**The Law Society of Saskatchewan Library's online newsletter highlighting recent case digests from all levels of Saskatchewan Court. Published on the 1st and 15th of every month.**

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***Harpold v Saskatchewan (Corrections and Policing)*, 2023 SKCA 98**

Caldwell Leurer McCreary, 2023-08-25 (CA23098)

Appeal - Torts - Misfeasance in Public Office

The appellant appealed a chambers decision in which the chambers judge granted summary judgment and dismissed the appellant's claim of misfeasance in public office. The background to this appeal involved the appellant being subject to supervision by Corrections and Policing (Corrections), including agreeing to obtain the approval of Corrections before changing his residence or employment and reporting to a probation officer each week. Corrections allowed him to work in Fort McMurray for two weeks, but decided that the work arrangement could not continue because it was not feasible for the appellant to continue to report in person. The appellant initially claimed damages due to the probation officers' inflexible position. This claim was struck on the basis that it did not disclose a reasonable claim, but this was overturned by the Court of Appeal (court). The court found that the claim substantively pleaded the tort of misfeasance in public

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office, but whether it would survive a summary judgment application was another matter. Corrections then applied to have the claim dismissed, which was granted by a chambers judge. The chambers judge concluded that none of the essential elements of the tort of misfeasance in public office were made out. The chambers judge held that there was no evidence that Corrections officials committed any action that could considered contrary to law.
HELD: The court dismissed the appeal. There was no palpable and overriding error in the chambers judge's finding of fact in concluding that the appellant's action for misfeasance in public office should be summarily dismissed.

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***R v John*, 2023 SKCA 116**

Caldwell Schwann McCreary, 2023-10-25 (CA23116)

Courts and Judges - Judicial Intervention
Trial Fairness - Test

The appellant appealed convictions of aggravated assault, designation as a dangerous offender, and an indefinite sentence on the basis the convictions were unfair due to judicial intervention during the trial. The interventions included frequent judicial questioning of the witnesses, interruption of counsel's questioning, and extraneous comments. In their decision, the Court of Appeal considered the role of judges in criminal trials in Canada.
HELD: The appeal was allowed. The trial judge's multiple interventions rendered the trial unfair and as a result the convictions were quashed and a new trial was ordered. The appeal against the appellant's designation as a dangerous offender and sentence were not addressed. There is a strong presumption that judicial intervention is not unfair and an appellate court should be reluctant to intervene. The ultimate question is not whether a trial judge was impartial or whether an accused was prejudiced by judicial intervention, but whether a reasonable individual would perceive the trial was conducted fairly. The Court of Appeal emphasized that Canada utilizes an adversarial system where opposing parties must present relevant evidence and argument while the trial judge presides as an objective decisionmaker. This adversarial system is a principle of fundamental justice and does not permit a judge to become an independent investigator who seeks out the facts. Although judges are responsible for the conduct of the trial, they are primarily listeners and must not be perceived to have taken on an adversarial or even

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quasi-adversarial role. Judges may, however, carefully intervene to clarify unclear answers, resolve misunderstandings, or correct inappropriate conduct when necessary. When a trial judge oversteps, the appearance of trial fairness is undermined. Although there is a high bar required before judicial intervention renders a trial unfair, in this matter, the Court of Appeal concluded that when combined, the trial judge's interventions would lead a reasonably minded person to conclude the appellant did not have a fair trial.

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***R v J.A.*, 2023 SKCA 119**

Schwann Barrington-Foote Drennan, 2023-10-30 (CA23119)

Criminal Law - Sexual Assault - Acquittal - Appeal
Crown Appeal - Re-examination of Witness

The Crown appealed from an acquittal of the accused. The complainant and accused attended a graduation party attended by approximately 80 people. The complainant made a statement to police that she was sexually assaulted at the party when she went outside. The complainant stated she was "black out drunk" and had no memory of what the assailant looked like, and that she could not see his face or see what he was wearing. The complainant's friend testified that it was dark and that she saw the complainant up against a truck with an unknown male. The friend admitted that there was nothing "out of the ordinary" happening: the two were kissing. The trial judge was left with a reasonable doubt as to whether the accused was the person who assaulted the complainant and acquitted him of the charges. The Crown argued that the trial judge at Provincial Court: 1) failed to consider the whole of the evidence on identification and misapprehended material evidence; and 2) erred by refusing to allow the Crown to re-examine the complainant.
HELD: The Court of Appeal (court) dismissed the Crown's appeal. The court noted that the Crown had a heavy burden on an appeal from an acquittal. To succeed, the Crown had to demonstrate both that the trial judge erred in law, and that the legal error had a material bearing on the acquittal. 1) The court found that the trial judge's overall findings regarding identification evidence were consistent with his having considered the totality of the evidence. He considered the evidence of both the witness and complainant and was left with a reasonable doubt. 2) During the trial, the Crown applied to re-examine the

complainant after cross-examination. The trial judge ruled that the cross-examination was not confusing and did not permit re-examination. On appeal, the Crown argued that it was permitted as of right to re-examine its own witness to clarify an ambiguous response arising from the cross-examination. The court held that whether an error in the discretionary exercise of trial management powers was pure law or mixed fact and law turned on the facts. Here, however, the court did not need to determine whether this ground of appeal raised a pure question of law, because the trial judge correctly exercised his trial management powers by determining that the complainant's answer was clear and unambiguous, and that nothing new came up in cross-examination such as to require re-examination. Crown trial counsel conceded that re-examination was not necessary.

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***R v Schreiner*, 2023 SKCA 121**

Caldwell Schwann Kalmakoff, 2023-11-07 (CA23121)

Appeal - Sentence - Second Degree Murder
Criminal Law - Appeal - Conviction - Not Criminally Responsible
Evidence - Admissibility - Statements - Voluntary - Protected

The appellant appealed a conviction of second degree murder and subsequent sentence of imprisonment for life without eligibility for parole for 17 years. The appellant admitted he killed his sleeping wife by stabbing her more than 80 times in front of her three-year-old son but claimed he was not criminally responsible due to his schizotypal personality disorder. The trial judge rejected the defence. The appellant asserted the trial judge failed to 1) ensure a fair trial, 2) provide sufficient reasons for denial of the defence, 3) properly consider the evidence, and 4) impose an appropriate period of ineligibility for parole.
HELD: The appeal was dismissed. 1) The trial judge was entitled to accept and reject the evidence as he did. 2) The trial judge's reasons provided a logical analysis of the legal issues before the court. 3) It is not sufficient for an appellant to merely suggest an alternative interpretation of the evidence because they disagree with a judge's view. None of the appellant's assertions the trial judge misapprehended the evidence satisfied the legal requirements. 4) A fit sentence is one that is proportionate to the gravity of the offence and moral culpability of the offender. The trial judge was careful to account for the circumstances of the murder as well as the aggravating and mitigating factors

arising from this matter. The appellant's actions were particularly heinous and although the appellant's mental health issues were a mitigating factor, the sentence imposed was not disproportionate. The appellant failed to demonstrate the sentence was the product of an error in principle or that it was demonstrably unfit.



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***R v Singer*, 2023 SKCA 123**

Schwann Barrington-Foote McCreary, 2023-11-15 (CA23123)

Constitutional Law - *Charter of Rights*, Section 8 - Unreasonable Search and Seizure
Common Law - Implied Licence Doctrine - Implied Licence to Knock

The RCMP received a call reporting a vehicle description of a driver who was speeding. The caller said she believed he might be driving while impaired because he accelerated when he saw her. An hour later, officers found the appellant asleep in the driver's seat of his truck parked in his driveway. He was not visible from the street. Officers did not observe the appellant driving the truck. The officers knew that the driveway was private property but did not obtain a warrant. They were unable to wake the appellant by knocking on the windows, so they opened the doors of the truck and woke him up. He failed the roadside breath test and was then charged with having care and control of a motor vehicle with an excessive blood alcohol level. The appellant was transported to the RCMP detachment where he spoke to duty counsel and refused to provide a breath sample. He was charged with failing or refusing to comply with a demand made by a peace officer under s. 320.27 or 320.28 of the *Criminal Code* and with operating a motor vehicle while impaired. Prior to trial, the appellant filed a *Charter* notice. At trial in Provincial Court, he argued that his s. 8 *Charter* right to be secure against unreasonable search and seizure was breached when the officers walked up his private driveway to investigate a complaint of impaired driving. The trial judge found the appellant guilty of failing to provide a breath sample, and the impaired driving charge was stayed. The trial judge concluded that the appellant's s. 8 *Charter* right was not breached. He relied on the common law "implied licence" doctrine for police to enter private property on legitimate business, holding that there was no objectively reasonable expectation of privacy in this case. The appellant appealed the conviction on the basis that the trial judge erred in finding that there had been no *Charter* violation. He also argued that his right to a fair trial was prejudiced when the Crown's sole witness was not excluded from the courtroom while the appellant's trial counsel made submissions to the court. The Court of Appeal (court) determined whether the trial judge erred in determining that the appellant's s. 8 *Charter* right to be free from unreasonable search and seizure had not been violated.

HELD: The court allowed the appeal, excluded the evidence obtained in violation of the appellant's *Charter* rights, quashed the conviction, and entered an acquittal on the charge of refusing to provide a breath sample. The trial judge erred in finding that the appellant's s. 8 *Charter* rights were not infringed. The appellant had a reasonable expectation of privacy while sleeping in his vehicle on his driveway, and his subjective expectation of privacy was objectively reasonable. The evidence that led to the appellant's conviction was obtained as a result of the s. 8 violation, and the court found that it should be excluded. The court did not need to

consider the appellant's second argument regarding his right to a fair trial. Section 8 protects privacy interests. State conduct that does not interfere with a reasonable expectation of privacy is not subject to constitutional scrutiny under s. 8. The court must first determine whether the accused had a reasonable expectation of privacy, which has both a subjective and objective element. The individual must first subjectively hold an expectation of privacy in the place or thing for s. 8 to be engaged, but that expectation must be objectively reasonable. Here, the application and scope of the implied licence to knock was also at issue. The court noted that the implied licence to knock was a subset of the implied licence to enter private property on legitimate business. It authorized the person only to approach the door and knock. A police officer who approaches the door to gather evidence against the occupant has exceeded any authority that is implied by the invitation to knock. The jurisprudence confirmed that a police officer who approaches the door of a residence for the purpose of gathering evidence against the occupant is an intruder, because an unlawful search is not lawful police business. The court did not agree with the Crown that the invitation to knock doctrine was engaged, because there was no evidence the police entered the property for the purpose of knocking on the door of the residence, or even on the window of the vehicle. The Crown did not prove that this warrantless search was authorized by law. There was no implied invitation to enter the driveway to investigate the driver. It was clear the officers intended to investigate by gathering evidence against the appellant from the moment they set foot on the driveway. The officer did not have an implied licence to enter at all and was a trespasser from the moment she set foot in the driveway. The officers knocked on the truck windows to gather evidence against the appellant. This conduct intruded the appellant's reasonable expectation of privacy and was a s. 8 search. The Crown could not rely on police ancillary powers here, because there was no evidence the officers were concerned with public safety or thought there were exigent circumstances. The trial judge did not conduct a section 24(2) *Charter* analysis, so the court did. There was no ambiguity in Saskatchewan jurisprudence, so the police could not be said to have acted in good faith. An officer could not be said to be acting in good faith if the *Charter* breach arose from an officer's negligence, unreasonable error, ignorance as to the scope of their authority, or ignorance of *Charter* standards (*R v Sabiston*, 2023 SKCA 105). The court found that the police conduct here was a serious violation of the appellant's privacy interests in the driveway of his residence and weighed strongly in favour of exclusion under the first part of the *Grant* test. There was also a serious impact on the appellant's privacy interests, so the second *Grant* factor also favoured exclusion. The third factor, whether the truth-seeking function of the criminal trial process would be better served by the admission of the evidence or by its exclusion, weighed in favour of the evidence being admitted. In the final balancing of the factors, the court held that this was not a case where the third line of inquiry tipped the balance against the first two. The court stated that inclusion of the evidence would do further damage to the long-term repute of the administration of justice, and so it had to be excluded.


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***Sali v Johnson*, 2023 SKKB 181**

Goebel, 2023-08-28 (KB23172)

Family Law - Relocation - Best Interests of the Child Analysis

The parties cohabited in a spousal relationship from 2015 to 2021 in North Battleford. They had two young children together. The mother decided to separate, and moved to Cochrane, Alberta while the father was at work. The father opposed the unilateral

relocation and commenced a court proceeding. The court held in an interim order that it was in the best interests of the children that they stay in the primary care of the mother, but that she exercise her parenting time near North Battleford. This was varied to a week-on, week-off shared parenting schedule with the mother exercising parenting time in Cochrane and the father living in the family home in North Battleford. The father was a welder who worked long shifts away from home for days at a time. The mother asked to have the children placed in her primary care in Cochrane, her hometown, and where all her extended family lived. The father's preference was to have shared parenting in North Battleford or, alternatively, that the children be placed in his primary care. The parties could not agree on a final parenting plan. The matter proceeded to trial, leaving it to the court to determine: 1) a final parenting arrangement that was in the children's best interests; 2) the amount of ongoing child support, and 3) costs.

HELD: The court held that it was in the best interests of the children to reside in the mother's primary care in Cochrane with generous time in the care of the father. 1) The court applied *Friesen v Friesen*, 2023 SKCA 60 to determine the best interests of the children in the context of the proposed relocation. The proposed relocation and its impact on the family was considered along with the best interests of the children analysis, and not as a separate issue. The court looked to ss 10 and 15 of *The Children's Law Act, 2020* for the governing principles, as the parties were never married. There was only an interim order in place, so the court found that both parties had the same burden of proof to provide evidence to assist the court in determining which care plan was in the children's best interests. The court considered the children's needs and relationships, parental capacity, past and future care arrangements, each parent's willingness and ability to communicate and cooperate with the other, and each parent's willingness to support the children's relationship with the other, all within the context of the relocation factors. The court also considered evidence related to family violence and its impact on the children's best interests. The court was satisfied that the father engaged in behaviour that constituted family violence under the legislation. During the relationship, the father's relationship with the mother's family was tense. The father forbade the maternal grandmother from visiting the children or bringing them gifts. The father admitted he tracked the mother's vehicle on his phone and hired a private investigator to conduct surveillance of the mother and her extended family. When questioned, the father minimized his behaviour, and did not accept that the mother felt threatened or intimidated by him. The court considered the mother's reasons for the relocation. Cochrane was her home community where she had support from her parents and extended family. She found a job with a generous salary and benefits, with room for future growth. Both parties agreed that despite communication challenges in the past, it was in the best interests of the children that the parents retain joint decision-making responsibility. The current shared parenting regime could not continue. The court noted that in this analysis, whether the relocating parent would move absent permission for the children to move was irrelevant to the analysis. The children's stability and security were best met in the primary care of the mother. The court found that the mother was more likely to fully and genuinely support the children's relationship with the father than the reverse. She fully acknowledged that she moved with the children to Cochrane without notice to the father, but that she did so because she was afraid the father would not allow her to leave with the children and that the situation would become volatile. Immediately after, she began to facilitate regular contact between the children and the father. The court was satisfied that the mother's reasons to relocate were consistent with the best interests of the children and that it was in the best interests of the children to be in the primary care of the mother in Cochrane. 2) The court set the amount of child support to be paid by the father to the mother, to be adjusted each year, taking into account the father's reported income from the year prior. 3) The court permitted counsel for the father to speak to costs at a later hearing.


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***R v Crowley*, 2023 SKKB 215**

Elson, 2023-10-03 (KB23210)

Criminal Law - Fraud - Sentencing
Criminal Law - Sentence - Joint Submission

The offender pled guilty to defrauding LongRange Services Ltd. and entered into a plea agreement with the Crown. The parties were unable to arrive at a joint sentencing submission. The Crown submitted an appropriate disposition given the circumstances would be a custodial sentence of two years less a day, a forfeiture order, and a fine. Defence counsel contended a conditional sentence would be appropriate and allow the offender to provide restitution more quickly. The parties turned to the court for adjudication of whether it would be appropriate for the court to direct a conditional sentence in these circumstances.
HELD: On consideration of the principles of sentencing set out in ss 718 to 718.2 of the *Criminal Code*, the court concluded a conditional sentence of two years less one day was appropriate given the circumstances. Sentencing is a highly individualized exercise that must be governed by the circumstances of each particular case. In this matter, the Court found the offender's exploitation of a relationship of trust was an aggravating factor that made denunciation and deterrence particularly important. The circumstances between the parties, however, were complicated by the prospective plan to sell LongRange to the offender, which did not excuse the offender's actions, but did provide for a unique perspective in which the offender believed LongRange owed him. This perspective distinguished this matter from similar cases where the motives for fraud were personal greed, substance addiction, or need for extra funds.

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***G and I Construction Group Inc. v Ace Burger Ltd.*, 2023 SKKB 214**

Elson, 2023-10-12 (KB23209)

Construction Law - Cost-Plus Contract - Oral Contract - Summary Judgment

The defendant restaurant operators entered into an oral agreement with the plaintiff contractor to renovate the premises in advance of the opening of the restaurant. Renovations were carried out on a cost-plus basis, but there was no estimate, quote, or maximum price set out. Once the renovations were completed, the plaintiff sent an invoice. The defendants were unhappy with the amount charged. Several amended invoices were exchanged between the parties while they negotiated and tried to resolve the conflict. The plaintiff commenced this action for the outstanding balance. The parties agreed to resolve the dispute through summary judgment.
HELD: The court found that the plaintiff proved its account charged for the renovations, and the court set the amount of the judgment. The plaintiff was also entitled to prejudgment interest and column one costs. Cost-plus construction contracts mean that the owner agrees to reimburse the contractor for expenses incurred and to pay a specified fee over and above those expenses. The court noted that disputes in cost-plus construction contracts are typically fact-specific and informed by the contract between the

parties. The court cited *Infinity Construction Inc. v Skyline Executive Acquisitions Inc.*, 2020 ONSC 77 for guiding principles. A contractor in a cost-plus contract has the obligation to maintain proper accounts. The court noted that both parties had some responsibility for this dispute. The casual way the parties entered into the agreement without written terms and conditions and without specific estimates or quotes invited conflict. The court analyzed whether the plaintiff proved its claim on the preponderance of the evidence, including the presentation of proper accounts and related documentation. The court was persuaded by the evidence that the plaintiff obviously incurred costs to carry out the renovations, and that the renovations met the scope of the work expected by the defendants. The court found that the defendants' liability was reflected in the fourth version of the invoice, which included the discounts negotiated by the parties. This invoice represented a reasonably fair picture of the account that the plaintiff expected the defendants to pay.

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***Canadian Imperial Bank of Commerce v Knight*, 2023 SKKB 220**

Danyliuk, 2023-10-18 (KB23221)

Foreclosure - Order Nisi
Mortgages - Foreclosure - Judicial Sale

In 2014, CIBC loaned funds to a client for the purchase of a residential condominium in Saskatoon. Repayment of the loan was secured by a mortgage registered against the property. The client fell into default and in 2023, CIBC sought and obtained leave to commence foreclosure. CIBC's application for leave included a claim for relief which would allow them to sell the property.
HELD: The court declined the request for an order nisi for foreclosure but granted an order nisi for sale by real estate listing. The court's broad jurisdiction to order judicial sale is reflected in Rule 10-46 of *The Queen's Bench Rules*. Where the land value exceeds the amount of the mortgage debt, a judicial sale should be ordered. In this matter, the evidence indicated that there was equity in the property to which CIBC had no rightful claim.

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***Canalta Real Estate Services Ltd. v Melfort (City)*, 2023 SKKB 221**

Crooks, 2023-10-19 (KB23222)

Administrative Law - Property Assessment - Judicial Review
Administrative Law - Judicial Review - Standard of Review - Natural Justice - Procedural Fairness - Reasonableness - Reasons for Decisions

The applicants sought judicial review of the way the Saskatchewan Assessment Management Agency (agency) conducted property assessment values. The court considered 1) the appropriate standard of review; 2) whether the agency acted reasonably; and 3) whether the applicants were denied procedural fairness when they were not permitted to provide further submissions prior to the agency's recalculation as ordered by the review committee.
HELD: The application was dismissed. 1) The assessment should be reviewed on a standard of reasonableness. 2) The review committee's instructions for assessment were reasonable. 3) A remittal from the review committee back to the agency does not give rise to a new hearing. As such, there was no breach of procedural fairness.


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***Agrocorp Processing Ltd. v G.F. Farms Ltd.*, 2023 SKKB 219**

Keene, 2023-10-20 (KB23211)

Contract - Breach of Contract - Damages
Contracts - Breach - Non-Delivery - Damages - Crops - Production Contract
Statutes - Interpretation - *Sale of Goods Act*, Section 50

The plaintiff applied for summary judgment for damages against the defendant arising out of the failure of the defendant to honour a contract to deliver small red lentils to the plaintiff. The plaintiff alleged that the defendant did not provide any red lentils to the plaintiff, so the plaintiff had to go out into the market to purchase replacement lentils to fulfil contracts the plaintiff had with other parties, resulting in damages. The defendant brought a counter application for summary judgment asking the court to dismiss the plaintiff's claim, along with several defences.
HELD: The court awarded a judgment for damages in favour of the plaintiff. The defendant breached the production contract. There was no uncertainty regarding any of the essential terms of the production contract. The defendant argued that the contract was void for uncertainty because there was uncertainty of an essential term: the name of the purchaser. On the facts, the court found it was obvious that the defendant, on behalf of his company, was well aware that he was dealing with a corporation. In the past, the defendant had entered into six similar contracts and received payments from the same plaintiff. The court also determined whether the "right of first refusal" clause in the contract was valid. A right of first refusal is a potential buyer's contractual right to meet the terms of a third party's higher offer. The court found that the right of first refusal clause was unenforceable for being uncertain, and severed it from the contract. The court's opinion was that any damages should be quantified as the difference between the price offered by a third party and the market price. The court then looked to s. 50 of *The Sale of Goods Act* to determine the plaintiff's damages for non-delivery. The court found that there was availability of small red lentils for sale in the market during the time of non-delivery. The court found that the difference between the production contract price and the market price based on the stipulated contract obligation of 1,088 tonnes was $210,837, which represented the plaintiff's damages. However, the defendant also had to incur the cost to clean and load replacement lentils because of the breach. This resulted in further damages of $47,872.


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***Enviro-Gun Ltd. v Sherwood (Rural Municipality No. 159)*, 2023 SKKB 224**

Tochor, 2023-10-26 (KB23213)

Civil Procedure - *Queen's Bench Rules*, Rule 4-44

The plaintiffs issued a claim against the defendants in 2010 alleging several grievances against RM officers and councillors relating to the assessment and taxation of property. Parts of the claim were struck, while other parts remained for the plaintiff to review and amend. Nothing happened for two and a half years. After a notice of intention to proceed was filed, no further steps were taken for over nine years. The defendants filed an application to dismiss for delay under Rule 4-44 of *The Queen's Bench Rules*.
HELD: The court granted the application to dismiss the plaintiff's claim. The court had no hesitation in concluding that twelve years in total was inordinate delay, was inexcusable, and that it was not in the interests of justice to allow the claim to proceed. The court ordered costs in the amount of $800 to be paid to the RM.


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***Andros Enterprises Ltd. v Bennett*, 2023 SKKB 228**

Mitchell, 2023-10-31 (KB23215)

Civil Procedure - Parties - Application to Add a Third-Party Defendant
Contribution and Indemnity - Third Party - Discoverability - *Limitations Act*

A barbeque being used on an apartment balcony caught fire and caused significant damage to the apartment building. An action was commenced by the third-party defendant who applied for an order under the summary judgment regime striking or dismissing the third-party claim on the basis the claim was outside the limitations period and therefore statute-barred. The court considered: 1) the principles of discoverability in the context of a claim for contribution and indemnity, and 2) whether the third-party claim was statute-barred.
HELD: The application was allowed on the basis that the application to add the third-party was statute-barred. The principles of discoverability apply to claims for contribution and indemnity under s. 14 of *The Limitations Act*. The attempt to add a third party outside of the two-year limitation period did not amount to an alternative proceeding.


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***Hoth v Myers*, 2023 SKKB 231**

Bardai, 2023-10-31 (KB23224)

Landlord and Tenant - Appeal - Residential Tenancies
Judgments and Orders - Sufficiency of Reasons

A residential tenancy was ended as a result of a parking dispute between two tenants. The tenant appealed the decision on the basis that the hearing officer failed to apply the correct legal test, the tenant was denied procedural fairness, and the hearing officer failed to provide sufficient reasons. On appeal, the court considered whether sufficient reasons had been provided.
HELD: The reasons were inadequate, so a new hearing was ordered. The reasons of a hearing officer need not be perfect, but they ought to provide a reviewing court with sufficient understanding of the rationale utilized for the underlying decision. A review of this decision did not clearly identify the tests applied or the evidence assessed. Although the conclusion of the hearing officer might be appropriate, without knowing the test applied and factual findings upon which that test was analyzed, the conclusion could not be justified. Failure to provide adequate reasons is an error of law and a new hearing was ordered.


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***International Union of Elevator Constructors, Local 102 v Kone Inc.*, 2023 SKKB 234**

Brown, 2023-11-01 (KB23219)

Employment - Collective Agreement - Interpretation
Employment - Labour Relations - Grievance Arbitration
Labour Law - Judicial Review - Standard of Review - Reasonableness and Correctness

The applicant applied for judicial review of an arbitral decision interpreting the collective agreement on the basis that the arbitrator's interpretation was unreasonable and must be struck down.
HELD: The application was dismissed. The arbitrator's decision was justified and reasonable. A reasonable decision is one that is justified, transparent and intelligible; it does not need to perfectly include all arguments, statutory provisions, jurisprudence or other details. Where multiple interpretations may be considered reasonable, deference is required. The arbitrator took a deliberate and informed view of the entire situation and applied the modern approach to interpretation. After carefully setting out a logical approach, her conclusion was readily understandable, intelligible and within the realm of reasonableness.


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***Gardiner v Canada (Attorney General)*, 2023 SKKB 237**

Bardai, 2023-11-03 (KB23227)

Civil Procedure - Class Action - Certification
Civil Procedure - Abuse of Process - Multiplicity of Proceedings
Practice - Duty to Clients

Two competing claims were commenced on behalf of attendees of a residential school resulting in applications for certification on two separate proceedings based on essentially the same allegations by the same or similar classes of plaintiffs against the same defendants. Two separate judges were seized of the applications. The plaintiffs of this claim sought a permanent stay of the competing proceedings and a declaration that no other actions regarding the same subject matter may be commenced without leave of the court. The plaintiffs further sought an order directing immediate delivery of the file from the legal representatives of the competing claim. The court considered: 1) whether a lawyer can file an affidavit in support of an application argued by another lawyer from the same office; 2) whether the court has the power to stay the competing action and, if so, whether the action should be stayed; and 3) the responsibilities of a firm to the people who initially retained them.
HELD: The affidavit was struck, the application to stay the action dismissed, and the firm required to turn over all records pertaining to their client's directions. 1) As a general rule, the court wants to hear from the person with the best evidence. Lawyers, however, are only allowed to swear affidavits in proceedings in which they are the advocate if the matters in their affidavit are uncontroverted. A lawyer should not act as a witness and advocate when there are issues of credibility. 2) The court has the power under sections 6-4 and 6-13 of *The King's Bench Act* to order a stay of proceedings to avoid multiplicity of proceedings and prevent abuse of the court process. Although multiple proceedings should be avoided, a judge of the same court does not have authority to tell another judge of the same level what to do with a matter of which they are seized. 3) A lawyer and/or law firm has a duty to their client and must not allow a matter to languish.


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