CaseMail

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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Subject Index

***Arslan v Yapi ve Kredi Bankasi Anonim Sirketi*, [2024 SKCA 68]**

Caldwell Barrington-Foote Kalmakoff, 2024-07-11 (CA24068)

Judgments and Orders - Enforcement - Foreign Judgments - Registration
Administrative Law - Natural Justice - Procedural Fairness - Breach

This case was an appeal against the enforcement of a foreign judgment in Saskatchewan. The respondent bank obtained a judgment in Turkey against the appellant wherein he was found responsible for repaying a loan because he was a guarantor for that debt. The respondent then obtained a decision that the foreign judgment was enforceable at the Court of King's Bench in Saskatchewan. The appellant claimed that the judgment should not be enforced in Saskatchewan due to procedural fairness issues, a breach of natural justice, and misinterpretation of the nature of the foreign judgment by the chambers judge. The Court of Appeal (court) had to decide the nature of the Turkish court's decision, whether it fit the "final decision" requirement per s. 2 of *The Enforcement of Foreign Judgments Act* (EFJA), and whether the court proceedings in Turkey violated the principles of natural justice and procedural fairness.

HELD: The court dismissed the appeal. The court assessed whether the Turkish appeal process, including the high filing fee, denied the appellant's procedural fairness argument. Section 4(f) of the EFJA states that a foreign judgment cannot be enforced if rendered in a proceeding contrary to procedural fairness and natural justice principles. The Supreme court of Canada in *Beals v Saldanha*, 2003 SCC 72, said that the denial of natural justice could be grounds for refusing enforcement if foreign proceedings are contrary to Canadian notions of fundamental justice. Here, the court held that filing fees in the Turkish court did not inherently violate natural justice unless they prevented a fair process. Turkish law provided for fee waivers, but the appellant was unsuccessful in obtaining such a remedy in the Turkish court. Furthermore, the court compared Turkish appeal fees to Canadian security for costs, noting differences but finding no breach of fundamental justice. The court also confirmed that the Turkish judgment was final, as per expertevidence. The court dismissed the appeal, affirming that the Turkish proceedings met the minimum standards of procedural fairness and natural justice required under Canadian law. The foreign judgment was deemed enforceable in Saskatchewan, and costs were awarded to the respondent.

 Back to top

***R v Larose*, 2024 SKCA 69**

Leurer Tholl McCreary, 2024-07-12 (CA24069)

Criminal Law - Appeal - Fresh Evidence
Criminal Law - Manslaughter - Sentence - Appeal

J.L. appealed his 15-year sentence for manslaughter. At the time of the offence, J.L. was released from custody subject to probation conditions to keep the peace and be of good behaviour. Shortly after his release, he had an altercation with the victim at a drug house leading to the death of the victim. He was convicted of manslaughter. On appeal, J.L. sought to introduce a *Gladue* report, claimed errors in sentencing principles by the lower court, and challenged the fitness of the sentence. The court had to decide whether to accept the *Gladue* report at the appeal level and whether the judge made an error in the sentencing principles and fitness of the sentence.
HELD: The court upheld the sentence. The court refused to admit the *Gladue* report as new evidence on appeal, noting that this had not been before the trial judge, nor did the defence request such a report at trial. The court applied the test for admitting new evidence in an appeal based on *Palmer*, which includes criteria such as relevance to a decisive issue, credibility, and potential impact on the trial result (See *R v Palmer*, [1980] 1 SCR 759, as reiterated in

Criminal Law - Disclosure - Third Party Records

Criminal Law - Evidence - Expert Evidence

Criminal Law - Evidence - Witness - Expert

Criminal Law - Manslaughter - Sentence - Appeal

Criminal Law - Procedure - Disclosure

Criminal Law - Rolled-up Charge

Criminal Law - Sentence Appeal - Second Degree Murder

Criminal Law - Sentencing - Aboriginal Offender

Criminal Law - Sentencing - Principles of Sentencing

Criminal Law - Sentencing - Sex Offender Registration

Evidence - Expert Evidence - Notice

Family Law - Enforcement of Maintenance Orders

Judgments and Orders - Enforcement - Foreign Judgments - Registration

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

Mortgage - Foreclosure - Application to Confirm Judicial Sale

Mortgage - Foreclosure - Farmland - *Saskatchewan Farm Security Act*

Barendregt v Grebliunas, 2022 SCC 22). The court found no basis to admit the *Gladue* report. Furthermore, the court noted that the pre-sentencing report at trial already included *Gladue* considerations. The trial judge introduced a lengthy legal analysis of the *Gladue* principles and considerations in the sentencing decision based on the information from the pre-sentencing report. The trial judge acknowledged the troubled background of the appellant but still prioritized public safety and deterrence due to the seriousness of the offence. The court agreed with the trial judge, upholding the 15-year sentence, stating such a sentence was appropriate due to the gravity of the offence and the appellant's high moral culpability. The court further found that the trial judge had appropriately compared the appellant's sentence with other court decisions in similar situations, providing a similar range of sentencing.

 Back to top

***Miller v Miller Estate*, 2024 SKCA 70**

Leurer Kalmakoff Bardai, 2024-07-15 (CA24070)

Civil Procedure - Appeal - Leave to Appeal - *Nunc Pro Tunc*
Wills and Estates - Appeal
Wills - Estates - Probate - Genuine Issue to be Tried - Solemn Form

This was an application to the Court of Appeal (court) to quash an appeal because no right of appeal existed regarding an interlocutory decision. The main parties were the three children of the deceased. One of the children contested the will's validity and claimed undue influence in favour of another child, resulting in a disproportionate disposition of the estate. The trial judge ordered a trial to prove the will in solemn form, questioning the deceased's testamentary capacity and potential undue influence. The estate representative appealed this decision without first seeking leave of the court. Another beneficiary applied to have the estate's appeal quashed. The main legal issue was whether the decision to order a trial to prove the will in solemn form was interlocutory or final, which would determine whether an appeal required leave.
HELD: The court quashed the appeal of the estate's representative and awarded costs against him. The lower court decision was interlocutory because it did not resolve the central issue of the will's validity. Pursuant to section 46.1(1)(a) of *The Court of Appeal Rules* and section 8(1) of *The Court of Appeal Act*, there is no right of appeal from an interlocutory decision, and the appellant must seek leave of the court to proceed with an appeal. The estate representative argued that if the trial decision were interlocutory, the court should grant the leave *nunc pro tunc* ("now for then" to correct an earlier ruling retroactively). The court denied this request,

Municipal Law - Breach of Statutory Duty

Municipal Law - Judicial Review

Pleadings - Statement of Claim - Striking Out

Practice - Pleadings - Statement of Claim - Application to Strike - No Reasonable Cause of Action

Practice - Pleadings - Statement of Claim - Application to Strike - Statute-barred - Limitation Period

Practice - Pleadings - Statement of Claim - Striking Out - Cause of Action

Small Claims - Liability in Automobile Accident

Small Claims - Liability in Automobile Accident - Liability for Deductible

Small Claims - Motor Vehicle Accident - Liability

Small Claims - Practice and Procedure - Issuance of Claim

Statutes - Interpretation - *Cities Act*, Section 59, Section 61

Statutes - Interpretation - *Limitation of Civil Rights Act*, Section 18

Wills - Estates - Probate - Genuine Issue to be Tried - Solemn Form

Wills and Estates - Appeal

stating that *nunc pro tunc* is an extraordinary power that should not be used to defeat the objectives of s. 8 of *The Court of Appeal Act*. Further, the court stated that the estate representative did not establish the criteria under *Rothmans, Benson & Hedges Inc. v Saskatchewan*, 2002 SKCA 119, to grant a *nunc pro tunc* remedy. The *Rothmans* test requires the court to ask: "does the decision bear heavily and potentially prejudicially upon the course or outcome of the particular proceedings? [D]oes it raise a new or controversial or unusual issue of practice? [D]oes it raise a new or uncertain or unsettled point of law? [D]oes it transcend the particular in its implications?" (para 21). The court ruled that the answer to each of these questions was "no" in the current case. The appellant also caused an 11-month delay in filing the appeal documents, which weighed against granting leave. The court quashed the appeal and awarded costs against the estate representative.

 Back to top

***Frank and Ellen Remai Foundation Inc. v Bennett Jones LLP*, 2024 SKCA 71**

Caldwell Tholl Drennan, 2024-07-15 (CA24071)

Civil Procedure - Summary Judgment - Appeal

This was an appeal from a decision of the Court of King's Bench in which the chambers judge dismissed the appellants' application for summary judgment. At the Court of King's Bench, the appellants had claimed that the respondents provided negligent legal advice regarding tax and financial implications related to an alter-ego trust. The chambers judge found that a trial was necessary to resolve the factual disputes between the parties, especially whether the alleged advice was given. The evidence was not sufficient to decide on liability and negligence through summary judgment because there were gaps and inconsistencies in the presented evidence. The appellants appealed the dismissal of the summary judgment application, claiming the chambers judge did not use the court's fact-finding powers, failed to address alternative theories, and mishandled the evidence. The Court of Appeal (court) had to decide whether the chambers judge erred in finding a genuine issue that required a trial and whether the chambers judge erred in not exercising fact-finding powers because it was not in the interests of justice. HELD: The court dismissed the appeal. Rule 7-5(1)(a) and 7-5(2)(b) of *The King's Bench Rules* governed the issues of this case. For a judge to grant summary judgment under the Rules, the judge must be satisfied, based on affidavit and other evidence and their fact-finding powers under the Rules, that there would be no genuine issue remaining that would require a trial. The chambers judge had serious concerns about whether the alleged negligent legal advice was given, and the parties' evidence presented significant discrepancies that left the judge in significant doubt about addressing the parties' claims on summary judgment. Furthermore, the nature of the shortcomings of the evidence precluded the chambers judge from exercising the fact-finding powers of the court under Rule 7-5(2)(b) because to do so would have been against the interests of justice. The court also ruled that the chambers judge adequately addressed the alternative theories of the appellants for breach of duty. However, the evidence before the chambers judge did not support such a claim at that stage and a trial would be best to address those issues. The court further agreed with the chambers judge that the evidence was insufficient to grant summary judgment. The appeal was dismissed, and costs were awarded against the appellants.

 Back to top

***R v McKay*, 2024 SKCA 72**

Barrington-Foote McCreary Drennan, 2024-07-17 (CA24072)

Criminal Law - Evidence - Witness - Expert
Criminal Law - Evidence - Expert Evidence
Criminal Law - Rolled-up Charge
Criminal Law - Sentence Appeal - Second Degree Murder

The appellant appealed from the conviction and sentencing decision of the Court of King's Bench. He had been convicted of second degree murder and sentenced to life in prison with no eligibility for parole for 17 years. The appellant did not deny that he caused the victim's death. He claimed that the trial judge failed to consider the expert evidence as to the effects of drugs and alcohol on a person's memory and their capacity to understand the consequences of their actions, and the evidence of anger, excitement and instinctive reaction. The Court of Appeal (court) considered whether the trial judge erred by failing to consider expert evidence or by failing to consider the evidence of anger, excitement and instinctive reactions.
HELD: The court allowed the appeal and sent the matter for a new trial, having found that the trial judge erred in law by failing to consider the expert evidence from a medical doctor about the effects of drugs and alcohol on the appellant. The trial judge also failed to address the appellant's claims of alcohol-induced amnesia and the relevant evidence. The trial judge erred by refusing to consider anger, provocation, and other emotional states in the context of intoxication, which could impact the assessment of intent for murder. The evidence of each witness should be assessed in light of the totality of the evidence as a whole (see: *R v M.J.*, 2022 SKCA 106 at para 23). The trial judge qualified the expert evidence, a medical doctor, to

give testimony about the effects of drugs and alcohol, which made it readily apparent that there was a nexus between that evidence and the question of the amnesic state of mind of the accused. However, the trial judge failed to give adequate weight to these matters, which led to the flawed assessment of the appellant's state of mind and the verdict of second degree murder. The trial judge also erred by not considering evidence of the appellant's anger and instinctive reactions in a "rolled-up charge" approach. This approach involved assessing the cumulative impact of intoxication and emotional state on intent, even if provocation as a full defence was not applicable (see: *R v Phillips*, 2017 ONCA 752 at para 154). The trial judge, therefore, failed to properly consider and apply all evidence impacting the appellant's state of mind when determining the required intent for a second degree murder conviction. The court quashed the conviction and sentencing decision and remitted the matter for a new trial.

 Back to top

***Whitecalf v Stonechild*, 2024 SKKB 123**

Gerecke, 2024-06-27 (KB24120)

Aboriginal Law - Reserves and Real Property
Creditor and Debtor - Seizure
Family Law - Enforcement of Maintenance Orders

This case involved an application by the Maintenance Enforcement Office (MEO) to enforce a maintenance order against the individual defendant, with Peepeekisis Cree Nation (PCN) being identified as the account debtor responsible for paying funds to satisfy the defendant's child support arrears. The applicant was the recipient and was entitled to receive child support. The PCN had funds as part of a Treaty settlement and was to distribute them to the PCN members accordingly. The MEO director applied to designate the PCN as a debtor so the funds that the defendant was entitled to could be retrieved to satisfy the child support arrears. The court had to determine whether PCN was an "account debtor" within the meaning of section 25(1) of *The Enforcement of Maintenance Orders Act* (Act) and what evidence and rules applied respecting the seizure of funds from PCN under the *Indian Act*. HELD: The court ruled that the PCN was an account debtor and should pay the seized amount from the defendant's allocated funds to the MEO for child support arrears. The court applied the principles of statutory interpretation to conclude that the Act's remedies should be applied broadly to fulfill its objective of enforcing maintenance orders (See *GSI Global Shelters Developments Ltd. v Rural Municipality of Last Mountain Valley No. 250*, 2024 SKCA 30, for the instructions of the Court of Appeal about how courts should interpret statutes). The term "account debtor" was interpreted to include entities like PCN when they owe a monetary obligation. The funds from the settlement distributed to PCN members, including the defendant's share, were deemed a "monetary obligation." Once the distribution was declared and some members were paid, the payment to the defendant was no longer discretionary. The court found that PCN was an "account debtor" under the Act and liable for the amount specified in the notice of seizure to satisfy the child support arrears. On the second issue, the evidence should establish that a recipient is Indian and eligible to receive funds from the PCN. Status affects the applicability of seizure measures and enforcement of maintenance orders when assets of a status Indian are situated on a reserve. Such assets are exempt from seizure unless the recipient is a Band or status Indian. The MEO provided evidence, including a treaty number and a sworn affidavit, that the recipient is a status Indian, satisfying the court of her status under the *Indian Act*. The court referenced *J.P. v Peigan Band*, 1991 ABCA 10, and *Director of Maintenance Enforcement v Roesler*, 2022 SKQB 45, as guidance for the requirement and sufficiency of evidence respecting Indian status and the exemptions against seizure of Indian assets on reserve. In conclusion, the court ruled that the PCN was liable as an account debtor to pay the seized amount from the defendant's share of the treaty settlement to fund the child support arrears. The evidence was sufficient to establish that the seizure was valid because the recipient was a status Indian, and the exemptions under section 89 of the *Indian Act* did not prevent the seizure.

 Back to top

R v Bellegarde, 2024 SKKB 126 (not yet available on CanLII)

Kilback, 2024-07-05 (KB24121)

Charter of Rights - Right to Counsel
Charter of Rights - Right to Retain and Instruct Counsel
Charter of Rights - Search and Seizure
Charter of Rights - Search and Seizure - Evidence - Exclusion
Constitutional Law - *Charter of Rights*, Section 10(b)
Criminal Law - Defences - *Charter of Rights*, Section 10(b), Section 24(2)

The accused was charged with child pornography related offences. The key issue in this case was whether the electronic devices seized from his home should be excluded from evidence because of an alleged breach of his right to counsel under subsection 10(b) of the *Charter of Rights*. The RCMP executed a search warrant at the accused's home, and he was subsequently detained and informed of his right to counsel. He requested to speak with his father to ask for a lawyer's name, but the RCMP only allowed him to talk to legal aid duty counsel. As part of the search, the RCMP seized electronic devices from the accused's home that contained child pornography content. The accused argued that the RCMP violated his s. 10(b) *Charter* rights by denying him the opportunity to contact his father to obtain a lawyer of his choice. He applied under subsection 24(2) of the *Charter* to exclude the electronic devices and their contents from evidence. The only issue before the court was whether the electronic devices and their contents should have been excluded from evidence under subsection 24(2) of the *Charter* because of the breach of the accused's right to counsel.
HELD: The court ruled that the evidence should not be excluded. "Under ss. 24(2) of the *Charter*, evidence obtained in a manner that infringes the *Charter* rights of an accused must be excluded if it is established that "having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute""(See *R v McColman*, 2023 SCC 8). The

party that seeks to exclude evidence under s. 24 of the *Charter* has the burden of proof to satisfy the court that admission of such evidence brings disrepute to the administration of justice. The court should analyze the seriousness of the Charter-infringing conduct of the state (here, the RCMP), the impact of the breach on the *Charter* interests of the accused, and society's interest in the adjudication of the case on its merits (See *R v Grant*, 2009 SCC 32). The court acknowledged that the RCMP's failure to allow the accused to contact his father to get the name of a lawyer breached his right to counsel. However, this breach was not deliberate or malicious but rather a result of a misunderstanding by the RCMP officer about the law. The court found that although the breach was serious, it was mitigated because the accused was still provided access to legal aid duty counsel. The court also highlighted the seriousness of the charges related to child pornography (See *R v Bykovets*, 2024 SCC 6 at para 6; *R v Sharpe*, 2001 SCC 2 at para 158). Therefore, society's interest in seeing such charges adjudicated on their merits strongly favoured the inclusion of the evidence from the seized electronic devices and their highly reliable, relevant, and essential content to the Crown's case against the accused. The accused also argued the *Gladue* principles should be considered in light of subsection 24(2) of the *Charter*. However, the court stated that *Gladue* principles did not apply in this context, citing court precedents limiting the application of *Gladue* factors outside sentencing matters. The court concluded that the importance of the evidence and the offence's seriousness outweighed the *Charter* breach's seriousness. Therefore, the accused's application to exclude the evidence from the seized devices was dismissed.

 Back to top

***R v Paddy*, 2024 SKKB 137**

Elson, 2024-07-26 (KB24133)

Criminal Law - Disclosure - Third Party Records
Criminal Law - Procedure - Disclosure

The applicant was found guilty of six firearm-related offences and sought disclosure of records in advance of her sentencing hearing. The application was prompted by the Crown serving and filing a police officer's affidavit containing evidence suggesting the presence of aggravating circumstances related to the offences, which evidence did not come out at trial. The evidence included references to information contained in three intelligence reports created by investigating police officers.
HELD: The application was granted. The court also observed obiter that the intelligence reports in question should have been the subject of first-party disclosure. The court determined that the documents were likely relevant to the case against the accused. The production of third-party records in criminal proceedings turns on the application of a two-stage process. The first stage calls for the accused to satisfy a court that the documents/records sought are "likely relevant" to the case against the accused. If the likely relevance threshold is met, the second stage calls for the judge to determine, after inspection, whether the documents/records, or portions thereof, should be produced. In this case, the Crown's actions essentially conceded the likely relevance of the information in the intelligence reports and the applicant's awareness of the intelligence reports arose directly from the Crown. In addition, the Court found that any blanket privilege that the police may have had with respect to the intelligence reports was partly waived by the police officer's affidavit and finding blanket privilege would create manifest unfairness for the accused.

 Back to top

***Prairie Pride Natural Foods Ltd. v Agri-foods Appeal Committee*, 2024 SKKB 138**

Tomka, 2024-07-26 (KB24132)

Administrative Law - Judicial Review - Agri-Foods Appeal Committee
Agriculture - Appeal

This was an appeal against the decision of the Agri-Foods Appeal Committee (committee), which had concluded that the appellants were not aggrieved by the minimum live price set for chicken by the respondents. The committee had concluded that the appellants had not demonstrated that the setting of the minimum live price of chicken, for the disputed production cycles, was unfair, unreasonable, nor contrary to *The Agri-Food Act, 2004* (the Act) or *The Chicken Marketing Plan Regulations* (Marketing Plan). HELD: The appeal was dismissed. (1) The committee did not err in its treatment of evidence. Under s. 30(2) of the Act, the committee has a broad discretion in determining what evidence will be admissible and it will accept. In this case, the court concluded that the committee had evidence before it that properly supported its findings of fact. The committee's decision also detailed the arguments of both parties and provided an explanation of the evidence it considered along with the reasons for accepting or rejecting such evidence. The committee in the end considered all evidence and simply chose to put more weight on the evidence supporting the position submitted by the respondents. (2) The committee did not err in law in its interpretation of s. 5 of the Marketing Plan. The proper approach to issues of statutory interpretation is the so-called "modern approach" which holds that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament." In this case, the court determined that the appellants' argument unnecessarily placed a narrow interpretation of the considerations that go into the setting of the minimum price for chicken by the respondent and unduly fetter the power and discretion of the committee and the respondents. The court also determined that the committee balanced the considerations of fairness, stability and cost of production when considering what price should be set during the production cycles in issue. As such, the committee did not misinterpret the Marketing Plan objectives. (3) The committee did not exceed its jurisdiction. The hearing before the committee is not an appeal on the record and the committee is given the jurisdiction to make rules regarding the management and conduct of its appeal. The hearing before the committee is by way of a trial de novo and the committee has a quasi-judicial role. In this case, the committee understood their role and properly identified the issues they were to consider consistent with their statutory jurisdiction. The committee's decision also clearly indicated that the committee considered and addressed the proper issues.

 Back to top

***Olenic v Butler*, 2024 SKKB 127**

Bergbusch, 2024-07-08 (KB24122)

Civil Procedure - *King's Bench Rules*, Rule 5-39, Rule 5-40, Rule 5-46, Rule 9-18
Evidence - Expert Evidence - Notice

This court decision dealt with conformity with the rules of expert evidence in *The King's Bench Rules*. This case stemmed from a medical malpractice matter and claims of medical negligence in caring for a patient who died because of complications after elective surgery. The plaintiff sought to file expert evidence reports and call expert witnesses to testify. However, the plaintiff did not properly comply with the timeline requirements for filing and calling expert evidence per the relevant rules. Therefore, the plaintiff sought leave of the court to provide expert evidence and call expert witnesses. The court needed to decide whether to grant leave to call a hematologist to provide expert evidence at trial despite her report having been served late and whether to allow the plaintiff to call four expert witnesses to provide opinion evidence despite the rules limiting the number of experts a party may call on a single subject.
HELD: The court granted leave on both issues. The court had to analyze the leave applications by asking: 1) was the expert evidence relevant and necessary to adjudicate this case? 2) Did the plaintiff provide a satisfactory explanation for the delay? 3) Would granting leave prejudice the defendants in a way that an award of costs could not remedy? 4) Would the admission of the evidence unduly delay the trial? These inquiries are case-specific, and "[t]he overarching concern should be to ensure an adjudication on the best evidence while minimizing unfairness to any party" (para 35). 1) The court found that the hematologist's report was relevant and necessary to determine the issue of causation at trial. 2) The plaintiff also provided a satisfactory explanation for the delay in submitting the hematologist's report, noting the complex nature of the medical issues and the need for specialized input. 3) The court also noted that the defendants would not be prejudiced because there was enough time before trial for them to review the report. 4) Allowing the report and calling the hematologist for testimony would not delay the trial either. The court allowed calling the other four experts to provide expert opinion because their testimony would provide complementary evidence rather than duplicate testimony. Their testimony would assist the court in understanding the complex medical issues at play. The court emphasized that this decision was made to ensure the case would be adjudicated with all relevant evidence, while also considering fairness to all parties. The issue of whether these experts were qualified to provide opinion evidence remained to be addressed at trial.

 Back to top

***Affinity Credit Union 2013 v Monastyrski*, [2024 SKKB 128]**

Currie, 2024-07-16 (KB24127)

Mortgage - Foreclosure - Application for Judicial Sale - Order *Nisi*
Mortgage - Foreclosure - Application to Confirm Judicial Sale
Mortgage - Foreclosure - Farmland - *Saskatchewan Farm Security Act*

The plaintiff applied for an order confirming the judicial sale of land belonging to the defendants. The order *nisi* for the sale of the land was granted in October 2023. The defendants applied for an order setting aside the order nisi, arguing that by operation of s. 44 of *The Saskatchewan Farm Security Act* (the Act), the land was exempt from being the subject of an order for foreclosure of sale.
HELD: The judicial sale was confirmed and the defendant's application for an order setting aside the order *nisi* was dismissed. (1) There was no exceptional circumstance justifying the setting aside of the order *nisi*. Section 44(10) of the Act provides that no order for sale of a mortgaged homestead shall be made in an action for foreclosure of the mortgage or any relief other than foreclosure that may be granted to the mortgagee. Section 44(12) of the Act allows for orders to be made excluding any mortgage or class of mortgages from s. 44 of the Act where it is in the farmer's best interests. However, s. 44(12.3) of the Act provides that such exclusion does not apply to a mortgage that is made solely for the purpose of purchasing a homestead or solely for the purpose of new construction or improvements on the homestead. In this case, there was no dispute that at the time of making the mortgage, the parties agreed that the mortgage was being made solely for the purpose of new construction on the homestead. As a result, s. 44(12) of the Act was inapplicable and there was no basis for setting aside the order *nisi*.

 Back to top

***Mintenko v Mintenko*, [2024 SKKB 134]**

Morris, 2024-07-19 (KB24129)

Civil Procedure - Pleadings - Striking Out - King's Bench Rule 7-9
Pleadings - Statement of Claim - Striking Out
Practice - Pleadings - Statement of Claim - Application to Strike - No Reasonable Cause of Action
Practice - Pleadings - Statement of Claim - Application to Strike - Statute-barred - Limitation Period
Practice - Pleadings - Statement of Claim - Striking Out - Cause of Action

The testator in this case passed away in 1988 and his will created a trust for his surviving spouse, who passed away in 2016. The residue of the estate became available for distribution to the residuary beneficiaries, one of whom was the plaintiff. The plaintiff alleged the first defendant took advantage of his position as executor of the estate and wrongfully acquired estate property for his own benefit and to the plaintiff's detriment. The matter was adjourned sine die. However, the plaintiff chose to file a statement of claim in 2024 rather than return before the judge. The defendants applied to strike out the plaintiff's claim without leave to amend as the claim was statute-barred, pled no reasonable cause of action; was scandalous, frivolous or vexatious; and was redundant and unnecessarily lengthy.
HELD: The claim was struck out. (1) The plaintiff's claim was statute-barred. Under s. 5 of *The Limitations Act*, no proceedings shall be commenced with respect to a claim after two years from the day on which the claim is discovered. If a limitation period is raised against a claimant, the claimant has the burden of proving that the limitation period has not expired or no limitation period applies to the claim. In this case, the majority of the allegations in the claim pertained to matters dating from long before 2019. Pursuant to s. 6(2) of *The Limitations Act*, the plaintiff was presumed to have discovered the causes of action at the time the impugned acts

occurred (no later than 2019). Where no evidence had been tendered to place this presumption in question, there was no arguable issue with respect to its application. The pleading in the plaintiff's reply to the defendant's statement also confirmed that as of 2019, the plaintiff's extensive investigation had established several years of wrongdoing by the first defendant from 1988 to 2016. Because the claim was not issued until April 3, 2023, it was issued beyond the two-year limitation period established by ss. 5 and 6 of *The Limitations Act*.

 Back to top

***Calidon Financial Services Inc. v MacKay*, 2024 SKKB 135**

Morris, 2024-07-19 (KB24130)

Contracts - Conditional Sales
Creditors and Debtors - *Limitation of Civil Rights Act*
Statutes - Interpretation - *Limitation of Civil Rights Act*, Section 18

The defendant signed an agreement with the plaintiff in 2014 with respect to a combo-vac truck (i.e., a large truck with pressure washing and vacuum functions). After December 15, 2014, the defendant was unable to make monthly payments and the combo-vac truck was sold by auction. The plaintiff received proceeds from the auction sale, but this still left a large deficiency owing pursuant to the contract. The plaintiff sued for the deficiency and eventually brought a summary judgment application.
HELD: The plaintiff's claim and the summary judgment application were dismissed. (1) The court determined that the contract was a conditional sale contract. In determining whether a contract is a true lease or a conditional sale contract, the following considerations apply: (a) a significant down payment is not characteristic of a true lease agreement; (b) the payment of taxes and insurance by a lessee and a lessee's obligation to repair are evidence that an agreement may be characterized as a conditional sale; (c) the existence of an acceleration clause for all payments upon default indicates that a lease is, in reality, a conditional sale; (d) an option to purchase the property at significantly less than fair market value at the end of the term is a clear indication of a conditional sale. In this case, there was a significant down payment. The defendant was also obliged to pay taxes and insurance and had an obligation to repair. The contract also had an acceleration clause, and the parties agreed that the option to purchase the combo-vac truck for $100 represented an option to purchase it for significantly less than its fair market value at the end of the term. Based on the foregoing, the court was satisfied that the contract was a conditional sale contract, and the plaintiff could not pursue any of the remedies it sought against the defendant under s. 18(1) of *The Limitation of Civil Rights Act* (LCRA). (2) The Court determined that the exception in s. 18(2)(c) of the LCRA was inapplicable. Under s. 18(2)(c) of the LCRA, the sale of equipment or material used in the production of petroleum is exempt from the operation of s. 18(1) of the LCRA. The type of equipment contemplated by s. 18(2)(c) of the LCRA with respect to the oil and gas production industry is equipment directly involved in the production of oil or natural gas and not general purpose equipment that may be used to maintain such equipment. Combo-vac trucks do not fall within this exemption as they are not directly involved in oil or natural gas production, and as a result, the exception in s. 18(2)(c) did not apply.

 Back to top

***Engaged Neighbours United for Fairness in Regina Advocacy Association Incorporated v Regina (City)*, 2024 SKKB 136**

Elson, 2024-07-22 (KB24131)

Municipal Law - Breach of Statutory Duty
Municipal Law - Judicial Review
Statutes - Interpretation - *Cities Act*, Section 59, Section 61

The applicants challenged the redistribution of the municipal ward boundaries for the city of Regina, asserting that the city's Municipal Wards Commission (commission) did not comply with the direction under The Cities Act to consider "any special diversity or community of interest of the inhabitants" in specific areas of Regina. The applicants also argued that the report of the commission was not properly filed with the city, which was a precondition to the formal creation of the wards.
HELD: The application was dismissed in its entirety. (1) The court held that the findings of the commission were reasonable. Before a decision can be set aside as being unreasonable, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. In this case, the applicant advanced no arguable challenge related to either the justification or intelligibility of the commission's decision. The applicant's transparency challenge, premised on the proposition that the report did not more fully address circumstances related to "special diversity or community of interest," amounted to a glancing blow. The applicant could not point to any obvious shortcomings or fatal flaws in the commission's analysis of the evidence and submissions before it. In addition, while the direction under s. 61(1)(b) of *The Cities Act* to take into consideration the "special diversity or community of interest of the inhabitants" could not be ignored by a municipal wards commission, the direction was not as imperative, in a ward-specific sense, as the directions in s. 59 of *The Cities Act*. By giving greater regard to the directions in s. 59 of *The Cities Act* than those in s. 61 of *The Cities Act*, the commission acted not only reasonably, but correctly. (2) The commission properly filed its final report with the city. The meaning and significance of the terms "file", "filed" and "filing" in legislation depend on the circumstances associated with its intended use, including: (i) the context and purpose of the legislation in which the term appears; (ii) the purpose for which a document is to be filed; (iii) the responsibility and authority of the entity filing the document; and (iv) the responsibility and authority of the institution or person who receives the filing. In this case, the court was unable to accept the notion that the city council could have any legitimate role in determining whether the report was filed or not, as to do so would come inexcusably close to imperilling the virtue of a truly independent, commission-based ward creation and review process.

 Back to top

***R v Hansen*, 2024 SKPC 27**

Hinds, 2024-07-18 (PC24021)

Criminal Law - Care and Control - Presumption
Criminal Law - Care or Control - *De Facto* - Actual
Criminal Law - Care and Control while Impaired - Care and Control while over .08 - *De Facto* Care and Control

The defendant was charged with operating a vehicle while impaired by alcohol. At the time of the event, a concerned citizen contacted the police, reporting that the defendant appeared intoxicated. The police found the defendant sitting in the driver's seat of his car, which was parked on the street. The key issue in this case was whether the defendant was in care and control of his vehicle while impaired to meet the legal threshold under the *Criminal Code*.
HELD: The court found the defendant not guilty of the charges. The defendant successfully rebutted the presumption of operation of the vehicle, and the Crown failed to prove beyond a reasonable doubt that the defendant was in care and control of his vehicle in a manner that created a realistic risk of setting it in motion. The court acknowledged the statutory presumption that someone found in the driver's seat is presumed to be in control of the vehicle. However, this presumption can be rebutted if the accused can prove they did not intend to set the car in motion. The court cited *R v Boudreault*, 2012 SCC 56, and *R v Poncelet*, 2014 SKCA 30, as leading authorities respecting this issue. The court analyzed whether the Crown had established that the accused was occupying the driver's seat. If yes, did the presumption apply? Did the accused rebut the presumption? If no, then the court should conclude he was in care and control of the car, and if the Crown established the other elements of the offence, the court should convict; if the accused rebutted the presumption, the court must determine whether he was in de facto care and control of the vehicle based on the totality of the evidence. The defendant testified that while he sat in the driver's seat to recover from nausea, he did not intend to drive. His testimony was corroborated by his friend, who confirmed the defendant handed him the car keys, indicating no intent to drive. The court also examined the defendant's actions (handing over the car keys), his conditions (sitting in the driver's seat to recover from nausea) and his plans to walk home and ruled that the evidence established there was no realistic risk of danger. The court acquitted the defendant.

 Back to top

R v M.W.B., **2024 SKPC 24**

Lang, 2024-07-22 (PC24020)

Criminal Law - Assault - Sexual Assault
Criminal Law - Sentencing - Aboriginal Offender
Criminal Law - Sentencing - Principles of Sentencing
Criminal Law - Sentencing - Sex Offender Registration

This was a sentencing decision for the defendant, who was convicted of sexual assault charges against a minor victim. The

defendant was living with the victim's mother at the relevant times of the offence and was considered to have stepped into the role of a stepfather. The court balanced the need for denunciation and deterrence in cases of serious offences against vulnerable victims (such as children) and the consideration of the offender's personal circumstances, particularly under the *Gladue* framework for Indigenous offenders. The main issue before the court was determining an appropriate sentence for the defendant, taking into account the severity of the offence, the victim, the *Gladue* factors, and the broader principles of sentencing.
HELD: The court sentenced the defendant to six years of imprisonment and other ancillary orders, such as complying with the *Sex Offender Information Registration Act* for 20 years, among other restrictions and requirements The court followed the principles of sentencing provided in ss. 718-718.2 of the *Criminal Code*, the aggravating and mitigating circumstances of the offender, and the Supreme Court of Canada's guidance from *R v Friesen*, 2020 SCC 9, regarding the elevated sentencing requirements for sexual offences against children. The aggravating factors in this case were as follows: the victim was very young (six to eight years old); the defendant assaulted the victim for over a year; the offence happened within a position of trust because the victim saw the defendant as a stepfather; the assault occurred in the victim's home, which should have been a place of safety for her; and the defendant had a prior criminal record, including a conviction for domestic violence. The mitigating factors were as follows: the defendant was Indigenous with significant *Gladue* factors, including difficulty in upbringing and exposure to family violence and substance abuse; the defendant took rehabilitation efforts such as maintaining sobriety and reconnecting with his cultural identity; and he received support from his community and was employed. Based on all these relevant factors and principles of sentencing, the court found that six years of imprisonment and ancillary orders were appropriate.

 Back to top

***Xie v Meyer*, 2024 SKPC 29**

Demong, 2024-07-22 (PC24022)

Small Claims - Liability in Automobile Accident
Small Claims - Liability in Automobile Accident - Liability for Deductible
Small Claims - Motor Vehicle Accident - Liability
Small Claims - Practice and Procedure - Issuance of Claim

This case concerned the jurisdiction of the small claims court under *The Small Claims Act, 2016* as it related to the plaintiff's claim. The court noted that the plaintiff's claim did not involve any actual damage to the vehicle but instead sought a declaratory judgment that the plaintiff should not be bound by their insurance company's determination of fault, entitling them to return the insurance deductible. The judge reviewed the claim and relevant documents to determine whether a summons should be issued, considering the limited jurisdiction of the small claims court. It can only adjudicate on specific types of actions, including claims for debt or damages, recovery of personal property, and relief from opposing claims to personal property. The court had to decide whether it had jurisdiction to issue a summons for a claim that sought a declaration of non-liability for an insurance deductible without any actual damage to the plaintiff's car.
HELD: The court concluded that it did not have jurisdiction to adjudicate the claim as presented. *The Small Claims Act, 2016* in

section 3(1) identifies the types of actions that can be heard at the small claims court. The plaintiff's claim was not one of the prescribed types. Furthermore, small claims court does not have jurisdiction to adjudicate on matters of fault determination in the absence of actual damage (see: *Pidskalny v Yonge*, 2009 SKPC 102). Also, the small claims court's jurisdiction did not extend to issuing declaratory judgments on insurance matters where no damages have been claimed (see: *Saskatchewan Government Insurance v Valliere*, 2005 SKQB 430). The court concluded that it did not have jurisdiction to adjudicate the claim. The court refused to issue a summons to proceed with the action against the defendant. The plaintiff was advised that they could withdraw their claim and seek a refund of their filing fee. The court also suggested that the plaintiff might seek legal advice or contact the insurance company's fair practices office for further assistance.

 Back to top