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.

Volume 17, No. 17 **September 1, 2015**

Subject Index

R. v. Daniels, 2014 SKQB 259

Gabrielson, August 19, 2014 (QB14421)

Criminal Law – Controlled Drugs and Substances Act – Possession for the Purpose of Trafficking
Constitutional Law – Charter of Rights, Section 7, Section 8, Section 9, Section 24(2)

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, and unlawfully possessing cash not exceeding $5,000, proceeds of property obtained by the commission of an indictable offence, contrary to s. 154(1) of the Criminal Code. Counsel for the accused filed a Charter application, alleging that the accused's rights under ss. 7, 8 and 9 of the Charter were infringed and requesting that all evidence obtained be excluded from trial pursuant to s. 24(2) of the Charter. A voir dire was held. A number of police officers testified. The background to the laying of charges was that, as a result of a tip received from a confidential source that drugs were being trafficked from a house, the Saskatoon police began a surveillance operation of it. They knew the names of five individuals who were involved in the trafficking. The lead officer saw two of the individuals leave the house and, after following them in their car, arrested them. They were searched and found to be in possession of both cocaine and large amounts of cash. The officer then obtained a search warrant for the residence. At the site itself another officer noticed a vehicle at the back of the house, which then drove away. He communicated this to the lead officer and was told by him to stop the vehicle and arrest the

occupants. The officer stopped the vehicle, which was driven by the accused. He asked the accused for his licence and registration. The accused advised that he had rented the car as he was in Saskatoon to do work for his business. There were two passengers in the vehicle and the officer called the lead officer to tell him their identities. When the lead officer heard that one of the passengers was the owner of the house under surveillance, he told the investigating officer to arrest him. The officer then searched the vehicle in which he found a tin containing $1,800. Once again, the lead officer told him to arrest the accused and the other passenger. At the station, the accused and the second passenger were searched and $775 was found in the former's pocket and $1,340 and cocaine in plastic bags (57.7 grams) on the latter's person. Another police officer testified as an expert that based upon all of the evidence and the exhibits seized, he believed that the accused was an active participant in an organized "dial-a-dope" operation. The defence initially argued that the opinion evidence of this officer should not be admitted at the voir dire as expert opinion evidence because it had not met all the criteria set out by the Supreme Court in R. v. Mohan. The evidence should not be given any weight because some of the factual bases for his opinion had not been established in evidence at the voir dire. The defence submitted that the accused's Charter rights had been violated because the search was warrantless and not made pursuant to a lawful arrest. The only objective evidence that existed was the testimony of the officer, who said that he had seen the vehicle at the residence. There was no basis for stopping the vehicle and, regardless of the lead officer's belief that it had been at the house in question, that was insufficient to constitute valid grounds for arrest. Therefore, the evidence of the cash found on the accused and in the can in the vehicle should be excluded as it was obtained pursuant to an unreasonable search and seizure.
HELD: The court admitted the evidence. It allowed the opinion evidence regarding "dial-a-dope" operations because the court accepted that the training, experience and research of the officer qualified him to give the opinion and because the court had decided to admit the evidence from the search. The evidence was not so prejudicial that it outweighed the probative value. The court found that there had been no breach of ss. 7, 8 or 9 of the Charter respecting the arrest and/or detention for the accused and that the opinion of the officer was admissible evidence as an expert opinion. Regarding the alleged breach of s. 9, the court found that in all of the circumstances, the lead officer's subjective belief that the accused and his passengers were involved in the drug trafficking operation was objectively supported when he learned that one of them was the owner of the residence. There were reasonable grounds for stopping the vehicle and arresting the occupants. The search was justified as an attempt to find evidence of criminal activity because of the context and by virtue of the arrest of the owner of the residence and thus s. 8 was not breached. Under the Grant analysis, the court would have admitted the evidence

even if it had found breaches.

 Back to top

Rekken v. Health Region #1, 2015 SKCA 36

Richards Herauf Ryan-Froslie, April 17, 2015 (CA15036)

Civil Procedure – Pleadings – Statement of Claim – Amendment
Civil Procedure – Queen's Bench Rule 3-72
Statutes – Interpretation – The Fatal Accidents Act, Section 4(1)

The appellants appealed the dismissal of their application in Queen's Bench to amend their statement of claim pursuant to Queen's Bench rule 3-72 in an action under The Fatal Accident Act. The proposed amendment would include claims for aggravated and punitive damages based on their allegation that the defendant doctors had altered the medical records of their deceased son after the commencement of their litigation, with the intent of extinguishing or limiting their liability. The chambers judge dismissed the application on the basis that the word "proportion", used in s. 4(1) of the Act as it existed at the time the cause of action arose, precluded the award of such damages. The issues were whether the Act did preclude a plaintiff from claiming: 1) aggravated damages; and 2) punitive damages. HELD: The court dismissed the appeal with respect to the claim for aggravated damages and allowed the appeal with respect to the amendment for punitive damages. The court found that the chambers judge had relied upon "no reasonable claim" in rule 7-9(2)(a) of the Rules as the reason for refusing the amendments. As the Supreme Court's decision in Lett and s. 4(1) of the Act both precluded a claim for aggravated damages, the court confirmed the chambers judge's decision. With respect to punitive damages, the court found they may be available in a situation where the conduct complained of relates to the litigation rather than the death of the deceased. As it was not plain and obvious that the appellant's claim would fail, the appeal was allowed with respect to their claim for punitive damages.

 Back to top

R. v. Lomenda, 2015 SKCA 40

Jackson Caldwell Herauf, April 22, 2015 (CA15040)

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

Savoy v. Savoy

Stevenson v. First Nations University of Canada Inc.

Weidner Investment Services Ltd. v. Azhar

Wildeman v. Bell Mobility Inc.

10, Section 24(2) – Appeal

The Crown appealed the acquittal of the respondent after a summary conviction appeal court judge allowed the respondent's appeal from his conviction after trial in Provincial Court on a charge of driving while his blood alcohol exceeded .08. The trial judge found that the officer had administered the ASD test "forthwith" as required by s. 254(2)(b), and concluded that, in the circumstances, there had been no Charter breach and admitted the evidence. The respondent appealed on the ground that non-compliance with s. 254(2) ought to mean that the Crown could not rely upon the presumption in s. 258(1)(a) in this case where there were insufficient grounds to make a demand under s. 254(3). The appeal judge found reversible error in the trial judge's approach. He accepted the respondent's alternative submissions to the effect that: 1) the investigating officer had failed to administer the ASD test forthwith; 2) had thereby breached the respondent's rights under ss. 8, 9 and 10(b) of the Charter; and 3) the breaches were such that the Certificate of Analysis ought to be excluded from evidence under s. 24(2) of the Charter (see: 2014 SKQB 77). The Crown submitted that the appeal judge erred in doing so for several reasons: he applied an incorrect standard of review to find error in the trial judge's approach, he improperly interfered with the trial judge's findings of fact, he erred in law when making his own findings of fact afresh, and he erred in his determination to exclude evidence under s. 24(2) of the Charter.
HELD: The court dismissed the appeal. It agreed with the appeal judge's reasons and his decision to exclude the evidence under s. 24(2) of the Charter.

 Back to top

Kowalczyk v. Saskatchewan Government Insurance, 2015 SKCA 47

Richards Caldwell Herauf, April 29, 2015 (CA15047)

Civil Procedure – Appeal – Extension of Time
Civil Procedure – Court of Appeal Act, 2000, Section 9(2), Section 20(3)
Civil Procedure – Court of Appeal Rules, Rule 11(1)
Small Claims – Appeal

The prospective appellant appealed the chambers decision from the Queen's Bench Court that dismissed her appeal from the Provincial Court. The prospective appellant failed to attend a trial in small claims court, and when she applied to set aside the decision dismissing her claim, the Provincial Court judge determined that she had altered the notice of trial and therefore dismissed her application. She appealed that decision to the Queen's Bench and it was dismissed on November

30, 2012. Section 45 of The Small Claims Act, 1997 allows appeals on questions of law and s. 9(2) of The Court of Appeal Act, 2000 and rule 11(1) of The Court of Appeal Rules require that an application for leave be brought within 15 days of judgment. The prospective appellant attempted to file a handwritten document on December 12 and 31, 2012, and did file documents on March 8, 2013. The application to extend time was dismissed on March 27, 2013. The prospective appellant requested that the dismissal be set aside pursuant to s. 20(3) of The Court of Appeal Act, 2000.
HELD: The appeal should not be allowed unless the chambers judge erred in principle, disregarded or misapprehended a material of fact, failed to act judicially or rendered a decision so plainly wrong as to amount to an injustice. The court noted two problems with the prospective appellant's case: 1) she did not have an arguable case because she could not rely on an altered notice of trial; and 2) she did not explain the reason for the delay between December 31, 2012, and March 27, 2013. The chambers judge did not err. The court also pointed out that the prospective appellant would not be successful on her appeal even if the extension of time was granted because she was not appealing on a question of law.

 Back to top

R. v. Leroux, 2015 SKCA 48

Richards Caldwell Ryan-Froslie, May 4, 2015 (CA15048)

Criminal Law – Assault – Sexual Assault – Child Victim – Conviction – Appeal
Criminal Law – Assault – Sexual Assault – Child Victim – Sentencing – Appeal

The respondent appealed from his convictions for eight counts of indecent assault and two counts of gross indecency, committed while the respondent was a boys' dormitory supervisor at the Beauval Indian Residential School between 1959 and 1967 (see: 2013 SKQB 395). The respondent had been convicted and sentenced to ten years' imprisonment for similar offences committed between 1967 and 1979 in Inuvik at another residential school. His grounds of appeal were that: 1) the trial judge erred in admitting similar fact evidence; 2) the trial judge erred in denying the respondent's application for a stay of proceedings by reason of the delay in bringing the charges to trial; and 3) the verdicts were unreasonable. The Crown appealed from the three-year sentence of imprisonment imposed upon the respondent on the grounds that it was demonstrably unfit because it was not proportionate to the gravity of the offences in regard to the gross breach of trust, the duration of the assaults and other aggravating

factors (see: 2013 SKQB 438).

HELD: The court upheld the convictions except for quashing one conviction, granted the Crown's appeal and found a sentence of eight years' imprisonment to be a fit sentence. The court held with respect to the respondent's grounds of appeal that: 1) the trial judge's reasons adequately addressed the probative versus prejudicial effect of the similar fact evidence. The trial judge had not misused the evidence as proof that the respondent was the kind of person who would commit such offences; 2) the delay in bringing charges against the respondent arose from the residential school context and the nature of the offences whereby the humiliated victims were reluctant to report them. To impose an artificial limitation period would create injustice in such circumstances; and 3) the trial judge found that the complainants were credible and that the evidence was reliable as to the offences for which he entered convictions. He focused on the consistencies and inconsistencies within each complainant's testimony as to the alleged sexual assaults by comparing trial testimony and previous statements. The court found that the in the case of one conviction the evidence had not supported the trial judge's conclusions because he misapprehended the evidence of the two other complainants as corroborative when it was inconsistent. The court assessed the trial judge's reasons for sentencing and found multiple errors. The trial judge had failed to increase or decrease the sentences on the basis of aggravating and mitigating circumstances that he had identified. In some instances, he misconstrued some as mitigating when they were not and improperly discounted the weight of the aggravating circumstances. The trial judge had erred by classifying the offences as major sexual assaults by the criteria of whether penetration had occurred and using three years as a starting point for them and 18 months or less for the other sexual assaults, which violated the principle of proportionality. A sentencing judge must consider all of the aggravating and mitigating factors in each case of sexual assault and not use classification. The judge also failed to apply the totality principle properly and to provide reasons for his decision to reduce the concurrent sentences of 17 years to the length of the longest of the consecutive sentence of three years. A fit sentence would take into account that the respondent committed multiple sexual assaults on multiple child victims in the context of the Indian residential school system – aggravating circumstances that called for a substantial increase from any threshold sentence for such offences. The court increased the sentences for each count. Because each pertained to different victims at different times and involving different circumstances, the court held that the sentences should be served consecutively, resulting in a cumulative period of 30 years' imprisonment. Given that the respondent was 74 years old, the sentence would be unduly long. The totality principle was therefore applicable and the sentence would be reduced to eight years.

Back to top

R. v. C. (K.J.), 2015 SKCA 52

Jackson Ottenbreit Herauf, May 15, 2015 (CA15052)

Criminal Law – Assault – Sexual Interference – Conviction – Appeal

The appellant was convicted of sexual interference contrary to s. 271 of the Criminal Code. The trial judge sentenced the appellant as a long-term offender but found a lesser sentence than indeterminate detention would protect the public and ordered him to serve a term of eight years imprisonment followed by a long-term supervision order of ten years. The appellant was also ordered to serve at least one-half of his penitentiary sentence before parole could be considered. With respect to remand credit, the sentencing judge limited it to 1:1 (see: 2012 SKQB 508). The appellant applied to adduce fresh evidence and appealed his conviction, arguing that: 1) the verdict was unreasonable and could not be supported by the evidence; 2) the trial judge erred in his findings of credibility; and 3) the trial judge should have given him credit at the rate of 1.5:1 for his time in remand. With respect to the application, the appellant's mother made a video-recorded statement after the trial in which she stated that during the late afternoon on the day of the offence, the appellant had helped an Aboriginal woman who had fallen outside her house and then left to work in North Battleford. The appellant's mother had since died. The evidence, if accepted, went to show how the appellant could have come into contact with the victim of the assault and gotten his blood on an article that she was carrying. HELD: The court denied the application to adduce fresh evidence and dismissed the appeal. With respect to the application, the court found that it could have been introduced at trial as the appellant's mother was present during it and the appellant could have advised his counsel that she would have been able to give evidence that would explain the presence of his blood. The evidence was not relevant because the offence had occurred at 4:00 am and the evidence related to later in the day. It was not credible that the woman who had fallen had somehow acquired the evidence that had been seized from the scene of the crime that morning. The fresh evidence would not have affected the result. Regarding the grounds of appeal, the court held: 1) that the trial judge had not failed to look at the evidence as a whole. He was not required to refer to every speculative argument that the appellant advanced at trial or on appeal and the trial judge was entitled to draw an inference of guilt after considering the totality of the evidence; 2) it would not interfere with the trial judge's assessment of the credibility of the appellant's girlfriend, who testified that she had advised the police that the appellant had asked her to lie about his whereabouts after an officer had been to their house to investigate the offence. The trial judge had not referred to the witness's drug addiction and a prior

conviction for fraud, but relied upon the fact that her testimony was not undermined in cross-examination; and 4) the trial judge could only have achieved the objective of protection of the public if the appellant's sentence was imposed at the ratio of 1:1 to permit him to receive the necessary treatment and programming while incarcerated.

 Back to top

R. v. Lee, 2015 SKCA 53

Jackson Herauf Whitmore, May 15, 2015 (CA15053)

Constitutional Law – Charter of Rights, Section 11(b) – Appeal

The Crown appealed the decision of a Queen's Bench judge staying the proceedings against the respondent on the charge of abducting a child contrary to s. 283(1) of the Criminal Code because the respondent's s. 11(b) Charter right to trial within a reasonable time had been violated. As a result of conflict with the father of the child and to avoid a court order giving him increased parenting time, the respondent had taken her son to Mexico in 2009. In June 2010, an Information was sworn charging the respondent with abduction under s. 282 of the Code. In January 2011, the charge was stayed and a new Information laid, charging the respondent under s. 283. The RCMP had located the respondent and contacted her by email and informed her of the charge in October 2010. The respondent returned to Canada in August 2011 and was arrested. She was released on a recognizance. There were then 14 appearances and adjournments while the respondent obtained counsel, sought disclosure and attempted to enter a guilty plea without admitting to the offence. A trial date was set for January 2013, and at it the respondent applied to quash the conviction on the basis that the trial could not proceed by summary conviction because her consent was not endorsed on the record and the Information had been sworn outside a period of six months. The Provincial Court judge granted a mistrial. The Crown elected to proceed by indictment in April 2013, and a preliminary hearing was held in June where the respondent was ordered to stand trial in the Court of Queen's Bench. In a pre-trial conference in October, the respondent applied for court-appointed counsel and for a stay of proceedings on the basis of a s. 11(b) Charter breach. Counsel was appointed and trial was set for March 2014 and then changed to May 2014 because counsel was unavailable. The Charter application was scheduled for March 2014. In January 2014, the respondent's counsel applied and was given leave to withdraw, and the respondent informed the court that she would represent herself. The Charter application was heard according to schedule. The trial judge held that the respondent's s. 11(b) right had been violated after reviewing the factors set out in Morin.

HELD: The court dismissed the appeal. It found that although the trial judge had made errors in his analysis, there was no error in his conclusion that the delay was unreasonable. The court corrected the following findings of the trial judge: 1) the total delay amounted to 39 months not 41 months; 2) the respondent had waived 5.75 months not 8 months by consenting to adjournments; 3) inherent delay is the term given for certain kinds of delay, not the average time for the kind of charge in question to move from charge to preliminary hearing. The respondent's attempt to enter a guilty plea while denying commission of the offence could not be attributed to the Crown and should be regarded as neutral as would the amount of time the respondent spent in trying to retain counsel. The inherent delay of 8.75 months should be subtracted from the overall time of 39 months; 4) 6.75 months should be discounted from the total time because the respondent's action of refusing to return to Canada should have been attributed to her; 5) the Crown should bear responsibility for its error in proceeding summarily without the respondent's consent and attributed the delay of 5.25 months to it caused by the respondent's application to quash the charge until the preliminary inquiry; and 6) without explanation, the judge had found that institutional delay was not applicable to the case. However, 11.75 months was attributable to it, consisting of the 7-month period between the application for court-appointed counsel to pre-trial and another 4.75 months between the second pre-trial hearing until the time when the trial date was set. The court calculated the delay at 18 months attributable to the Crown and to institutional delay. While not unduly long, it found that the prejudice caused to the respondent was severe as her access to her son was restricted by the court's order and the bail conditions imposed upon her limited her ability to travel and relocate to Alberta where her son was living with his father. These conditions persisted for three years despite the fact that the Crown had stated its intention to seek only a conditional sentence of six months.

 Back to top

PCL Industrial Management Inc. v. Agrium, 2015 SKCA 55

Richards Herauf Whitmore, May 29, 2015 (CA15055)

Statutes – Interpretation – Builders' Lien Act, Section 46(3)

The appellants, a joint venture known as JV Vault, appealed a decision made in Queen's Bench chambers that dismissed their application for an order compelling the early release of holdback funds under s. 46 of The Builders' Lien Act. The appellants had entered into a construction contract with the respondent in 2009. In December 2014, the appellants had sought the early release of a portion of the holdback and the respondents had declined to pay out the funds on the basis that the

project was expected to be completed in June 2015 and therefore the early release provisions of s. 46 did not apply because the remaining term of the contract was less than one year. Its interpretation of the Act prevailed in the application. The respondents also argued that the decision in the application was interlocutory and thus the appellants should have applied for leave to appeal pursuant to s. 8 of The Court of Appeal Act, 2000.
HELD: The court dismissed the appeal. It found that the issue raised by the appellants in the motion was not part of a larger controversy or action so that the decision of the chambers judge was final and there was no need to apply for leave to appeal. The court reviewed section 46 and held that s. 46(1) was subject to s. 46(3). The chambers judge correctly interpreted and applied s. 46. Holdback cannot be released pursuant to s. 46(1) if, as of the anniversary date of the contract, there is less than one year left on the contract.

 Back to top

R. v. McCallum, 2015 SKPC 58

Lane, April 20, 2015 (PC15048)

Criminal Law – Controlled Drugs and Substances Act – Possession for the Purpose of Trafficking – Marijuana
Constitutional Law – Charter of Rights, Section 8, Section 9

The accused was charged with possession of marijuana in an amount not exceeding 3 kilograms for the purpose of trafficking and cannabis resin in an amount not exceeding 3 kilograms for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act. The accused brought a Charter application alleging that his ss. 8 and 9 Charter rights had been violated and sought an order under s. 24(2) for the evidence seized by the RCMP to be excluded. The accused argued that: 1) he was arrested without reasonable and probable grounds to believe that any offence had been committed; and 2) that he and his motor vehicle were subjected to a search subsequent to his arrest and the search was conducted without reasonable and probable grounds to believe that an offence had been committed. A voir dire was held. The charges had been laid as a result of a police informant advising an RCMP officer that the accused would be driving from Prince Albert to La Ronge the next evening at a certain time to transport a significant quantity of marijuana. The informant also described the accused's vehicle and said that his wife would be a passenger in it. The officer verified as much of the information as possible and then arranged with another officer how they would set up to be able to make a traffic stop of the accused's vehicle. Consistent with the information received, the accused's vehicle was seen by the

officers on the night in question and stopped. The officer noticed that the accused was nervous and the vehicle had air fresheners in it, often used to mask the smell of marijuana. He arrested the accused and then conducted a search of the vehicle, finding 60 grams of cannabis resin and more than four pounds of cannabis marijuana. An RCMP expert testified that the amounts were consistent with trafficking. The defence argued that the officer accepted information from someone whose tips in the past had never resulted in a charge or a conviction and therefore was unreliable. The officer was acting then only on mere suspicion.
HELD: The court dismissed the application and found the accused guilty of the charges. The court found that the information provided to the officer gave him reasonable and probable grounds, and after the stop occurred, the officer's observations confirmed the information. The officers believed that the accused was committing an offence and could be arrested and that a warrantless search could be conducted incidental to his arrest. The Crown had proven that the accused was driving a vehicle registered in his name, that he had control of it and that in it was sufficient quantity of drugs to indicate possession for the purposes of trafficking.

 Back to top

R. v. Poletz, 2015 SKQB 114

Gabrielson, April 20, 2015 (QB15112)

Criminal Law – Appeal – Conviction
Criminal Law – Evidence
Criminal Law – Impaired Driving

The appellant appealed his impaired driving conviction contrary to s. 253(1)(a) on the ground that the trial judge erred when he held that the evidence at trial met the legal standard of proof beyond a reasonable doubt. The appellant's vehicle was observed backing out of a driveway and then driving with no lights on at 1:52 am. The vehicle was stopped and the appellant was the sole occupant. An odour of alcohol was detected, the accused appeared to be staring in the distance, and his speech was slurred. The appellant argued on appeal that the trial judge failed to consider all of the evidence, specifically his testimony that he was not affected by any of the alcohol that he had consumed. A video taken at the detachment was said to be proof of the lack of impairment. The Crown opposed the viewing of the video on appeal arguing that would be a retrying of the evidence. The appellant also argued that the trial judge did not carry out the necessary analysis given the appellant testified.
HELD: The court concluded that a W(D) analysis was not required because the issue for the trial judge was not one of credibility but

rather whether the evidence was sufficient to establish the offence of impaired driving beyond a reasonable doubt. The trial judge was found to have properly considered the evidence; the appellant's evidence assisted the trial judge in concluding that he was impaired and the video was not found to assist the appellant. In Saskatchewan a "marked departure" from the ordinary ability of an accused to operate a motor vehicle is not required. There was evidence at trial to confirm the trial judge's findings and conclusion. No error of law was made so the appeal was dismissed.

 Back to top

R. v. Mayoh, 2015 SKQB 116

Smith, April 21, 2015 (QB15113)

Criminal Law – Appeal – Conviction
Criminal Law – Driving over .08 – Breath Demand – As Soon As Practicable

The appellant was convicted of driving over .08 contrary to s. 253(1)(b). The appellant was stopped for irregular driving. The officer noted a smell of alcohol, fumbling, red bloodshot eyes, a distant stare, and stumbling. An ASD demand was made and the appellant failed leading to a Breathalyzer demand and breath tests. The appellant argued that the ASD demand was not lawful because at the time the officer made the demand he had already concluded the appellant was impaired and therefore should have taken a breath sample as soon as practicable as required by s. 254(3). The trial judge indicated that it was clear that the officer had not reached the point where he was satisfied that the accused was arrestable for impaired driving just prior to making the ASD demand. The appellant argued that the conclusion was an error of fact and that the judge further erred by not finding a violation of the appellant's ss. 8 and 9 Charter rights. The Crown argued that focusing on a specific word (impaired) in a specific line of testimony was incorrect and looking at the whole of the evidence it was obvious that the officer was using "impaired" in a colloquial sense, meaning he believed the appellant had consumed alcohol. The appellant also argued that the officer knew he was impaired because he would not let him go home after giving breath tests but instead required that he stay in cells to sober up.
HELD: The appeal was dismissed. The trial record was found to support the conclusion that, prior to the fail on the ASD, the officer had not reached the point where he had sufficient grounds to arrest he appellant for impaired driving. The appellant's argument that the officer knew he was impaired because he made him sober up at the detachment was also unsuccessful. When the officer decided to hold

the appellant in custody he had learned of the level of the appellant's impairment, specifically the two breath tests at .14.

 Back to top

P.W. Lorch & Associates Ltd. v. Saskatchewan, 2015 SKQB 119

Zarzeczny, April 22, 2015 (QB15108)

Civil Procedure – Pleadings – Statement of Defence – Application to Amend

The defendant Government of Saskatchewan applied to amend its defence. It sought to change the wording of the statement of defence so as to delete an admission made by one of its employees. After discovery and examinations for discovery and responses to undertakings, the defendant concluded that the paragraph in question contained an error and the admission should be withdrawn since it was a real question and issue between the parties within the meaning of Queen's Bench rule 3-72(3). The plaintiff opposed the application, arguing that it had relied upon the admission of fact in its preparation for trial. The defendant filed its statement fours year prior and this late application prejudiced the plaintiff and caused unfairness.
HELD: The court granted the application. The court found that it was for the trial judge to determine what evidence would be accepted and what conclusion would be drawn from it as well as its relevance with respect to the causes of action pled in this case. Counsel for the plaintiff was experienced and had two months until the trial to prepare his case based upon the amendment to the statement of defence.

 Back to top

Stevenson v. First Nations University of Canada Inc., 2015 SKQB 122

Barrington-Foote, April 27, 2015 (QB15115)

Civil Procedure – Summary Judgment – Queen's Bench Rule 7-2
Employment Law – Wrongful Dismissal
Evidence – Credibility

The plaintiff commenced an action for wrongful dismissal after being dismissed from his employment as Vice-President of Administration for the defendant. The defendant applied for summary judgment dismissing the plaintiff's claim pursuant to rule 7-2 of The Queen's Bench Rules. The employment agreement had a termination provision.

The defendant argued that the plaintiff's misconduct constituted both criminal acts against the defendant and gross negligence. Many of the allegations related to what the defendant argued was unauthorized travel. The plaintiff was suspended for the defendant to complete an external audit that concluded that the plaintiff had significant financial gain at the defendant's expense. The plaintiff was dismissed after the audit was completed. The plaintiff asserted that the process of his termination was not fair because he did not have an opportunity to respond to the allegations in the audit report and because the board deciding to terminate the plaintiff was not provided with the audit report. The plaintiff also alleged political interference and poor governance. As a result of the audit report, the plaintiff was charged with one count of defrauding the defendant exceeding $5,000; however, he was not convicted of that charge. The plaintiff instead pled guilty to defrauding the Government of Canada of an amount in excess of $5,000 contrary to s. 380(1)(a) of the Criminal Code. The conviction related to funding provided by the Government of Canada that was actually used by the plaintiff for personal expenses.
HELD: The defendant's application was granted. The court interpreted the employment contract phrase "criminal acts against the College" broader than argued by the plaintiff. At a minimum the court said that the phrase would include criminal acts that did not result in a conviction but were proven on a balance of probabilities. Regardless of the interpretation, the court held that the application could be decided solely on the basis that the plaintiff was guilty of gross negligence of duty. The court determined that "gross negligence of duty" should be interpreted to mean that the plaintiff could only be dismissed for cause if he was guilty of conduct that represented a marked departure from the standard or performance and conduct he was required to meet as a result of his employment as Vice-President of Administration. Relevant considerations included the nature and extent of the breach and the number of breaches. The court noted that the plaintiff's honesty, not incompetence, were raised by his misconduct and a high standard had to be applied to him because of his position of public trust. The defendant could rely on not only what was known at the time of dismissal but also what was learned since the dismissal. The plaintiff's arguments relating to political takeover and fairness of the process of his termination were found to be without merit. The court did not rely on the audit report for the truth of its contents except to the extent that facts were agreed to by the plaintiff in the agreed statement of facts. The admissions made by the plaintiff read together with the portions of the audit report that they referred to were found to be more than adequate to make the defendant's case. The court concluded that the fraud conviction alone was an act of "gross negligence of duty" sufficient to justify his termination. The court also concluded, using its authority in rule 7-5(2)(b), that the plaintiff was acting in his employment capacity with the defendant when he took the trip that resulted in the fraud conviction. The plaintiff was found to lack

credibility.

 Back to top

Wildeman v. Bell Mobility Inc., 2015 SKQB 125

Elson, April 28, 2015 (QB15117)

Civil Procedure – Class Action
Civil Procedure – Pleadings – Particulars
Class Action – Demand for Particulars
Practice – Demand for Particulars

The plaintiff was the representative plaintiff in a class action proceeding against six groupings of wireless and cellular service providers. The plaintiff alleged that the defendants improperly charged fees for emergency 911 services. The defendants applied for particulars from the plaintiff. The general nature of the particulars sought were: 1) as to the 911 fee, or portion thereof, the plaintiff sought to recover because they were excessive; 2) of the common law duty to charge only reasonable rates; 3) as to how the defendant misled the class; 4) as to the contract terms breached by the defendants; 5) of breaches of The Competition Act and consumer protection legislation; 6) of the time period and geographic locations not provided with 911 services; 7) as to how the defendants participated in collusion and conspiracy and acted in concert with each other; and 8) of the claim for special damages.
HELD: The court ordered the particulars sought with one exception. Particulars were found to be necessary prior to certification so that the defendants and court could have a clear and reasonably precise understanding of both the plaintiff's claim and his assertion of its suitability as a class action. The court discussed the particulars sought as follows: 1) the defendants' evidence disclosed that there were different components and levels to the 911 fees. The court agreed with one of the defendants that the response they received from the plaintiff with respect to the fees was confusing and inconsistent. Also, the court determined that the plaintiff did not identify all of the fees that were in dispute; 2) the plaintiff did not provide further particulars as to the common law duty imposed on the defendants to charge only reasonable rates indicating that to do so would amount to legal argument. The court agreed that an order for particulars was not warranted; 3) the plaintiff's response as to how the defendants' misled them was found to be insufficient because the court requires precision when any fraud or misrepresentation is pled and the existence of the allegation in a class action increases the importance of particulars. Relying on a statute to support the allegation of misrepresentation was found not to relieve the plaintiff of the responsibility to provide

particulars of the allegations; 4) the defendants' concern was found to be valid. Particulars as to the breach of contractual terms would assist the defendants in assessing the case they have to meet and would assist the court hearing the certification hearing; 5) the plaintiff identified provisions of various statutes but did not indicate how the defendants breached the provisions. The court held that alleged breaches of statute needed to be particularized like alleged breaches of contract; 6) the plaintiff indicated that the knowledge was held by the defendants and therefore particulars were not warranted. The court again noted that it was not appropriate for a party to avoid giving particulars simply on the basis that such particulars were within the knowledge of the applying party; 7) a claim of collusion and/or conspiracy necessarily requires an agreement. The particulars of the alleged agreement should be provided when sought; and 8) the court determined that it would be appropriate for the representative plaintiff to provide particulars of his personal claim for special damages.

 Back to top

Henningsen v. Lee, 2015 SKQB 129

Megaw, April 30, 2015 (QB15120)

Family Law – Child Support – Retroactive Support

The parties had a seven-year-old child who had primarily resided with the petitioner since 2012. They could not agree on whether retroactive child support in the amount of $6,891 should be ordered from July 2013 through to November 2014. The petitioner argued that the delay was caused by the parties discussing resolution. The respondent asserted that she would have financial hardship if retroactive support was ordered.
HELD: To determine whether there should be an award for retroactive support, the court must review all of the facts and assess the factual matrix. The court rejected the petitioner's argument that the matter should be determined finally at chambers because of the limited amount of money in issue. The court found that there was an incomplete factual picture that prohibited the court from making a determination on the retroactive support issue.

 Back to top

Granatier v. Granatier, 2015 SKQB 130

Tholl, May 1, 2015 (QB15121)

Family Law – Custody and Access – Variation

The petitioner and the respondent shared the parenting of their five-year-old son. The petitioner resided in Martensville and the respondent in Regina. As their son would start school in the fall, the arrangement could not continue and neither parent would consent to the child moving to the other parent's residence, although they both agreed to provide generous access to the other parent. Both parties' parents were significantly involved with their grandson. The respondent and his son had been living with his parents for six months prior to trial and the respondent's mother looked after the child when the respondent was at work. The respondent had lived with his girlfriend for a year prior to moving to his parents and his son was very comfortable with residing at that home, but the respondent had decided to separate from his girlfriend to determine whether they would continue the relationship. The respondent had worked in a variety of positions since the birth of his son and it would take him some time to find a new job in Saskatoon if he were to relocate there. The petitioner owned her own home, and when her son lived with her, he attended the same daycare for the past two years. He would continue to attend there if his primary residence were to be with the petitioner. She had been employed with the same employer for a lengthy period and had been able to transfer easily between locations. It would, however, take some time for her to arrange a transfer to Regina, although her employer would accommodate her desire to do so. During the time of their shared parenting, neither of the parties had paid child support. With the alteration in this arrangement, support would have to be established. The petitioner earned $55,000 annually and the respondent's income was similar.

HELD: The court ordered that the parties continue to share custody but changed the parenting arrangement so that the primary residence of their child would be with the petitioner because of the continuity it would provide to him as the respondent intended to leave his parents' home and his future with his girlfriend was uncertain. If the respondent were able to move to Saskatoon or environs and obtain appropriate employment by August 31, 2015, the court ordered that the parties would resume shared parenting. The court provided access to the respondent so that his son would spend three weekends every month with him as well as five weeks in the summer and allotted time during school holidays. The court determined child support in accordance with s. 9 of the Guidelines and ordered the petitioner to pay $52 per month if the respondent relocated to Saskatoon. If the respondent had not relocated to Saskatoon by the end of August 2015, he was ordered to pay $402 per month to the petitioner pursuant to s. 3 of the Guidelines.

Back to top

Savoy v. Savoy, 2015 SKQB 131

Sandomirsky, May 1, 2015 (QB15122)

Family Law – Family Property – Division

The petitioner husband applied for retrospective and prospective spousal support, for division of family property and an order regarding his access to his four-year-old daughter. The petitioner began living with the respondent in the Philippines when he was 50 and she was 20 years of age. The petitioner had income at that time from a payout received from his first wife on the occasion of their divorce and division of a family business. The respondent attended medical school in Manila and had two children with the petitioner. They married in 2000, and not long after, the couple moved to Canada. The petitioner was unable to work outside the home but looked after the children and the family home. The respondent wife worked and maintained the family as a physician and created a professional medical corporation. The couple's third child was born in 2011, the year that they separated. The major family property asset was the respondent's medical clinic. The petitioner had applied for interim spousal support in 2012 and was granted $5,500 per month based upon information that the respondent's income was $353,750. Later evidence revealed that her income for 2011 was $550,000. The petitioner brought another application to vary his spousal support because he had had a heart attack but the court denied it, pending the final disposition of the proceedings. The petitioner argued that the value of the medical clinic was $375,000.

HELD: The court awarded the petitioner retrospective and prospective spousal support. In the case of the former, it corrected the spousal support amount at $9,307 per month based upon the parties' actual 2011 incomes but limited the corrected payment to the time of the interim application to vary in September 2014 because the respondent assumed the financial burden of servicing family debt and raising the children. The court ordered the respondent to pay the petitioner $25,000 at the rate of $600 per month regarding the retroactive support. The court ordered the respondent to pay $7,000 per month to the petitioner for non-compensatory prospective spousal support commencing May 1, 2015. Although it was less than the amount recommended by the Guidelines, the court found that the petitioner's needs had not changed since September and because of the financial burden borne by the respondent. Regarding the division of family property, the court found the evidence regarding the value of the clinic, the major asset, to be problematic. It appeared that as the clinic's value was $166,800 not $375,000, it could not order a division of family property because the net worth of it was zero due to the parties' debts. The court ordered that, in view of the petitioner's age, the four-year-old daughter would have her primary residence with the respondent

and the petitioner would parent her for three days each week and for one overnight stay on the weekends.

 Back to top

R. v. Laprise, 2015 SKQB 135

Scherman, May 7, 2015 (QB15132)

Criminal Law – Appeal – Stay of Proceedings
Criminal Law – Defences – Charter of Rights, Section 7, Section 24(1)
Criminal Law – Disclosure

The Crown appealed the trial judge's decision staying the charges of impaired driving and failure to provide a breath sample against the respondent. The trial judge held that it was fair and just to stay the charges because of the Crown's late disclosure of police cell block videos of the respondent. The video was provided early but the respondent's counsel did not attempt to view it until 20 days prior to the trial. When he could not view the video, he advised the appellant by fax. The appellant's counsel left on vacation and failed to deal with the fax until the day before trial and offered the respondent an adjournment. The respondent did not agree with the adjournment and instead argued that her s. 7 Charter rights were breached due to the late disclosure. She argued against the stay because it would likely mean another six- to eight-month delay, which would impact her career plans.
HELD: A stay could be justified if the respondent could not make full answer and defence or if the integrity of the justice system was impacted due to late disclosure. The appeal court was unable to see how the respondent's right to make full answer and defence was compromised in the circumstances. Also, there was no evidence of how a stay was justified to maintain the integrity of the justice system. The trial judge erred in law by not applying the two tests that could justify a stay. There was no flagrant disregard for the rights of the accused. The appeal was allowed and the matter was returned to Provincial Court.

 Back to top

Avramenko (Trustee of) v. Avramenko, 2015 SKQB 137

Ball, May 13, 2015 (QB15127)

Bankruptcy and Insolvency – Real Property – Joint Tenancy – Partition

The trustee in bankruptcy applied for an order for the partition and sale of three quarter sections of farmland co-owned by the bankrupt and his wife, the respondent. If granted, the order would result in the trustee and the respondent each receiving payment of their respective equities in the farmland. The land had been appraised at amounts varying between $250,000 and $346,000. The trustee and the respondent had attempted to reach an agreement for the sale of the land for three years since the bankrupt's assignment. The respondent had problems acquiring financing to enable her to purchase the trustee's interest. Because of the delay, the trustee was eager to move the proceedings forward as the bankrupt's interest in the lands comprised the only non-exempt assets of any real value.

HELD: The court granted the order. It found that the trustee was not compelled to sell the bankrupt's interest to the respondent for the price and on the conditions made in her offer as there had been no agreement for sale between them. The trustee was entitled to obtain the order for sale, despite the fact the lands had been held in joint tenancy, because it had been severed by the bankruptcy and the trustee held the lands in place of the bankrupt as a tenant in common with the respondent. The court held that the respondent could not rely upon The Saskatchewan Farm Security Act either, as it did not apply to an application of this kind. As the court found that there had been no evidence of bad faith on the part of the trustee and that the respondent had not supplied any evidence that the sale would cause her economic detriment, it had no reason not to grant the order. It rejected the trustee's position that the respondent should pay solicitor-client costs because her conduct had added to the costs of the administration of the bankruptcy and awarded costs on a party and party basis.

 Back to top

Weidner Investment Services Ltd. v. Azhar, 2015 SKQB 140

Gunn, May 14, 2015 (QB15129)

Landlord and Tenant – Residential Tenancies – Rehearing

The landlord appealed the decision of a hearing officer of the Office of Residential Tenancies (ORT). The tenant had claimed damages for inconvenience, lost wages and the time that he had spent at the hearings. The officer made an award of $800 to the tenant to compensate him for inconvenience and for the lost wages while he sprayed the rental unit for bedbugs as per an agreement between him and the landlord. The landlord disputed that there had been such an agreement. The officer noted that there had been no evidence as to the exact calculation of the lost wages but made an estimate for the purposes of the award.

HELD: The court remitted the matter to the ORT for a new hearing. The hearing officer had the jurisdiction to award damages for inconvenience suffered by the tenant pursuant to s. 70(6)(c) of The Residential Tenancies Act. However, the tenant could not be compensated for time spent at the hearing because the loss arose as a result of the proceedings that he had initiated. The hearing officer erred in law when he made an award for lost wages without evidence.

 Back to top

Elchuk v. Gulansky, 2015 SKQB 142

Allbright, May 19, 2015 (QB15134)

Contracts – Breach of Contract
Injunction – Interlocutory Injunction – Requirements

The applicants commenced an action against the respondents/defendants as a result of the respondents' termination of a contract with them for the extraction of gravel from lands owned by the respondents. The applicant argued that the respondents did not have grounds to terminate the contract. The contract specified that payment was to be made to respondents quarterly on the first business day of each quarter by 5:00 pm. The applicant made the payment 20 hours past the time. The respondents returned the applicants' cheque and advised that the agreement was at an end. The applicants delayed the payment because the respondents had applied for summary judgment to dismiss the applicants' claim in an earlier and almost identical suit that the applicant had brought against the respondents. The application was to be heard in chambers on the same date as the payment was due and the applicants hesitated to pay because of their uncertainty regarding the impact of the decision on the contract. The applicants sought an injunction to continue the terms of the contract pending resolution of the action and to restrain the respondents from terminating it and taking possession of a stockpile of gravel that the applicants had accumulated on the site. The respondents opposed the application because they argued that the applicants' breach of the contract by the failure to make payment within the timeframe established in the contract was a fundamental breach and warranted its termination. As the contract was terminated, there was no basis on which to order interim injunctive relief. The respondents also took the position that the contract's price for gravel was no longer appropriate and to continue the contract with its initial pricing was inequitable. If the injunction were granted, the respondents requested that the court direct how the stockpile was to be treated and also to order security for costs.
HELD: The court granted the injunction. It adopted the reasoning of

Laing, J., in his decision regarding the first injunction granted to the applicants in their previous action against the respondents (see: 2013 SKQB 291). The court found that the applicants had established that there was a serious question to be tried and that the applicants had explained the reasons for their very short delay in making the payment. The respondents knew that the applicants would make the payment and had failed to show any prejudice to them resulting from the delay. The applicants had shown that they would suffer irreparable harm because they were unable to quantify the amount of gravel that they could extract and sell before a trial and the price that they would obtain. The court granted the respondents' request and set a new price for the gravel. It would not deal with the matter of the disposal of the stockpile as that would be a matter for the trial judge. In light of the applicants' residence being outside Saskatchewan, the court ordered them to provide security for costs in the amount of $10,000.

 Back to top

SaskEnergy Inc. v. ADAG Corp. Canada Ltd., 2015 SKQB 143

Smith, May 19, 2015 (QB15135)

Contracts – Interpretation
Partnerships – Limited Partnerships
Real Property – Land Titles Act
Real Property – Lease – Option to Purchase
Real Property – Sale – Specific Performance
Statutes – Interpretation – Partnership Act, Section 7

The plaintiff leased its head office from the defendant registered owner. The defendant was the general partner of the other plaintiff by counterclaim (Limited Partnership). The lease of the property gave the plaintiff an option to purchase (OTP) the property at a fixed price of $18.9 million. At the time the lease was executed, the value of the property was between $11 and $15 million. At the time of the court action the property was valued at $50 million. The plaintiff sought an order for specific performance arguing that it exercised the OTP in November 2011. The defendant argued that the OTP was only enforceable if two thirds of the limited partners of the Limited Partnership voted in favour of the sale as required by the governing partnership agreement. The plaintiff argued that the OTP clause was clear and unambiguous whereas the defendant argued that the plaintiff was aware that approval by the Limited Partnership would be required to invoke the OTP. The plaintiff gave the defendant notice of its intention to exercise the OTP on August 25, 2011. The defendant replied that the plaintiff had no legal basis to exercise the OTP at the expiry of the initial term. The issues were as follows: 1) did s. 213 of The Land Titles Act apply; 2) did the plaintiff know that the defendant

did not have authority to grant the OTP; 3) did s. 7 of The Partnership Act (PA) preclude the plaintiff from enforcing the OTP; 4) did the defendant's representative and Limited Partnership manager believe that the defendant's representative had no authority to grant the OTP; 5) did the plaintiff exercise of its option to renew preclude the exercise of the OTP; 6) did the plaintiff fail to comply with the terms of the OTP; and 7) was specific performance an appropriate remedy.
HELD: The court discussed the issues as follows: 1) The Land Titles Act has provisions that protect the plaintiff so that the entity identified as the registered owner on the title has authority to deal with the title. The plaintiff asserted that the defendant's argument required the court to ignore the "mirror and blind" principle and look behind the registered owner thereby violating the "indefeasibility principle". The court agreed with the defendant that the debate was not about indefeasibility but was about the nature and quality of the OTP. The debate was to be governed by the PA; 2) the court agreed with the plaintiff's characterization of the facts; at the time of the execution of the lease the plaintiff reasonably believed that the defendant had the authority to enter in to the commitments in the documents; 3) the defendant argued that the sale of property was not in the usual way of business for the partnership and therefore the partnership would not be bound by it pursuant to s. 7 of the PA. The court concluded that in any business dealing with a real estate investment, the selling of the real estate was a natural incident to such business. The sale of real estate was, therefore, "carrying on in the usual way" as contemplated by s. 7. Also, the partnership agreement also referred to the sale of the partnership's real estate; 4) the defendant's representative knew that the partnership was supposed to be wrapped up prior to the date of the OTP and therefore the court drew the inference that he thought the OTP would not require a vote of the limited partners by the time it could be exercised. Also, the defendant had many opportunities to question the representative's authority to bind the partnership and they did not do so; 5) the important date was not when the plaintiff gave money but when they gave notice to exercise the OTP. The notice was given within the initial term of the lease, as contemplated by the documents; 6) the court did not find the terms of the OTP to be ambiguous or internally contradictory; and 7) there was no other office tower available in the marketplace. Further, the property had some inherent qualities that made it particularly suitable for the plaintiff. The plaintiff also undertook renovations at a cost of $4.3 million; renovations included a control room to monitor 83,700 kilometres of pipeline. Specific performance was awarded because there was no substitute property available and damages would be a totally inadequate remedy.

 Back to top

101060873 Saskatchewan Ltd. v. Saskatoon Open Door Society Inc., 2015 SKQB 154

Zarzeczny, May 28, 2015 (QB15145)

Real Property – Lease – Option to Purchase
Civil Procedure – Queen's Bench Rule 7-5

The plaintiff and the defendant both applied for summary judgment pursuant to Queen's Bench rules 7-2 and 7-5 regarding the validity of an option-to-purchase clause in their lease. In 1995, a commercial building was purchased by Vera Heinze. Unable to sell it in 2002, she entered into negotiations with the defendant to lease the building. The defendant requested a number of renovations, and as a condition to making them, Ms. Heinze required the defendant to take a ten-year lease. The defendant then negotiated the inclusion of an option to purchase clause that the defendant could exercise in the tenth year of the lease because the cost of the ten-year lease in terms of rent was much higher than the purchase price of the property. Ms. Heinze later sold the building to the corporate plaintiff, owned by Ms. Heinze's daughter. In order to finance the purchase, mortgage loans were obtained against the building in the amount of $260,000 and $126,700. The defendant exercised the option at the conclusion of the ten-year term and the question arose whether it was entitled to take the title free of encumbrances as the clause was silent in that regard. The plaintiff sought a declaration that the option-to-purchase clause in its lease with the defendant was void and unenforceable because it was vague and uncertain. The defendant sought specific performance. It argued that clause was clear and unambiguous and in the circumstances of the case, there was an implied condition that the plaintiff convey title to it free and clear of mortgage and mortgage encumbrances.
HELD: The court granted the defendant's application. It held that in the circumstances of this case, that there was an implied term in the option to purchase under the lease that required the owner to convey clear title to the purchaser defendant. It ordered specific performance with the plaintiff to convey title free and clear of the security encumbrances. The security interests were ordered to be discharged but that the indebtedness would remain intact and enforceable.

 Back to top

Mental Health Inpatient Services (Director) v. A. (S.), 2015 SKQB 159

Zarzeczny, June 1, 2015 (QB15154)

Mental Health – Patient Detention

The applicant, the Mental Health Inpatient Services Division of the Regina Qu'Appelle Health Region, applied for an order directing the involuntary detention and committal of the respondent for treatment at the Saskatchewan hospital for period of one year pursuant to s. 24.1 of The Mental Health Services Act. At the hearing, the respondent's attending psychiatric physician testified as an expert witness. He diagnosed the respondent with schizoaffective disorder associated with severe and persistent obsessive-compulsive disorder. She had suffered from mental health problems for many years and her condition was worsening. Her family supported the application.
HELD: The court granted the application.

 Back to top

National Revenue (Minister) v. Burlingham Associates Inc., 2015 SKQB 161

Thompson, June 2, 2015 (QB15149)

Bankruptcy and Insolvency – Discharge – Income Tax Debt

The bankrupt's discharge was objected to by the trustee and the Minister of National Revenue (MNR). The trustee recommended that the bankrupt be required to pay $18,300 based on his ability to pay and because of the high tax circumstances of the bankruptcy. The MNR had a proven claim for personal income tax debt in the amount of $233,000, which made up 90 percent of the total unsecured claims and unsecured claim for $14,700 for outstanding GST debt. It argued that the bankrupt should pay $60,000. The tax debt was incurred by the bankrupt between 2003 and 2013. He testified that he withdrew $30,000 from his RRSP in 2003 because he could not support his family of four children and his wife without resorting to welfare. He was unable to pay the taxes owing and then over the years that followed, the income tax debt and penalties grew annually. There was evidence that the bankrupt had attempted to pay down his tax debt. At the time of the hearing, the bankrupt was 64 years old and supporting his wife without any retirement savings. He continued to operate his business and by reducing his staff, he and the trustee believed that he could meet the trustee's recommendation and make monthly payments to the estate of $500 per month.
HELD: The court ordered the bankrupt to pay $18,300 to the trustee for the benefit of the estate creditors and to serve a three-year suspension from the date of the order before being eligible to be discharged.

 Back to top