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Subject Index

R. v. B. (E.D.), 2014 SKQB 166

Maher, June 4, 2014 (QB14433)

Criminal Law – Evidence – Admissibility

The accused was charged with sexual assault on G.M., a three-year-old child, contrary to s. 271 of the Criminal Code. The accused pled not guilty and the Crown requested a voir dire to determine the admissibility of a DVD and statements made by G.M. to adults (his mother, his grandmother and a family friend) regarding alleged improper sexual activity of the accused with the child. The accused was living with G.M.'s mother. The mother contacted the RCMP because she was upset with the accused, who had a knife. When she spoke to the police, she mentioned the comments that G.M. had made to her. The child was examined by a physician who noted in his report that there were no signs of sexual assault. The child was interviewed by an officer who had been trained in the area and the interview was recorded on a DVD. The officer admitted that the child was present when he spoke to his mother about sexual abuse. The mother, grandmother and a relative of the mother all testified that G.M. had made statements or comments that indicated that the accused had been sexually assaulting him.

HELD: The court refused to admit the DVD and the hearsay statements of G.M. made to his mother, grandmother and the other witness. It found there was insufficient reliability for the evidence to be placed before a jury. With respect to the DVD, it held that there were no comments by G.M. that identified any improper sexual activities of the accused with the child and therefore there was no relevance to it

regarding the charge. The evidence of G.M.'s grandmother and the other witness had no relevance to the charge and would be prejudicial to the accused. The evidence of one of the statements made by G.M. to his mother met the criteria of threshold reliability but not its ultimate reliability.

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R. v. Stephan, 2015 SKCA 95

Jackson, September 1, 2015 (CA15095)

Criminal Law – Appeal – Conviction
Criminal Law – Appointment of Counsel – Criminal Code, Section 684

The appellant applied pursuant to s. 684 of the Criminal Code for an order appointing legal counsel for representation during his conviction appeal. The appellant was convicted of breaking and entering a dwelling house and therein committing the indictable offense of robbery contrary to s. 348(1)(b) of the Criminal Code. The appellant did not have sufficient means to obtain counsel, so the only issue for the appeal court was whether it was in the interests of justice for him to have legal assistance.
HELD: The application was dismissed. The appeal court noted that the appellant had an arguable ground of appeal; however, he testified at the trial and was able to present argument to the Court of Appeal. The offence was not complicated nor was the testimony at trial and therefore the appeal court determined that he would be able to present his appeal effectively.

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R. v. Gill, 2015 SKCA 96

Jackson, September 1, 2015 (CA15096)

Criminal Law – Appeal – Conviction
Criminal Law – Appeal – Sentence
Criminal Law – Assault – Aggravated Sexual Assault
Criminal Law – Judicial Interim Release Pending Appeal

The appellant appealed his convictions and sentences for charges of aggravated sexual assault and breach of release contrary to ss. 273(2)(b) and 145(3) of the Criminal Code, respectively. He also applied for judicial interim release pursuant to s. 679(3) of the Criminal Code pending the appeal. The appellant's common law wife and mother of

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his three-year-old child provided an affidavit that the appellant would live with her and would be employed pending the outcome of the appeal. At the close of the Crown's case at trial, the appellant applied for a stay of proceedings for a breach of his s. 7 Charter rights and a declaration of mistrial for inadequate interpretation resulting in a s. 14 Charter breach. The trial judge did find a s. 7 breach with respect to delay in providing the appellant with some prosecutorial request sheets and supplementary occurrence reports. The trial judge found that the previous adjournment granted to the appellant satisfactorily remedied the breach. The appellant was provided with full interpretation services and there was no issue with respect to the Crown's case. The issue arose when the appellant's first witness, his then wife, testified on his behalf from India. There were difficulties with the electronic link and the interpretation. The trial judge found the difficulties resulted in the testimony not meeting the constitutionally guaranteed standard. The trial judge did not order a mistrial but instead excluded that day's evidence and allowed the appellant to begin again with a new interpreter.
HELD: The appeal court found that the first ground, s. 679(3)(a), had been satisfied by the appellant; he identified grounds of appeal that met the low threshold. The court was not persuaded that the appellant would surrender himself into custody. He did not provide a sworn affidavit indicating he would do so. Also, there was conflicting information regarding his common law wife and employment possibility. Further, the appeal court was not satisfied, on a balance of probabilities, that his continued detention was not necessary in the public interest. The strength of the grounds of appeal were not found to overcome the factors favouring his continued incarceration. The Court of Appeal held that the appellant's release could detrimentally affect the public confidence in the administration of justice.

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R. v. Janzen, 2015 SKCA 97

Jackson, September 2, 2015 (CA15097)

Criminal Law – Appeal – Conviction
Criminal Law – Appeal – Sentence
Criminal Law – Assault with a Weapon
Criminal Law – Judicial Interim Release Pending Appeal
Criminal Law – Operating a Motor Vehicle in a Manner Dangerous to Public

The appellant appealed his convictions of assault with a weapon, a motor vehicle, and operating a motor vehicle in a manner dangerous to the public, and thereby causing harm to a victim, contrary to ss. 267(a) and 249(3) of the Criminal Code, respectively. The appellant also

R. v. Smith

R. v. Stephan

R. v. Wheaton

Radiology Associates of Regina Medical PC Inc. v. Sun Country Regional Health Authority

Royal Bank of Canada v. 4445211 Manitoba Ltd.

Saskatchewan (Ministry of Highways and Infrastructure) v. Beer

Saskatchewan v. Public Service Superannuation Board

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Thorvaldson-Hoffert v. Torgerson

appealed his sentence of six months in custody and 18 months probation. He applied pursuant to s. 679 of the Criminal Code for judicial interim release pending appeal. The Crown did not argue that the appellant would not surrender himself into custody. The offences arose when the appellant commenced driving his vehicle while his former wife was attempting to unbuckle their child from the car seat. The appellant testified and admitted that he drove his vehicle, knowing that the victim was partially in and out of the vehicle.
HELD: Because of the appellant's admissions the court found that it was not possible for the appellant to argue that there was a miscarriage of justice, that his counsel was ineffective, that he lacked criminal intent, or that the trial judge shifted the burden to him. The grounds of appeal that the appellant raised with respect to the assault charge were therefore frivolous. The grounds of appeal with respect to the s. 249(3) charge were not found to be frivolous but they were also not found to be strong arguments. Therefore, the court concluded that it was not in the public interest to release the appellant. The Crown agreed that the applicable subsection was ss. 679(3) not 679(4) for the application for judicial interim release, regarding the sentence appeal. The grounds of the sentence appeal were not frivolous. The real issue on the sentence appeal was whether it was in the public interest that the appellant be released. The appellant would have already served his sentence by the time the appeal is heard. The court should avoid a situation where the appellant has to forgo his conviction appeal to have the sentence appeal heard quickly. The appeal court considered the seriousness of the offences and the link to family violence in concluding that it was not in the public interest that the appellant be released pending appeal outcome.

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R. v. Kang, 2015 SKCA 98

Lane Caldwell Whitmore, September 8, 2015 (CA15098)

Criminal Law – Appeal – Sentence
Criminal Law – Impaired Driving Causing Death
Criminal Law – Impaired Driving Causing Injury
Criminal Law – Leaving the Scene of an Accident
Criminal Law – Refusal to Provide a Breath Sample
Criminal Law – Sentencing – Sentencing Principles

The Crown appealed the respondent's sentences on the basis that they were demonstrably unfit because they did not reflect the gravity of the offences or the respondent's degree of moral culpability and because they did not adhere to the principle of parity. The Crown also argued that the trial judge misapprehended facts. The respondent was

convicted of five Criminal Code offences: impaired driving causing death contrary to s. 255(3) (27 months incarceration); two counts of impaired driving causing bodily harm contrary to s. 255(2) (18 months incarceration on each to be served concurrently to the 27 months); failing to stop at an accident contrary to s. 252(1.2) (three months consecutive to the 27 months); and refusal to comply with a demand for a breath sample contrary to s. 254(5) ($1,000 fine and 12 days incarceration in default). The respondent had been drinking and smoking marijuana when he drove into a semi and trailer. He left the accident scene and drove to another location where he parked the vehicle with his three injured passengers and called 911, giving two different stories. The respondent admitted to drinking. One of the passengers died and the other two both suffered head injuries that required surgery. The respondent had complied with all bail conditions of his lengthy release. He did not have a criminal record. The Crown argued that the judge made many errors in her sentencing of the respondent.

HELD: The sentencing judge committed two errors in principle: 1) she found no evidence that the respondent was very impaired and listed the absence of such evidence as a mitigating factor. The only reason there was an absence of evidence was because the respondent refused to comply with a breath demand; and 2) she found that the respondent fleeing from the scene and calling 911 within seven minutes was a mitigating factor. The commission of another offence, leaving the scene of an accident, cannot be a mitigating circumstance. The appeal court reviewed impaired driving causing death cases and determined that the offence rarely, if ever, would attract a sentence of less than 30 months. The case imposed by the sentencing judge was demonstrably unfit. Too much emphasis was placed on the respondent's efforts to turn his life around after the accident resulting in denunciation and deterrence being underemphasized. The manner of driving was highly offensive and the respondent's moral culpability was very high. The Court of Appeal found that a sentence of three years incarceration would be appropriate. The court did not intervene with respect to the impaired driving causing bodily harm sentences. The Court of Appeal had not considered a sentence under s. 252(1.2) before. The sentence imposed was found to fall within the acceptable range imposed by other Saskatchewan courts, but the three-month sentence was predicated on the sentencing judge's erroneous view that it was a mitigating circumstance that the respondent fled only a few blocks. The sentence was therefore demonstrably unfit. The respondent not only fled to evade criminal liability, he compounded the situation by telling lies to the 911 operator. The appeal court found that the appropriate sentence was one year incarceration to be served consecutively to the sentence of impaired driving causing death. The sentence for refusal to provide a breath sample was also demonstrably unfit. An appropriate sentence was found to be six months incarceration to be served consecutively to the other sentences. The

principle of totality was adhered to with the total sentence of 4.5 years.

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Dearborn v. Financial and Consumer Affairs Authority (Director), 2015 SKCA 99

Lane, September 18, 2015 (CA15099)

Civil Procedure – Appeal – Application for Stay of Proceedings
Civil Procedure – Appeal – Stay of Execution – Application to Lift
Civil Procedure – Court of Appeal Rules, Rule 15(1), Rule 48(6)

The appellant applied pursuant to Court of Appeal rule 15 and s. 11(8) of The Securities Act, 1988, for stays of orders of different panels established under the administration of the director of the Financial and Consumer Affairs Authority pending his appeals of the orders to the court. The applicant argued that the determinations under the appeals will affect the disclosure requirements of the respondent in its investigations and the decision should be stayed until the issue of full disclosure is determined by the court. The respondent argued that the court should not deal with these matters piecemeal, and it was appropriate to wait until the authority made a decision on the merits. HELD: The applications were dismissed. The application pursuant to rule 15 was without merit as the rule does not impose a general stay of proceedings. The court noted the failure by counsel to provide a memorandum or brief of law setting out the facts and the legal arguments, even if not required pursuant to applications under rule 48(6), led to a less-than-complete picture of the circumstances surrounding the stay application. Because the applicant had argued the application on the same basis as that for granting an injunction, the court found that upon applying the balance of convenience test, it found that it would not deal with the matters piecemeal and that the applicant would not be prejudiced pending the appeals.

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DeMaria v. Law Society of Saskatchewan, 2015 SKCA 106

Ottenbreit Caldwell Ryan-Froslie, October 9, 2015 (CA15106)

Administrative Law – Judicial Review – Bias – Apprehension of Bias – Appeal

The appellant appealed from the decision of a Queen's Bench judge in chambers that dismissed his application for judicial review of the

decision of the benchers of the Law Society of Saskatchewan who had upheld a decision of a panel of three benchers sitting as the Law Society's Admissions and Education Committee (the A&E panel). The A&E panel had refused the appellant's application for admission into the membership of the Law Society as a lawyer. The chambers judge found that the benchers' decisions were correct on matters of law and were otherwise reasonable (see: 2013 SKQB 178). The appellant raised numerous grounds of appeal, but the court found that only his allegation of a reasonable apprehension of bias had any basis. The appellant raised the issue with respect to both the A&E panel and the benchers' conduct. He noted that the Law Society's in-house counsel, who appeared for the Law Society at the benchers' review hearing, ate breakfast in the hearing room with the benchers before their review of the A&E panel decision and that he remained in the room for ten minutes after the hearing had concluded and the appellant had left. Secondly, the bencher who had served as chair of the A&E panel had contacted the Law Society's in-house counsel directly by email about the decision before the decision had been released to the appellant and at the end of the message had invited counsel to play golf with him. HELD: The appeal was dismissed. The court found that with respect to the allegations of a reasonable apprehension of bias that the chambers judge's decision was correct. Regarding the allegation regarding the benchers, aside from the ill-considered breakfast meeting, the evidence had not met the threshold for a reasonable apprehension of bias. Regarding the chairman of the A&E panel, he had acted imprudently but that it was a single transgression. There was no reasonable basis to conclude that an informed person, viewing the matter realistically and practically would hold a reasonable apprehension of bias on the part of the chairman of the A&E panel based upon the strong presumption that the chairman had acted fairly and impartially in reaching the final decision.

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R. v. Wheaton, 2015 SKPC 102

Jackson, July 10, 2015 (PC15125)

Criminal Law – Driving with a Blood Alcohol Level Exceeding .08 – Notice of Intention to Produce Certificate
Criminal Law – Impaired Driving

The accused was charged with driving while over .08 contrary to s. 253(1)(b) of the Criminal Code. The issues for the court were: whether the Crown established that the accused received sufficient notice of the certificate, as required by s. 258(7) of the Criminal Code; and whether the Crown proved that the accused's ability to operate his motor

vehicle was impaired by alcohol. The accused was served with a photocopy of the original certificate; however, the officer did not sign the notice of intention to produce certificate at the time of service. The officer observed the accused make an excessively wide turn. The accused was slurring his speech, was unsteady on his feet, and had glassy, watery eyes. The video at the detachment was tendered, and the officer agreed it was similar to the accused's demeanor roadside. HELD: The court found the decision in Bear was applicable to the circumstances because the officer in that case forgot to sign and date the notice of intention to produce certificate at the time of service. The accused did not argue any misunderstanding of the contents of the notice because of the missing signature. The reason for the notice is to provide the accused with reasonable notice of what the Crown intends to rely upon at trial. The court was satisfied that, on balance, the Crown complied with the requirements of s. 258(7) and the certificate of qualified technician could therefore be admitted. The court held that there was a reasonable doubt that the Crown proved the accused's ability to operate his motor vehicle was impaired by alcohol at the time of driving. The accused was found guilty of driving over .08.

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R. v. Smith, 2015 SKPC 130

Rybchuk, September 1, 2015 (PC15105)

Criminal Law – Impaired Driving – Care or Control
Criminal Law – Impaired Driving – Indicia of Impairment

The accused was charged with impaired driving contrary to s. 253(1)(a) of the Criminal Code. The issues were: 1) did the accused have care or control of the vehicle; and 2) was the accused's ability to operate the vehicle impaired by alcohol. The accused was in his vehicle outside of his friend's house when police arrived. According to the police, they had been patrolling and saw the accused's truck driving through town so they pulled up behind it. The accused had arrived at his friend's house and when he found the door locked he returned to his vehicle to make a call. The police then pulled up behind his vehicle. The accused did not dispute that he had been driving his truck earlier, three or four minutes before police pulled up behind him. The accused testified he had six light beer during the six hours prior to the stop. An officer testified that the accused had difficulty walking properly and that there was a strong odour of alcohol coming from the accused's breath. He was also slurring his words and had bloodshot, glassy eyes according to the officer. The officer formed the opinion that the accused's ability to operate a motor vehicle was impaired and he was arrested. The auxiliary officer had similar observations of the accused.

The accused had two friends testify on his behalf regarding his level of impairment.
HELD: The court determined the issues as follows: 1) the court found as fact that the accused was driving his truck three or four minutes before the police pulled up behind him. The accused was in actual care or control of his motor vehicle. The court also found that there were numerous facts that were acts of care or control that involved a risk of putting the vehicle in motion and could become dangerous to the public; and 2) the court rejected the accused's friends' testimonies because one left the bar well before the accused and the other had no idea what the accused had to drink before he attended the bar and he was not with the accused the whole night. The court was satisfied beyond a reasonable doubt that the accused's ability to operate a motor vehicle was impaired to a degree well beyond slight. The accused was found guilty of impaired operation of a motor vehicle, or in the alternative, impaired care or control of a motor vehicle.

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R. v. Harmon, 2015 SKPC 134

Kovatch, September 21, 2015 (PC15113)

Criminal Code – Theft – Conversion

The accused was charged with theft of money, greater than $5,000 from another person, contrary to s. 334(1) of the Criminal Code. The accused had visited a bank and presented to the teller a passbook with the bank's account number on it, rather than the usual plastic account card with a magnetic strip. The teller testified that when she entered the account number, a woman's name was retrieved as the account holder. The accused was carrying a woman's purse and looked somewhat feminine so the teller provided the balances to him and gave him print bank statements, which clearly identified the name of the account holder. The accused then left but returned and advised the teller that he wanted to take the money out. She prepared the withdrawal forms and the accused signed them. The signature was not clear but it appeared that the accused used his name. The manager admitted that she had made a number of mistakes by assuming that the accused was the account holder and that she should have asked for identification and more information. The accused had not said that he was the account holder but never gave his own name. The accused did not testify but in a videotaped statement given to the police, he admitted that his signature was on the withdrawal forms but stated that he didn't intend to do anything criminal and that the withdrawal of funds was the fault of the teller. The issue was whether the accused had the requisite intent to commit the offence of theft.

HELD: The accused was found guilty. It found as a fact that: the accused knew he was receiving funds from another person's account and knew that the amount was more than the amount he had in his personal account; he knew that the teller was making a mistake; and he felt entitled to say nothing and take advantage of the mistake. The accused was not entitled to rely upon the mistake and converted the funds to his own use and was therefore guilty of theft by conversion, pursuant to s. 322(1) of the Code, and consequently guilty of theft over $5,000.

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Thorvaldson-Hoffert v. Torgerson, 2015 SKPC 135

Gordon, September 25, 2015 (PC15136)

Tort – Theft by Conversion

The plaintiffs brought an action against the defendant requesting general damages in the amount of $20,000, which represented the value of items missing from their home during the period of time when the defendant was caring for their house in their absence. The plaintiffs had asked the defendant, a friend, to come to their house daily while they were on holidays. Upon their return they noticed immediately and over the following months, many household belongings and money to be missing. At trial they submitted a list of their property, when it was acquired and its value. The defendant denied taking any of the items. She advised that she had undertaken to do certain tasks every day and that she had done them.
HELD: The claim was dismissed. The court accepted the defendant's evidence and found that the plaintiffs could not accurately recall all of the items that they had in their possession nor was there a sufficient evidentiary basis for the values assigned to the items alleged to be missing.

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R. v. Pippin, 2015 SKPC 136

Gray, September 11, 2015 (PC15114)

Criminal Law – Motor Vehicle Offences – Impaired Driving – Presumption of Care and Control

The accused was charged with having care or control of a motor vehicle while his ability to do so was impaired by alcohol, contrary to s.253(1)

(a) of the Criminal Code, and without lawful excuse failed to comply with a demand for breath samples, pursuant to s. 254(3)(a)(i) of the Code. The police were called to a residence at 5:00 am to investigate a vehicle parked in the complainant's driveway with the engine running. The officers found the accused in the vehicle in the driver's seat. He was not wearing his seat belt. His legs were under the steering wheel, his feet were close to the pedals and his torso and head were lying on the passenger seat. The officers had trouble wakening the accused and he seemed confused when roused. They noted that there was a glass on the dashboard and an open bottle of liquor in the vehicle. The accused was asked to get out of the vehicle and he lost his balance when he did so and grabbed onto one of the officers. They smelled alcohol and observed that the accused's eyes were bloodshot and his speech was slurred. The accused was arrested for care or control because his ability to operate a motor vehicle was impaired by alcohol. At the detachment, the accused consulted with a lawyer and was then taken to the breath technician to give breath samples. He was given nine opportunities to blow into the instrument with fresh mouthpieces. The accused either did not blow hard enough or long enough to provide a sample for analysis. The accused testified that he had been at a party and had had five to eight drinks before leaving to drive home. He had not felt intoxicated but was tired and, after driving for 20 minutes, decided to pull over until he had a rest and felt better. He pulled into a private driveway believing that it was a safe place to stop, put the vehicle in park, had a drink and laid down. He could not put his vehicle in motion unless he put his foot on the brake and pulled the gear shift down. Regarding the charge of refusal, the accused said that he had been confused by the instructions. The issues before the court were: 1) whether the Crown had established the ability of the accused to operate a vehicle was impaired by alcohol; 2) whether the Crown was entitled to rely upon the presumption of care and control under s. 258(1)(a) of the Code; 3) if the presumption was not applicable, had the Crown established actual care and control; and 4) had the Crown proven the offence of refusal beyond a reasonable doubt.
HELD: The court found the accused guilty of both charges. It held with respect to each of the issues that: 1) it accepted the evidence of the officers and found that the accused's ability to operate a vehicle was impaired by alcohol; 2) it found that the accused had abandoned his intention to drive because he had pulled off the main road and removed his seat belt before falling asleep. He had rebutted the presumption; 3) the accused was impaired and found behind the steering wheel with the engine running. He had no plan to get himself home other than to drive himself when he awoke. There was a real risk that he would drive himself when he awoke. The accused was found to be in actual care or control; and 4) there was a lawful demand based on the evidence and the accused failed to provide a sample suitable for analysis. The accused had not argued that he had a lawful excuse. The court found that he had not intended to give an adequate sample.

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Pilot Butte (Town) v. Gerein, 2015 SKPC 142

Demong, October 5, 2015 (PC15122)

Municipal Law – Bylaw – Enforcement

The plaintiff, a municipality, installed a town water system because it became concerned with the water quality of the some of the wells relied upon by its residents. It passed bylaws that made it mandatory that only town water could be used and required all property owners to connect to the town's water system. The bylaws specified that a fine and penalties could be imposed upon property owners who chose not to comply. The defendants in this case had not complied, and the plaintiff brought an action against them for the sum of $985 pursuant to the bylaw's terms. The defence of Miller was that he felt that the bylaw was unfair and that he had not received notice of his violation of the bylaw and should not be bound by the penalty provisions of it. The other defendants argued that in the absence of a specific contract between the plaintiff and themselves, they had no obligation to comply with the bylaws. They also submitted that the plaintiff's water might have contaminants and be unsuitable for use.
HELD: The court granted judgment in favour of the plaintiffs. The defendant Miller had no valid defence. The plaintiff had the power to make the bylaws and it served the notice of violation on him and the other defendants by registered mail as required by s. 390 of The Municipalities Act, which deems service. The defendant would have to bring an application to the Court of Queen's Bench if he wanted to have the bylaw quashed. The other defendants, known to the courts as OPCA litigants (Organized Pseudolegal Commercial Arguments), did not have a valid defence either. The plaintiff was not required to enter into separate contracts with individuals in order to enforce its bylaws.

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Royal Bank of Canada v. 4445211 Manitoba Ltd., 2015 SKQB 261

Danyliuk, September 1, 2015 (QB15270)

Civil Procedure – Pleadings – Statement of Defence – Striking Out
Civil Procedure – Queen's Bench Rule 7-9

The plaintiff bank brought two applications to strike out the defendants' statement of claim, on the grounds that: 1) it failed to disclose any reasonable defence; and 2) it was frivolous, vexatious and

an abuse of process. The plaintiff alleged that the defendant's company owed it money on two loans. The rest of the defendants were guarantors of the debts. The plaintiff made demands for payment but the debts remained unpaid. The defendants all filed one statement of defence admitting the loans but denying the specific sums claimed by the plaintiff. They also pled that the negotiations held with the plaintiff had failed. The defendants claimed that the plaintiff had not conducted itself fairly and had breached the common law duty to act honestly, relying upon Bhasin v. Hrynew. The defendants suggested that the applications were premature because mediation had not occurred under The Queen's Bench Act. The plaintiff asked for solicitor-client costs.

HELD: The applications were granted and the statement of defence struck. The court found that this was not an appropriate circumstance for the applications to proceed to mediation. To achieve the purpose of Queen's Bench rule 7-9, mandatory mediation provisions ought not to delay the plaintiff. The plaintiff's request for solicitor-client costs was denied as it had not met the criteria set out in Siemens v. Bawolin. The court held with respect to the grounds for striking, that: 1) pursuant to Queen's Bench subrule 7-9(2)(a), the application was based solely upon the pleadings, and even assuming that they were true, the denial of the precise amounts owing did not constitute a valid defence. In such circumstances, the question can be dealt with by way of reference under Queen's Bench rule 6-58. Further, the negotiations related not to the agreements but to the defendants' attempt to escape their terms and obtain more generous terms to repay debts that were clearly owing. The defendants had not pled that there was an intentional lie conveyed by the plaintiff to one or more of the defendants to support an allegation of breach of the duty created by Bhasin; and 2) pursuant to Queen's Bench subrules 7-9(2)(b) and (e), it found that it could consider other evidence and the merits of the case. The affidavits filed in this application by the defendants had not amplified the statement of defence. The defence had no merit and could not succeed because the defendants failed to plead or adduce evidence to indicate the principles set out in Bhasin had been violated.

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Anderson v. Anderson, 2015 SKQB 263

Elson, September 2, 2015 (QB15254)

Civil Procedure – Queen's Bench Rule 1-3, Rule 4-49, Rule 15-2
Family Law – Divorce – Petition – Discontinuance

The respondent husband applied for an order to disallow the discontinuance of a petition for divorce that had been issued by the

petitioner in 2009 but never served. The respondent only became aware of the existence of that petition when his own was issued in 2015. Because a 2009 valuation of family property would be favorable to his position, the respondent attempted to protect it by instructing his counsel to serve and file a notice of intent to answer. The petitioner's counsel responded by filing a notice of discontinuance. The petitioner had not served the petition in 2009 because the parties were attempting to reconcile. The respondent argued that the Queen's Bench rules 1-5(1) and (2) applied and the discontinuance should be set aside, as the filing of it constituted an abuse of process or was done for an improper purpose.
HELD: The court dismissed the application. The court found that Part 15 of the Queen's Bench Rules did not contain a rule regarding discontinuance of a family law proceeding. In keeping with rule 15-2, the general procedure and practice of the court was adopted and therefore rule 4-49 was applicable. The petitioner was entitled to discontinue the 2009 petition. The petitioner showed no intention in pursuing the petition at the time due to the effort to reconcile. The technical reliance upon the foundational rules or the inherent jurisdiction of the court by the respondent was rejected by the court. Neither source of law could provide a basis upon which a court could force a litigant to proceed with an action that they had chosen not to pursue.

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F. (C.) v. Saskatchewan (Minister of Social Services), 2015 SKQB 264

Elson, September 3, 2015 (QB15255)

Family Law – Custody and Access – Person of Sufficient Interest
Statutes – Interpretation – Children's Law Act, Section 6

The petitioner, a former foster parent of two children, sought an interim designation as a person of sufficient interest regarding them as well as an order of interim custody. The Ministry of Social Services opposed the application on the grounds that it would not be in the best interests of the children because the fundamental quality of foster care is incompatible with the substance and character of the orders sought by the petitioner. The ministry submitted that regardless of the bond between the applicant and the children, she should be considered a stranger as a matter of law. It would not be in the best interests of the children to return them to the petitioner because of the disruption it would cause. The children, aged 13 and seven at the time of the application, were placed in the applicant's foster home when the oldest was three years of age. The other child, a boy, was placed there in 2007 shortly after his birth. Both children remained with the petitioner until

October 2014. Pursuant to a court order, both children were found to be in need of protection in 2009. The petitioner and her husband had been foster parents since 1972. The petitioner submitted five affidavits provided by teachers, parents of friends of the children and neighbours testifying as to the strong bond between the petitioner and the children and how deeply involved she had been in their lives. The boy's biological mother was supportive of the petitioner's application and expressed concern about the foster home where her son was currently living. The ministry had closed the petitioner's foster home in 2014 because a report commissioned by them had expressed concerns regarding the condition of the house and because of a belief that the children had gone unsupervised. The petitioner vigorously disputed the contents of the report.

HELD: The court granted an interim order, pending trial, designating the petitioner as a person of sufficient interest pursuant to s. 6 of The Children's Law Act and an interim order, pending trial, that the children be returned to the custody of the petitioner. The court was satisfied, based on the considerable evidence presented in support of the petitioner's position, that it was sufficient to justify an interim order for the designation. It did not accept that her status as a foster parent disqualified her from a s. 6 designation or that it was not in the best interests of the children to return them to her because it had been the ministry who had disrupted their lives by removing them in the first place.

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101077099 Saskatchewan Ltd. v. Bayhurst Energy Services Corp., 2015 SKQB 269

Megaw, September 3, 2015 (QB15258)

Civil Procedure – Costs – Non-party
Civil Procedure – Queen's Bench Rules, Part 7
Civil Procedure – Summary Judgment

The defendants applied for summary judgment pursuant to Part 7 of the Queen's Bench Rules. The plaintiffs were ten numbered companies that claimed $417,000 in remaining holdback pursuant to an agreement with the defendants. After the transaction was completed all of the numbered companies were dissolved and remained dissolved. The evidence did not disclose that any person authorized by the numbered companies instructed commencement of the plaintiffs' claim. The former shareholders of the companies were the promoters of the litigation. The issues were: 1) what is the test for determining whether a summary judgment application ought to proceed; 2) was this an appropriate case to decide summarily; and 3) who should be entitled to

costs.
HELD: The issues were determined as follows: 1) the court must decide whether the case can be decided on the basis of the evidence before it. The respondent to an application must show that there is a genuine issue for trial. The respondent cannot argue that there may be further evidence if the matter was allowed to proceed to trial or that something else was going to be done to rectify whatever problems existed that led to the summary judgment application; 2) the plaintiff corporations were no longer a legal entity recognized at law. The plaintiff argued that there were alternatives to dismissing the action by way of summary judgment. The first option given was really just an opportunity to gather evidence. The second suggestion was to allow the plaintiffs to restore the companies to corporate registry. No steps had been taken to do so notwithstanding the amount of time that had elapsed. Also, the action should not have been commenced in any event because the plaintiffs never existed when the claim was commenced. The third alternative was to allow an amendment to the statement of claim. There may well have been other parties, such as the shareholders, with claims but there was no reason they could not have been added to the claim much earlier. The defendants were found to be entitled to summary judgment and the action against them was dismissed; and 3) the defendants sought an order for costs against the former shareholders of the plaintiffs' because they were the ones responsible for the commencement of the litigation. The court held that the plaintiffs were "persons of straw" to allow the litigation to be commenced. Costs were awarded in favour of the defendants against the former shareholders of the plaintiffs.

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R. v. Heise, 2015 SKQB 270

Kovach, September 4, 2015 (QB15259)

Criminal Law – Appeal – Conviction
Criminal Law – Arrest – Reasonable and Probable Grounds
Criminal Law – Blood Alcohol Level Exceeding .08

The appellant appealed his conviction of driving while over .08, contrary to s. 253(2)(b) of the Criminal Code, on the basis that the officer did not have reasonable and probable grounds to arrest him. He argued that the officer did not have reasonable grounds to suspect that he had alcohol in his body at the time of the ASD. At 3:00 am officers observed the vehicle the appellant was driving swerve on three or four occasions. The officer noticed a smell of alcohol so asked the appellant and his passenger to exit the vehicle to determine who was emitting the smell of alcohol. The appellant indicated that he had two drinks.

There were empty beer bottles in the back seat. The officer made a demand for an ASD sample. When the appellant failed the ASD the officer placed him under arrest. The appellant's Charter arguments were rejected because the trial judge determined that the officer subjectively held the belief that the appellant had alcohol in his body and concluded that the grounds for such belief were objectively reasonable. The issues were: 1) did the trial judge err in concluding that the officer had reasonable and probable grounds to arrest the appellant; and 2) if so, what was the appropriate remedy.
HELD: The appeal was dismissed. The issues were determined as follows: 1) the threshold required for "reasonable suspicion" is much lower than it is for "reasonable belief". The appellant explained during his testimony at the trial proper that his alcohol consumption was at 10:00 pm and he had not consumed anything at the bar where he picked his friend up. He did not convey this time frame to the officer. The court found that an admission of drinking alcohol can form part of the reasonable suspicion analysis, without any further details as to the time and quantity of the alcohol consumed. Also, the court determined that the officer did not err in considering the fact that he smelled alcohol coming from the vehicle even though he did not know exactly who it was coming from.

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GRP Holdings Ltd. v. 101251327 Saskatchewan Ltd., 2015 SKQB 272

Meschisnick, September 4, 2015 (QB15283)

Contracts – Interpretation – Arbitration

The applicants and the defendant applied for a determination by the court of an appropriate candidate to arbitrate a dispute. The parties had entered into an asset purchase agreement. The agreement called for adjustments to the purchase price if actual working capital and EBITDA on closing varied from the amounts estimated in the agreement. It also called for the payment of the net book value of certain capital assets as of the date of closing. Disputes arose in determining the amount payable. The agreement provided that disputes were to be resolved by arbitration by a single chartered accountant from an independent firm, to be selected by agreement, and failing agreement, by appointment by a court pursuant to s. 11 of The Arbitration Act. The parties proposed various individuals as candidates but were unable to agree on any one of them.
HELD: The court selected one of the candidates to serve as the arbitration tribunal of the disputes. The chartered accountant was located in Saskatoon and had experience in the fields of administrative justice and some technical expertise that the other candidates had not

possessed.

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Smiljic v. Liech, 2015 SKQB 273

Krogan, September 8, 2015 (QB15263)

Family Law – Child Support – Determination of Income
Family Law – Child Support – Retroactive
Family Law – Child Support – Section 7 Expenses
Family Law – Custody and Access – Best Interests of Child
Family Law – Custody and Access – Travel Out of Country
Family Law – Division of Property – Equitable Considerations
Family Law – Division of Property – Valuation

The parties were married in 2010 and separated in 2011. Their daughter was born a few months after the separation and primarily resided with the petitioner. The petitioner was a social worker with an annual income of $81,047 in 2015 and $64,240 in 2014. The petitioner and her mother jointly owned a condominium. The mother provided the down payment of $41,961 for the condominium when the petitioner purchased it in 2008. The purchase price of the condominium was $184,000. The mother and petitioner agreed that if the condominium was sold the mother would receive her initial investment and half of any increased equity. On the petition date the condominium's value was $190,000. The respondent only lived in the condominium for six months. The respondent did not contribute to any expenses related to the condominium. The property in the petitioner's possession was: a vehicle; a pension; an RRSP; a line of credit; and a Visa. The respondent had a masonry business with net assets of $23,324 in 2011. His personal income ranged from $24,805 in 2010 and $17,200 in 2014. He was paying child support in the amount of $244 per month and he had not contributed to the child's daycare costs. The child participated in Ukrainian dancing. The respondent resided in Edmonton and the petitioner resided in Regina. The petitioner opposed the child travelling with the respondent's friend to Edmonton and she also opposed the respondent travelling with the child out of Canada. The issues were: 1) division of property; 2) child support; 3) out of country travel with the child; and 4) whether a third party may transport the child for the respondent's parenting time.
HELD: The issues were determined as follows: 1) the parties agreed to use the value of the condominium at the date of petition, $190,000. The court agreed that that mother's investment in the condominium was an investment on the terms understood between her and the petitioner. The mother and petitioner were both on the title to the property and therefore the respondent's arguments that the debt was statute-barred or did not exist pursuant to The Statute of Frauds did not succeed. The

court found that the petitioner's equity was $7,296. The petitioner agreed to an equal division of the equity. The court noted that the petitioner's consent to equal division was more than fair because an unequal division of the value of the condominium would be appropriate pursuant to s. 21 of The Family Property Act. The equitable considerations were the short marriage and the respondent only lived in the condominium for six months. The parties' total assets were $27,394.95 with the respondent possessing $23,324 and the petitioner possessing $4,070.22. The respondent was ordered to pay the petitioner $9,627.26; 2) because the court was left to speculate regarding the respondent's actual income the court ordered that he pay 50 percent of the daycare costs and dance lessons. He was also ordered to pay 50 percent of the costs incurred in 2013 and 2014. The retroactive portion was to be paid in monthly amounts of $200; 3) the petitioner's concerns with the respondent travelling out of Canada were not borne out. The court held that both parties could travel with the child outside of Canada without permission from the other party; and 4) the court did not find that it would be in the child's best interests to travel to and from Edmonton with the respondent's friend. The petitioner was given taxable costs because she was largely successful.

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Hamblin v. Svendsen, 2015 SKQB 274

Chow, September 9, 2015 (QB15264)

Family Law – Custody and Access
Family Law – Child Support

The petitioner requested an order for custody and support and the respondent sought an order of joint custody as well as a shared parenting regime. At the time of the application, the parties had joint interim custody pursuant to an order issued in chambers in 2012. The petitioner and the respondent were the parents of a four-year-old boy who was born after a brief relationship. After the child's birth in 2011, the petitioner was the child's primary caregiver and he resided in Regina with her and her two daughters from another relationship. The child attended day care while the petitioner worked full-time. The respondent was employed full-time as a supervisor for a federal agency located in a small village approximately three hours from Regina and as a part-time reservist with the Department of National Defence in Regina. The parties could not resolve issues regarding the respondent's access. Following a court order issued in 2011, the respondent was to provide the petitioner with dates that he was available to care for their son. The petitioner submitted that the respondent attempted to change the access schedule frequently and

without sufficient notice to facilitate his work schedule and it was difficult for her to change the schedule because she was responsible for her other two children. The respondent submitted that he should pay child support based on the Guidelines but that because his income had been unusually high in the previous year, the court should determine his income based upon the average of three years pursuant to s. 17. He also argued that his portion of s. 7 expenses should be reduced because of the cost to him to exercise access in accordance with s. 10.
HELD: The court found that both of the parties were capable, loving parents and the evidence supported that it would be in their child's best interest for them to enjoy joint custody. The court rejected the respondent's request for a shared parenting arrangement due to the fact that he had not provided any information as to educational or other opportunities for the child in the village where he lived nor had he made any plans for the care of the child when changes in his work schedule occurred. The petitioner had indicated that she intended to enroll the child in the same school as her daughters attended when he was to start kindergarten. Therefore the court found that it was in the best interests of the child to reside primarily with the petitioner and the respondent be given liberal specified access. The court ordered that the respondent would parent the child for two weekends every month, as chosen by him in advance. Because of the petitioner's responsibilities to her other children and the respondent's option to select the access periods to best suit his schedule, the exchanges would continue to occur in Regina. The court determined that the respondent's income should be based upon his 2013 earnings and not the average for the last three years because it had steadily increased over that time. He was ordered to pay the petitioner the sum of $732 per month in child support. Regarding s. 7 costs, the court found that the respondent exaggerated his fuel costs and they did not qualify as unusually high pursuant to s. 10(1)(b). The respondent was ordered to pay 66 percent of the petitioner's net childcare expenses.

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R. v. Noname, 2015 SKQB 276

Elson, September 11, 2015 (QB15271)

Criminal Law – Home Invasion – Sentencing

The two accused were each found guilty after trial of offences related to a home invasion: one count of robbery contrary to s. 348(1)(b) of the Criminal Code and two accounts of assault with a weapon against both of the victims, contrary to s. 267(a) of the Code. W.N. was found guilty of attempted murder, contrary to s. 239 of the Code, and K.N. was found guilty of the lesser and included the offence of aggravated

assault, contrary to s. 239 of the Code (see: 2015 SKQB 14). W.N. had planned and organized the home invasion for the purpose of intimidating and frightening the residents and to steal some of their property. The group brought a shotgun (capable of discharging buckshot), a bat, a baton and a pellet gun. W.N. urged one of the group to fire the shotgun at one of the residents, who was wounded in the leg and required surgery. W.N., 33 years of age, is Aboriginal but spent most of his childhood living in Regina. His father was abusive and both parents had alcohol and substance addictions, as does W.N. He only attained grade nine education and has no training. Although he is the father of four children by three different women, W.N. is not currently in a relationship. His criminal record was brief. His only adult record identified convictions for theft, failing to stop at an accident and failure to attend court. The pre-sentence report stated that W.N. took responsibility for his actions and expressed remorse. The criminogenic risk aspect showed his overall risk for general re-offending was high (80 percent) and that the risk could be reduced if his employment, family and marital circumstances, peer relationship and substance abuse issues were addressed. Regarding Gladue factors, it was noted that W.N. was not well connected or particularly committed to his Aboriginal heritage but that his family background and life showed many of the same themes. There was some comment that W.N. had and should continue to receive support from the Piapot First Nation. The other accused, K.N., is 26 years old. He too lived in a city but moved to the Piapot reserve when he was ten. He was raised by his grandmother. He lives with his partner and their young child. His grandmother and spouse were shocked by the offences and indicated that they were out of character for K.N. He has no criminal record. His pre-sentence report indicated that he was at a medium (50 percent) risk to re-offend and that he was in the 24 percentile in the assessment and reducing his risk factors, notably attitude, peers and issues relating to residence stability would further lessen the risk. He expressed remorse for his actions. The Crown argued that W.N. should receive a 10- to 12-year sentence of imprisonment and K.N.'s sentence should be in the 8- to 10-year range.

HELD: The court sentenced W.N. to eight years of imprisonment, reduced to six years, five months after credit was given for 19 months for time spent in custody. K.N. was sentenced to five years, six months imprisonment reduced by 15 days as credit for pre-sentence custody. The court found that s. 318.1 of the Code applied and the aggravating factors considered by the court included that the offenders had planned the crime, brought weapons, intimidated and used violence against the victims and had not sought medical attention for the victim who was shot. They sought to profit from the crime. The court specifically rejected W.N.'s expression of remorse as a mitigating factor because of the manner in which he had testified during the trial.

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Desnomie v. Desnomie, 2015 SKQB 277

McIntyre, September 11, 2015 (QB15266)

Family Law – Spousal Support

The petitioner and respondent had cohabited for 25 years. They had married in 1999 and separated in 2012. They had three children but only the youngest, a 13-year-old boy, was living with the respondent mother. An adult daughter had three children of her own and because the respondent was concerned with how the grandchildren were being parented by her, the respondent took them into her home with the agreement of the petitioner that it was the right thing to do. After separating, the respondent remained in the family home and the petitioner paid the mortgage, taxes and utilities. An interim order made in 2013 directed the petitioner to pay child support for the son in the amount of $1,065 per month and spousal support of $760 per month with the respondent assuming responsibility for the household costs. The parties then settled parenting issues, child support and family property at a pre-trial conference where the respondent's income was assessed at $43,000 and the petitioner's at $126,700. The issue of spousal support was reserved. Since then, the respondent had taken in the grandchildren. Their mother gave the respondent the funds she received from various government benefits of $600 per month. The respondent, a status Indian, had been working for 17 years with an Aboriginal financial institution, earning $47,500 in 2014. She had stayed at home to raise the children before taking the job because the petitioner's work often took him away from the home. The funds earned by her were tax exempt and represented taxable income of $62,500. However, due to the stress of caring for her grandchildren, she intended to take a less responsible position that would limit the opportunity for her income to increase. The respondent submitted a financial statement indicating $73,900 coming in and expenditures of $120,800. The petitioner's 2014 income was $144,000. The respondent argued that she had significant financial need and her continuing child care responsibilities have had an impact on her employment. She sought an adjustment to the child support payable and spousal support of $1,416 per month, reviewable in five years. The petitioner argued that once the respondent's exempt income was adjusted to reflect a taxable income, the bottom range of the Guidelines was nil and given his means and the fact that support had been paid for the past two years, no further support should be ordered.
HELD: The court found that the respondent was entitled to spousal support on the basis of need. Although there is no legal obligation on the parties to support grandchildren, there may be a moral obligation. The economic consequences to the respondent of caring for them was part of her condition, means, needs and circumstances. However, the

court found that the respondent's evidence of her expenses was unreliable. The court found the respondent's income to be non-taxable at $46,700 for the purposes of the Guidelines because the Universal Child Care Benefit she received for her son was taxable income. Column H indicated that the respondent would not pay tax on the spousal support received. The court ordered the petitioner to pay spousal support of $800 per month for a period five years, ceasing then when the child will be an adult.

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N.-B. (C.), Re, 2015 SKQB 279

Brown, September 15, 2015 (QB15272)

Family Law – Child in Need of Protection – Person Having Sufficient Interest

The applicant sought to be added as a person having sufficient interest pursuant to s. 23 of The Child and Family Services Act. The child in question, C.N.-B., was three years old and had been out of parental care for 29 months. The ministry was about to seek a permanent committal of child. It had made extensive efforts to find family members with whom to place the child. In February 2015, the applicant became known as a family resource. She is the cousin of the child's grandfather. The applicant and the child had visited between 10 and 15 times since and she had indicated her interest in caring for the child. However, the applicant was not interested in caring for the child's sister, aged 10, who was also in care. In addition, another half-sibling of both children resided with another foster family and there was some possibility that all three girls could live together with this family. C.N.-B.'s visits with the applicant stopped in May 2015 because, according the applicant, the ministry lost interest in placing the child with her in favour of the foster home where all three sisters might be able to live. The ministry opposed the application because the applicant had not pursued the relationship and because the potential to place C.N.-B. with her sisters was a superior outcome. Counsel for the applicant indicated that the appointment of her as a person of sufficient interest would not delay the trial and were ready to proceed.
HELD: The application was granted. The applicant advised that her representation would not delay the trial. Under the Act, the question of who is a person of sufficient interest rests on whether a person who is an extended family member of the child might be an appropriate resource. The applicant was the only relative who was willing and capable to care for the child. The evidence regarding the cessation of the visits was conflicting. Designation of the applicant enabled her to advance the benefits of herself as a potential caregiver as one

possibility when the trial is held and the best one would be determined on the evidence put forward and tested by cross-examination.

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Savorn Estate v. Williams, 2015 SKQB 280

Dufour, October 15, 2015 (QB15285)

Wills and Estates – Property – Surviving Joint Tenant
Trusts and Trustees – Resulting Trust – Family Transactions

Two of the deceased's children disagreed over the distribution of her estate. In 1998, the deceased transferred her three real properties to joint names of herself and her daughter. She also transferred her bank account into joint names with the daughter. The will made at that time gave all the residue to the daughter and excluded the son. A 2008 will gave the daughter 20 percent of the residue and gave the son 40 percent. Shortly before the deceased's death, the daughter removed $22,000 from the joint account indicating she did so to prevent her brother from taking it. The deceased also made another will shortly before her death with the same terms as the 2008 will and with added terms that the daughter must return the $22,000 and sign a formal agreement that the real properties were the property of the estate within 90 days or she would get nothing from her mother's estate. The lawyer that did the joint transfer of the property no longer had his files and did not recall his interactions with the deceased. The lawyer did testify as to his general practice regarding instructions for wills and the transfer of real property by an elderly person in the late 1990s. He said that in all likelihood the properties were transferred to joint names for estate planning purposes with right of survivorship. The lawyer that prepared the 2008 will noted that the deceased was clearly competent at the time of making the 2008 will. The same lawyer that prepared the 2008 will also prepared the 2011 will and again indicated that he did not have any concerns over the deceased's competency to execute the 2011 will. The issues were: 1) did the deceased intend to make a gift of the real properties that would take effect on her death or did she intend that the daughter hold them in trust for the benefit of her estate; and 2) what was the deceased's intention when she opened the joint account with the daughter.
HELD: The presumption of resulting trust applied to the mother/daughter transfers so the daughter had to prove that the deceased intended to gift the rights in the real property and bank account to her. The court was not persuaded by evidence from the daughter that the deceased was so grateful for all her help in times of illness. The issues were determined as follows: 1) the 2008 will was of little assistance to the court in determining the deceased's intentions

with respect to the joint items. The statements regarding the joint items in the 2011 will were not accorded much weight by the court because previous decisions have indicated that these self-serving statements long after the original transfers carry little or no weight. The court looked at the transfers themselves and found that the deceased intended to gift the right of survivorship in the real properties to her daughter; and 2) the deceased transferred the bank accounts to joint names shortly after she executed her 1998 will, which led the court to conclude that she was getting her affairs in order. There was no evidence that the daughter was to have access to the funds in the joint account before she died. The court found that the deceased would not have done anything in 1998 to jeopardize the money that enabled her to handle her own affairs and remain independent. The transfer to a joint account was to set out what should happen with her possessions when she died. The court determined that the daughter had no claim to the $22,000 that she took from the joint account prior to the deceased's death. The $22,000 was held to belong to the deceased's estate.

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Saskatchewan v. Public Service Superannuation Board, 2015 SKQB 283

Kalmakoff, September 16, 2015 (QB15274)

Administrative Law – Application for Judicial Review

SGEU and Peterson brought an application for judicial review of a decision of the Public Service Superannuation Board regarding Peterson's pension benefit entitlement. The board, established by The Public Service Superannuation Act (PSSA), was created to oversee and determine the applicability of the PSSA and The Superannuation (Supplementary Provisions) Act, by virtue of current or former employment with the Government of Saskatchewan, members of certain pension plans. Peterson worked for the Department of Social Services and was a member of the Public Service Superannuation Plan (PSSP) from 1977 to 2002 when he went on long-term disability. Pursuant to SGEU's long-term disability plan (LTD plan), his benefits were determined with reference to his salary at the time of disablement and the plan specifically included camp differential pay. The LTD plan then remitted pension contributions to the PSSP on his behalf. In 2002, the Public Employees Benefits Agency (PEBA) advised the LTD plan that camp differential pay did not count as salary for the purpose of pension contributions and issued a refund to Peterson for the portions of pension contributions deducted from his LTD plan benefits relating to camp differential pay included in his income. PEBA confirmed this position in a letter sent to Peterson in February 2009 and SGEU filed a grievance on his behalf, claiming that his pensionable earnings should

include the differential with his salary. The matter was then referred to the board in 2012. In 2014 the board dismissed SGEU's complaint, holding that the differential pay was not included as salary for the purpose of determining an employee's pension entitlement because it did not meet the definition of salary in either ss. 2(j)(i) or (ii) in The Saskatchewan Superannuation Plan Act. SGEU and Peterson sought judicial review of the board's decision. The issues were: 1) what was the appropriate standard of review; and 2) had the board made a reviewable error in deciding that the differential pay was not salary within the meaning of s. 2(j).
HELD: The court set aside the board's decision and returned the matter to it for a rehearing. It found with respect to each issue that: 1) the question fell within the board's mandate and area of expertise, as defined by enabling legislation and therefore the standard of review was reasonableness; and 2) the board had not provided sufficient analysis of s. 2(j)(i), which was unreasonable, and that its decision regarding s. 2(j)(ii) was also unreasonable because it reached a conclusion different from the plain and ordinary meaning of the legislative provision without providing analysis.

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P. (R.L.) v. M. (S.N.), 2015 SKQB 288

Megaw, September 18, 2015 (QB15276)

Family Law – Custody and Access – Interim – Variation

The petitioner applied for custody of the two children of his relationship with the respondent. In 2012, an interim order was granted in which the children were to have their primary residence with the petitioner and access given to the respondent. The order specified that a review of it could be undertaken without proving a material change because of the uncertainty associated with the respondent's living arrangements and employment. The petitioner had left his wife to live with the respondent in British Columbia. The petitioner reconciled with his wife and returned to Regina to live with her in 2012, and at that time, the petitioner left the children in the care of their maternal grandmother with whom they lived for approximately one year. The children returned to the care of the respondent for a while and then she contacted the petitioner and asked him to assume parenting of the children because she was afraid that they would be apprehended. There was evidence that the respondent abused illegal drugs. She had had only sporadic contact with the children since they moved and had not appeared at the hearing. The children were returned to the petitioner in Regina in June 2014. They were enrolled in school and extracurricular activities. The petitioner

and his wife were now in a stable relationship and both had secure employment. The children's grandmother brought an application pursuant to s. 6 of The Children's Law Act requesting that she be designated a person of sufficient interest. The petitioner took issue with the fact that the proposed respondent had not made the application properly.
HELD: The court granted the application and varied the interim order based upon the specific terms of the 2012 order. The petitioner was given custody of the children and the respondent was entitled to access to be supervised by a third party and had to refrain from the use of drugs or alcohol for a period of 24 hours prior to exercising access. The manner of application of the proposed respondent was cured by the court in the interest of justice pursuant to Queen's Bench rule 1-6(4). However, the application was denied. The court found that the grandmother had not established the kind of involvement necessary to be designated a person of sufficient interest.

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Baker v. Sherwood (Rural Municipality No. 159), 2015 SKQB 301

Gunn, September 23, 2015 (QB15280)

Municipal Law – Bylaw – Validity
Statutes – Interpretation – Municipalities Act, Section 355

The applicants were all voters and owned property in the respondent rural municipality (RM). They challenged the validity of a bylaw passed by the council of the RM in 2014 and sought an order quashing it pursuant to s. 358 of The Municipalities Act. The RM was the subject of an inspection pursuant to s. 396 of the Act. In June 2014 the Minister of Government Relations ordered an inquiry pursuant to s. 397 of the Act, following the issuance of the inspector's report. The inquiry was commissioned to look into the appropriateness of the conduct of the RM's council members in relation to a proposed development with regard to whether any members had a pecuniary interest in it and whether such interests had been identified and disclosed among other questions. The inquiry officer was given the power to require the attendance of any officer of the RM. In July 2014, the RM's council held a meeting during which their counsel advised the councilors of the need to secure their own counsel for the purposes of the inquiry as he was unable to act on their behalf. In October 2014, the RM's counsel provided a legal opinion to the council as to whether the respondent could reimburse the councilors for legal expenses related to their participation in the inquiry. At the next meeting, the council passed the necessary authorization for drafting a policy and bylaw for reimbursement for legal expenses for the members. The bylaw was

passed shortly afterward. Four of the councilors retained their own counsel for the inquiry.
HELD: The application was granted and the bylaw quashed. The court found that the applicants had standing to challenge the bylaw and that it had jurisdiction to review the bylaw pursuant to the standard of correctness. The court found that the bylaw was beyond the circumstances that permitted indemnification for municipal officials' legal costs under s. 355 of the Act and the bylaw was ultra vires in situations where the councilors were not the subject of a claim for liability. Further, the bylaw was not authorized by s. 82 or s. 151 of the Act. The court rejected the respondent RM's argument that it could rely on s. 8 of the Act as part of its general powers regarding peace order and good governance to pass the bylaw because it found that it was passed to protect the interests of the council members on a personal basis.

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Saskatchewan (Ministry of Highways and Infrastructure) v. Beer, 2015 SKQB 311

Labach, October 7, 2015 (QB15322)

Landlord and Tenant – Writ of Possession

The applicant applied for a writ of possession pursuant to s. 50(1) of The Landlord and Tenant Act. The respondents sold a parcel of land to the applicant for a right of way for a new highway. The contract stipulated that the respondents were to remove anything that they wanted to salvage from the property by April 1, 2015, but they had not done so and continued to occupy the property. The applicant was aware before that time that there were a number of encumbrances on the respondents' title and paid them and then paid the balance of the purchase price to the respondents and clear title was then registered in the applicant's name in February 2014. The respondents complained that the reason that they had not vacated was that the applicant's payments of the encumbrances reduced the amount of money they had received and there was not enough left from the sale for them to be able to afford to move the house. However, they did not provide any documentation regarding the cost of moving it.
HELD: The application was granted and the court directed the registrar of land titles to issue a writ of possession. There was no evidence that the respondents had any claim to the property and their complaint was not a valid reason to hold possession against the applicant.

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Radiology Associates of Regina Medical PC Inc. v. Sun Country Regional Health Authority, 2015 SKQB 330

Elson, October 21, 2015 (QB15327)

Injunction – Interlocutory Injunction – Requirements
Contracts – Breach of Contract

The applicant plaintiff sought an interlocutory injunction prohibiting the defendant from continuing to seek or accept bids or quotations for the provision of computed tomography (CT) services at a hospital in Estevan. The plaintiff contended that the defendant's action in requesting quotations was in breach of its contract with the plaintiff for the provision of radiological services. The contract had been entered into in 1998 between the plaintiff, a physician corporation that employs 21 radiologists and the defendant successor to the health districts, which had been amalgamated into a new health region. In 2009, the defendant requested that the Minister of Health provide funding for the purchase of a CT scanner to be used in the Estevan hospital. The defendant consulted with the plaintiff extensively regarding this proposal. When the Minister granted the request, the defendant was informed that it had to issue a request for quotations (RFQ) for CT services. The defendant informed the plaintiff of this and referred to the existing contract but stated that the RFQ only related to CT services that were outside the scope of the contract. The plaintiff took the position that it was able to provide the services but only on the understanding that it would be the provider of the service pursuant to the terms of the contract. It argued that if the services were contracted elsewhere that it expected its business would be reduced and would likely result in the loss of one radiologist's position. It also raised the issue that if it was not the provider of CT services, it might result in conflicting assessments regarding the type of CT scan necessary for a particular patient. The plaintiff also expressed concern that the Saskatchewan Medical Association, the sole bargaining agent for physicians in their negotiations with the government in respect of their fees, had not been involved in the defendant's decision.
HELD: The application was dismissed. Applying the three-pronged test for granting an interlocutory injunction, the court found that the applicant had met the first hurdle that there was a serious issue to be tried but had not established, based on its arguments, that irreparable harm would occur to it for which it could not be adequately compensated if the injunction was not awarded. It was not necessary to investigate whether the balance of convenience favoured one party or the other.

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