled to claim

against Western in its own name.
HELD: The court found that the application was not properly brought under rule 7-1 as required and determined it on the basis that it was pursuant to rule 7-9(1) based on the ground specified in rule 7-9(2)(a). The court reviewed the indemnity bond and found that it was not plain and obvious that the indemnity bond could not bear the meaning of an implied trust as argued by Johnston. The other portions of Johnston's third party claim, based upon an express right to claim against Western, would fail and were struck.

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Morgan v. Morgan, 2015 SKQB 71

Smith, March 3, 2015 (QB15064)

Family Law – Family Property – Illegal Removal

After their separation, the petitioner and the respondent began proceedings for the division of matrimonial property. The respondent remained in the family home while the petitioner paid the mortgage. Before the matter was heard, the petitioner broke into the home and removed a number of items.
HELD: The court ordered the petitioner to pay for the repair of the damages caused by his break-in and to return the items taken within 10 days at his cost by a third party. The petitioner's conduct was unacceptable and was sanctioned by costs. The court awarded $2,500 to the respondent.

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R. v. Longman, 2015 SKQB 72

McMurtry, March 5, 2015 (QB15065)

Criminal Law – Application for Court-appointed Counsel

The accused applied for court-appointed counsel to assist him with his trial on charges of: possession for the purpose of trafficking in cocaine; possession of a prohibited weapon, a switch blade; and possession of a prohibited weapon while subject to a weapons prohibition order. Although the accused had Legal Aid counsel, just before his trial that counsel obtained permission to withdraw because he had lost contact with the accused. The accused did not appear at his trial and a warrant was issued. The accused has been in custody since November 2014. The Crown argued that the accused was responsible for the

situation and was disentitled to court-appointed counsel. The accused submitted evidence of his indigence and that he had not deliberately severed his relationship with his previous counsel. He explained that he was not allowed to carry a cell phone as part of his undertaking when he was released but that he could be reached by telephone at the residence in which he was required to live. The accused said that he tried to contact his counsel after receiving registered letters from Legal Aid directing him to contact his counsel, but was unable to reach him. He also testified that he was mistaken as to the date of his trial. The evidence supporting the charges had been obtained as a result of a search of a residence. At the hearing, his representative argued that there might be a challenge to the warrant. The accused had a grade eight education and faced a penitentiary term of three years if convicted.

HELD: The court granted the application. The court accepted the accused's explanation regarding his relationship with his previous counsel. The accused's education, the complexity of the charges, the fact that he has been in custody and the severity of the punishment if convicted were factors that required the appointment of counsel for the accused to make a full answer and defence and receive a fair trial.

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Alberici Western Constructors Ltd. v. Saskatchewan Power Corp., 2015 SKQB 74

Elson, March 6, 2015 (QB15067)

Statues – Interpretation – Arbitration Act, 1992, Section 8
Statutes – Interpretation – Builders' Lien Act, Section 88, Section 91(2)

The plaintiff (AB) was the general contractor on the Boundary Dam project commenced by the defendant SaskPower. The defendant Technical Heat Treatment Services (Techeat) was a subcontractor on the project. The contract between AB and SaskPower contained an arbitration clause. The subcontract between AB and Techeat also contained a provision that incorporated the same arbitration process described in the main contract. Techeat commenced a lien action against AB and SaskPower pursuant to s. 88 of The Builders' Lien Act. Because of a dispute regarding their operation agreement, AB Western served a notice on Saskpower to activate the arbitration process and also served a statement of claim on SaskPower. AB advised SaskPower that its intention was to pursue arbitration but that it had issued the statement of claim to prevent itself from being statute-barred from pursuing claims in court in case arbitration failed to resolve all of the issues in dispute, referring primarily to the claims of Techeat. AB

informed that it did not require SaskPower to file a statement of defence, but the latter did so and refused to proceed to arbitration. AB then applied to the court to stay its action against SaskPower and the action taken against it by Techeat, arguing that both matters should be referred to arbitration pursuant to the contract and the sub-contract. SaskPower applied to stay the arbitration proceeding. Techeat applied for summary judgment in respect of its actions against AB and SaskPower. SaskPower argued that s. 8 of The Arbitration Act, 1992 precluded AB from applying for the stay of proceedings. It submitted that s. 8 also precluded arbitration in the face of multiple proceedings. Techeat took the position that s. 91(2) of The Builders' Lien Act prevented AB from making the application because it had not formally requested an order under that section. Techeat submitted that this was a proper case for summary judgment as it fell within the exception listed in s. 8(2)(e) of The Arbitration Act on the basis that it could not be subject to the arbitration provision of the main contract because it was unaware of it.

HELD: The court granted AB's applications for a stay in respect of both actions. SaskPower's application to stay the arbitration proceeding was dismissed and Techeat's application for summary judgment was also dismissed. With respect to SaskPower's arguments, the court held that s. 8 of The Arbitration Act did not preclude AB from applying to the court for a stay of proceedings or that it precluded arbitration in the face of multiple proceedings, multiple parties or third party actions. The court rejected Techeat's position regarding s. 91(2) of The Builders' Lien Act. The court found that the terms of the sub-contract clearly provided that disputes would be decided by the same tribunal that decided disputes between AB and SaskPower. Further, Techeat had not dealt with the issue of whether summary judgment would be suitable for other lien claimants.

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Ayers v. CPC Networks Corp., 2015 SKQB 75

Mills, March 11, 2015 (QB15068)

Corporations – Directors and Officers – Indemnification
Statutes – Interpretation – The Business Corporations Act, Section 119(4)

The applicants sought an indemnity order against CPCN pursuant to s. 119(4) of The Business Corporations Act in the amount of $453,700 in respect of Adams and $156,200 in respect of Avery. CPCN had been the subject of a liquidation order and was subsequently sold largely as a result of a protracted dispute between minority shareholders, including the two applicants and the majority shareholders. Under the

sale process, a debt claim procedure involved submitting proof claims and appeals therefrom to be filed by a certain date. The directors and officers appointed by the majority shareholders filed a proof of claim in an unknown amount pursuant to s. 119(4) of the Act, seeking indemnity for any future costs to be incurred by them in their capacity as officers or directors because of a variety of court actions against them initiated by the minority shareholders. When they became aware of this, the applicants filed their own proof of claim pursuant to s. 119(4), but as it was filed out of time, no decision was made in the debt claims process. They then brought this Originating Application. The majority shareholders opposed it on the basis that the applicants' failure to comply with the debt claims process disentitled them from making a claim against the corporation although they acknowledged that the court had residual jurisdiction to allow the claim to proceed based on the wording of the claims process. With regard to their s. 119(4) indemnification applications, each applicant had filed for specific amounts that they had expended to defend themselves in another court action involving CPCN: Eagle Eye Investments v. CPC Networks, QBG 160 of 2010 (Sask QB).
HELD: The court held with respect to the preliminary issue that it would exercise its jurisdiction to allow the applicants' claims under the debt process to proceed and it was appropriate to allow Ayers and Adams to advance their s. 119(4) claims just as the majority officers and directors will be doing. The applicants' claim for indemnification related to the costs incurred by them as result of being the defendants in QBG 160. The court reviewed each applicant's itemized claims in light of the requirements of s. 119(4) of the Act and found that Adams had proven $157,400. Ayer's application failed because the claim appeared to relate to his practice of law and his activity as a litigant and had nothing to do with his duties as a director or officer of the company.

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Prekaski v. Prekaski, 2015 SKQB 76

Goebel, March 11, 2015 (QB15069)

Family Law – Custody and Access – Contempt – Costs
Civil Procedure – Costs – Solicitor-Client Costs

The petitioner mother had applied to vary an interim parenting order. The respondent made an application for variation and for contempt. As the petitioner had failed to honour an earlier parenting order made by the court, the judge found her in contempt, dismissed her application and ordered that she provide the respondent with specific access (see: 2014 SKQB 429). The judge adjourned the issues of: 1) the

petitioner's compliance with the fiat regarding access; 2) the appropriate sanction for the contempt; 3) the assessment of costs related to the petitioner's application to vary; and 4) the assessment of costs relating to the respondent's application for contempt and compensatory access.

HELD: The court found with respect to the issues that: 1) the petitioner had complied with the parenting order; 2) the appropriate sanction was to require the petitioner to post security in the amount of $2,000 for her future compliance with the order; 3) the petitioner shall pay costs fixed at $500 regarding the petitioner's application; 4) the petitioner shall pay costs to the respondent for his contempt application. The petitioner's contempt qualified as exceptional circumstances, warranting costs to be assessed on a solicitor-client basis fixed at $2,500 to be accounted for at the time that the division of family property is determined.

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