CaseMail

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***Karl v Dion Resources Inc.*, [2024 SKCA 103]**

Leurer Kalmakoff Bardai, 2024-11-06 (CA24103)

Civil Procedure - Disposition without Trial - Mediation
Civil Procedure - *King's Bench Rules* - Summary Judgment
Civil Procedure - Minutes of Settlement

The appellant appealed a decision of the chambers judge that granted summary judgment in favour of the respondents. The chambers judge concluded that the parties had reached a binding settlement, ordering the appellant to pay $1,650,000 to the respondents, and that there were no genuine issues for the matter to proceed to trial. The appellant argued that there were genuine issues requiring a trial, specifically regarding his personal liability under the settlement. The Court of Appeal (court) had to decide whether the chambers judge erred in concluding that the appellant's personal liability was to be presumed in the absence of a discussion at the mediation about limiting his personal liability.
HELD: The court found that the chambers judge erred in presuming the appellant's personal liability without explicit discussion or an agreement on this matter during

mediation. The court set aside the chambers decision, remitted the matter back to the Court of King's Bench for a trial on genuine issues, and awarded costs in favour of the appellant. The court found that the chambers judge made a palpable and overriding error by presuming the appellant's personal liability without explicit discussion or agreement about such liability at the mediation. The judge's conclusion rested on a presumption that because the appellant did not explicitly limit his liability, it was implied that he agreed to personal liability. The court held that the chambers judge improperly invoked a legal presumption to determine that the appellant had personally agreed to the settlement terms. The court found that the evidence raised genuine issues regarding the settlement terms, particularly on whether the appellant had personally agreed to be liable for the payment. The chambers judge's reliance on the legal presumption led her to incorrectly conclude that no material facts were disputed. The decision to grant summary judgment was based on an incorrect legal foundation. The court held that the matter involved factual disputes that required resolution through a full trial, not summary judgment. The chambers decision was set aside, and the matter was remitted for trial.

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***R v Bellerose*, 2024 SKCA 104**

Tholl Kalmakoff McCreary, 2024-11-13 (CA24104)

Criminal Law - Arrest - Reasonable and Probable Grounds
Criminal Law - Arrest without Warrant - Appeal
Criminal Law - Drug Offences - Appeal
Criminal Law - Evidence - Credibility - Corroboration

The appellant was convicted of charges of possession of drugs (methamphetamine) for the purpose of trafficking, possession of proceeds of crime, and breach of probation. The matter stemmed from an arrest without a warrant by the police. The trial judge found that the arrest was lawful and admitted the evidence obtained during the search by the police. The appellant appealed her convictions, arguing that the arrest was unlawful and that the evidence was insufficient to support the charges beyond a reasonable doubt. The Court of Appeal (court) had to decide whether the trial judge erred in concluding the arrest without a warrant was lawful, whether the judge properly considered alternative inferences to guilt, and whether the evidence was sufficient to prove the charges beyond a reasonable doubt.
HELD: The appeal was dismissed. The court did not find any error in the trial judge's

decision and upheld the convictions. The court found that the police had reasonable grounds for the warrantless arrest in light of the information they received from confidential informants, which was supported by the police investigations and surveillance, and the police officer's knowledge of the appellant's prior convictions for drug trafficking. The correctness standard of review applies on reviewing the reasonable grounds of a lawful arrest (see paragraph 34 of the decision). The trial judge applied the factors outlined in *R v DeBot*, [1989] 2 SCR 1140 (*DeBot*) to assess the reliability of confidential informants. The court found that the trial judge correctly applied the *DeBot* factors and concluded that the police had reasonable grounds for the arrest, based on credible, compelling, and corroborated information provided by the informants. The court upheld the trial judge's finding that the arrest was lawful. The court analyzed whether the trial judge properly considered inferences alternative to guilt, particularly whether the drugs could have been for personal use rather than trafficking. The trial judge followed the guidance from *R v Villaroman*, 2016 SCC 33, which requires that the trier of fact consider plausible alternative inferences inconsistent with guilt. The court found no errors in that analysis. The appellant also argued that the trial judge improperly took judicial notice of certain facts about the behaviour of heavy methamphetamine users. The court acknowledged that the trial judge made comments about the appearance and behaviour of methamphetamine users but found that these observations were based on common sense and did not amount to improper judicial notice or reliance on stereotypes. The trial judge's reasoning was consistent with the permissible use of common-sense assumptions in evaluating the evidence. The appeal was dismissed.

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***Lorencz v Talukdar*, 2024 SKCA 105**

Leurer Schwann Drennan, 2024-11-15 (CA24105)

Doctors and Surgeons - Negligence - Medical Malpractice
Torts - Actions in Tort - Negligence - Medical Malpractice

The appellant had sued the respondents for negligence arising from the death of a family member who had visited the respondent doctors in 2004. The action was dismissed by the Court of King's Bench. The family appealed only the dismissal of the claim against the second respondent, claiming the judge erred in various ways in making his causation finding.

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Torts - Water Supply - Interlocutory Injunction - Requirements

HELD: The appeal was dismissed. (1) The trial judge applied the correct legal test in determining causation. In establishing causation, the plaintiff must show on a balance of probabilities that "but for" the defendant's negligent act, the injury would not have occurred. In medical negligence cases, causation need not be proven with scientific or medical certainty. Courts are to take a robust and pragmatic approach to the facts. In this case, the judge was clearly aware of the direction from the Supreme Court that he take this sort of approach to assessing if the evidence established causation on a balance of probabilities (e.g., see: *Clements v Clements*, 2012 SCC 32; *Ediger v Johnston*, 2013 SCC 18; and *Benhaim v St-Germain*, 2016 SCC 48). The trial judge carefully examined all the theories advanced by the appellants to establish causation and explained why he was not convinced on a balance of probabilities that any were made out on the evidence. Based on all this, the suggestion that the judge failed to appropriately apply a robust, pragmatic, and common-sense approach to the evidence in determining factual causation was not rooted in an identifiable error of law. (2) The trial judge's factual finding on causation was not the product of palpable and overriding error. The trial judge's seven references to a "deferential diagnosis" in the trial decision were palpably wrong. However, they were simple misstatements that were of no consequence to the judge's finding that causation was not made out, because they did not reflect a misapprehension of the evidence. There was also no palpable error in the judge's finding that there was no evidence that any of the factors that should have triggered an emergent referral were present when the deceased attended before the second respondent. In short, when the trial decision was taken as a whole, the judge considered the possibility of both an urgent and a non-urgent referral to a cardiologist before he reached his conclusion that the appellants had not established causation. There was no basis to interfere with the judge's finding that, on a balance of probabilities, even if the second respondent had not been negligent, the deceased's death would not have been prevented.

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***Repchinsky v Saskatchewan (Government)*, 2024 SKKB 158**

Gerecke, 2024-09-05 (KB24156)

Civil Procedure - Interlocutory Injunction
Torts - Water Supply - Interlocutory Injunction - Requirements

The plaintiffs jointly owned a small farm near Lake Diefenbaker in Saskatchewan. In 2020, the plaintiffs obtained approvals and permits to construct irrigation works on and

under land subsequently purchased by the resort village of Coteau Beach (RV). The plaintiffs had been seeking an easement from the RV but were unsuccessful and the RV threatened to remove the work. The plaintiffs sought an injunction to prevent the RV from removing irrigation work located on land owned by the RV.
HELD: The application was granted. The plaintiffs were, however, required to serve and file evidence as to their financial capacity. (1) The plaintiffs established a serious issue to be tried. In determining applications for interlocutory injunctive relief, it is more useful for a judge to focus on the practical effects of the injunction than to get bogged down in attempting to make formalistic “all or nothing” distinctions between what is prohibitory and what is mandatory. The likely effect of a proposed mandatory order should be considered on a case-by-case basis and in the context of the balance of convenience analysis. In this case, the plaintiffs established a serious issue to be tried with respect to misfeasance of public office. The plaintiffs also established a serious issue to be tried with respect to breach of contract and failure to act in good faith arising from the RV’s agreement to the easement clause in the purchase agreement. (2) The plaintiffs established that they would suffer irreparable harm. Where a party seeking injunctive relief could be put out of business if relief is denied, this constitutes irreparable harm. In this case, removal of the irrigation line would be a permanent step. The development permit and approval to construct surface works that were issued to the plaintiffs in summer 2020 were valid for just one year each. No guarantee existed that if the plaintiffs secured a judgment against the RV, which could take several years, they would be able to rebuild the irrigation line on Block G. That represented irreparable harm that could not be adequately compensated by damages. (3) The balance of convenience favoured the plaintiffs. Determining the balance of convenience is typically a case-specific assessment and can accommodate a range of equitable and other considerations. The strength of the applicant’s case should be accounted for and the impact of injunctive relief on a respondent’s interests should be weighed. In this case, there was little or no risk to the RV’s ability to maintain the integrity of land it owned. There was also little chance that the granting of an injunction would establish a precedent that anyone could build what they wanted on the RV’s land. Furthermore, the RV had never outrightly objected to granting an easement to the plaintiffs. It agreed to the easement clause in the purchase agreement, committing it to negotiate concerning an easement. It negotiated with the plaintiffs. In other words, the RV itself understood that use of a small portion of Block G posed little impediment to its use of that land. The impacts on them were minimal. On the other hand, the harm to the plaintiffs of not granting the injunction would be significant and irreparable. Even though the plaintiffs’ arguments concerning breach of contract, failure to act in good faith, and misfeasance in public office fell short of strong, they were strong enough to satisfy the court that the balance of convenience, and all the equities, favoured the plaintiffs by a considerable margin. (4) The plaintiffs had filed no evidence as to their capacity to satisfy a claim of damages if they failed at trial. In an injunction application, the adequacy of the financial

undertaking provided is of concern to the court. In this case, while it seemed unlikely that the RV would suffer substantial damages, better evidence needed to be present to support the capacity of the plaintiffs to pay damages, the absence of which tilted the equities more in favour of the RV.

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***Saskenergy Incorporated v Unifor Local 649*, 2024 SKKB 160**

Layh, 2024-09-09 (KB24157)

Administrative Law - Arbitration - Judicial Review - Standard of Review - Reasonableness

The plaintiff had initiated a judicial review of an arbitration decision finding that the plaintiff breached its unilaterally imposed drug and alcohol policy (policy) when, after an incident on July 17, 2019, it sent four employees for drug and alcohol testing and after a second incident on March 4, 2020, it sent a single employee for testing, all members of the defendant. The terms and conditions of the policy were not in issue at the grievance. What was in issue was the grievors' allegation that the plaintiff had improperly applied the policy. The court had previously released a decision disallowing, as part of the record, affidavits sworn by the plaintiff's employees who attended the hearing.
HELD: The application was dismissed. The arbitrator's decision was not unreasonable. A decision will be unreasonable if, when read holistically: (a) it fails to reveal a rational chain of analysis; (b) it reveals an irrational chain of analysis; (c) when read in conjunction with the record, it is not possible to understand the decision maker's reasoning on a critical point. In this case, the arbitrator's reasons for disallowing the plaintiff's essential assertion were well reasoned and easily met the hallmarks of reasonableness. The arbitrator appropriately offered a cogent and logical explanation why he did not accept that after a significant incident caused by the experienced employees, the plaintiff could send them for testing to eliminate drugs and alcohol as a possible factor in the incident. The arbitrator's decision also showed that determining a reasonable line of inquiry was a multifaceted inquiry, dependent upon the circumstances of the incident, and found several reasons why the plaintiff's line of inquiry fell short of the arbitral jurisprudence.

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***Cattell v Lazar*, 2024 SKKB 163**

Currie, 2024-09-11 (KB24158)

Contracts - Breach - Misrepresentation
Real Estate - Sale of House - Caveat Emptor
Real Estate - Sale of House - Misrepresentation

Real Estate - Sale of House - Misrepresentation - Failure to Disclose

The plaintiffs owned a property in a rural municipality close to Saskatoon. The property was listed for sale in 2014. The plaintiffs entered into a contract for sale with the defendant on May 9, 2014. For reasons associated with water intrusion on the property encountered by the defendant on the closing date, the sale did not proceed. The property was subsequently resold. The plaintiffs alleged that the defendant failed to complete her purchase of the property and asked for judgment for breach of contract for sale. The defendant counterclaimed for the return of the funds paid towards the purchase, pointing to the water intrusion as constituting a breach of the sale contract and alleging fraudulent misrepresentation.

HELD: The plaintiffs' claim was dismissed, and the defendant's counterclaim granted. Interest was also awarded from June 25, 2014, to the judgment date on the sum claimed by the defendant. (1) There was substantial damage to the property entitling the defendant to rescission of the contract. In considering whether damage is substantial, the court should consider not only the cost of repair, but also the quality, character and consequences of the damage. In this case, as at the closing date, the property was not the property that the defendant had seen earlier and that she had agreed to purchase. The house on the property bore a risk of health concerns and it bore other complications including delay in occupying the house, delay in fully using the house, and potential unquantified expense. In these circumstances, the damage that was caused by the water intrusion was substantial within the meaning of clause 5.3. of the contract of sale. The damage was also not repaired as described in clause 5.3 of the contract of sale. The parties did not "otherwise agree" under clause 5.3 of the contract of sale, and so by operation of clause 5.3, the sale contract was terminated. (2) There was fraudulent misrepresentation by the plaintiffs. In determining fraudulent misrepresentation, the following elements must be present: (i) there must be a duty of care based on a "special relationship" between the representor and the representee; (ii) the representation in question must be untrue, inaccurate, or misleading; (iii) the representor must have made the misrepresentation knowingly or recklessly; (iv) silence may constitute misrepresentation where what is left unsaid distorts the truth about a material fact; (v) the representee must have relied, in a reasonable manner, on the misrepresentation; and (vi) the reliance must have been detrimental to the representee in the sense that damages resulted. In this case, the plaintiff's representation that there had never been water in the basement of the house was untrue, inaccurate and misleading. The misrepresentation was also made knowingly and recklessly. The defendant relied upon it in a reasonable manner as the question of water in the basement was of high importance to her, and it led to her deciding to remove all conditions and proceed with closing. The reliance was also detrimental to her. Thus, the statements made by the plaintiffs through the mid-May walk-through constituted fraudulent misrepresentation, entitling the defendant to rescission of the sale contract. The plaintiffs also knew there had been a water intrusion in the house on June 21 and 22, 2014, and recklessly let the defendant continue to believe there was no water intrusion in the house. Their silence led the defendant to believe there had not been water intrusion. The defendant also relied in a reasonable manner on this misrepresentation and the reliance was detrimental to her. The plaintiffs' failure to disclose the water intrusion of June 21 and 22, 2014, constituted fraudulent misrepresentation, entitling the defendant to rescission of the sale contract.

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***Greiner v Greiner*, 2024 SKKB 165**

Megaw, 2024-09-13 (KB24159)

Family Law - Child Support - Section 7 Expenses
Family Law - Determination of Income
Family Law - Division of Property - Exemptions
Family Law - Division of Family Property - Valuation Date

The parties had experienced significant personal and financial difficulties leading up to their separation. Those problems continued into the aftermath of the end of their marriage and interfered with their ability to operate their joint business venture. The petitioner accused the respondent of serious financial misconduct after their separation, asserting that, through his corporation, the respondent was earning significant income that was not being reported. The respondent accused the petitioner of serious personal misconduct before and after separation which resulted in risk to the ranching operation. As a result of that conduct, the respondent determined that the petitioner was incapable at that time of participating in the business. The parties sought to have the petitioner's conduct reviewed by the court, submitting that those determinations would in turn allow the court to arrive at the appropriate conclusions with respect to the family property, spousal support, and child support.
HELD: The court held that the petitioner's conduct was not relevant to the proceedings and detailed various assets and debts included in family property. The court made no exemptions applicable to the family property. The court declined to order retroactive payment from the petitioner with regards to the dividend being received through the parties' corporations. The court also declined to set the respondent's income for the purpose of child and spousal support. The court ordered that the interim advance received by the petitioner on her interest in the family property should be deducted from her family property distribution. Expenses under s. 7 of the *Federal Child Support Guidelines* were to be shared equally between the parties. Potential income tax issues would be addressed in future proceedings and costs were reserved for future determination. The court made no final determination regarding parenting arrangements. (1) The respondent's actions were neither nefarious nor done to deprive the petitioner of any interest she had in the property. In considering a party's conduct in connection with an application under the *Divorce Act* for the purpose of an interim or final order for spousal support, the court does not take into consideration any misconduct of a spouse in relation to the marriage. In a variation application, the court does not consider any conduct that could not be considered in the making of the initial order. A party's conduct in family law litigation is not to be on display unless it is specifically permitted by the relevant legislation or specifically probative to a live issue in the litigation. In this case, the respondent's actions preserved the ranch operation and to date had permitted the debts to be paid and the assets protected. There was no evidence to suggest the petitioner did not either want this to be done or that she wanted to be part of the ongoing operation. While the petitioner brought the application for the preservation order, there was no evidence to suggest the petitioner sought to prohibit the respondent from carrying on the ranching operation in the fashion that he did. (2) The appropriate date to value the family property was the date of adjudication. Generally, property should be valued consistently at either the application date or the date of adjudication. In determining the appropriate valuation date, a judge must act rationally based on the evidence before him or her, keeping in mind the purpose of *The Family Property Act* and the justice of the case. If the increase or decrease in property value is due solely to market forces, the property should generally be valued as of the date of adjudication. On the other hand, when the rise or fall in value is attributable solely to the actions of one spouse, it is appropriate to value the property as of the date of adjudication. The type of distribution contemplated by the court may also be relevant to the choice of the valuation date. In this case, the evidence tendered through the land appraisal experts established that the increase in value of the farmland was attributable principally, if not exclusively, to market forces. While the respondent's efforts, both physically and administratively, could not be minimized in any way, there was not sufficient evidence presented to allow for a conclusion that his work caused or contributed to any increase in value. Rather, his efforts resulted in the preservation of the assets. Valuation as at the date of adjudication was appropriate in this case. (3) The petitioner did not prove on

the balance of probabilities that the respondent was receiving the proceeds for the sale of cattle and attempting to cover it up. (4) There was no evidence called regarding the potential impact of income tax on any ultimate division of the family property. (5) The overriding concern in determining the amount of corporate income to include for the purpose of support is one of fairness. In this case, the weight of the evidence showed that, at present and over the time since the parties separated, and perhaps before that, the ranch operation was experiencing difficult financial circumstances. The evidence disclosed that the cash generated by the ranching operation was required to allow it to satisfy, or at least remain current, on its debt requirements and to allow it to repair and replace that which was required to permit the ranch to operate.

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***R v Rosner*, 2024 SKKB 166**

Currie, 2024-09-16 (KB24160)

Municipal Law - Dangerous Animals Bylaw - Appeal

A Provincial Court judge had found the appellant's dog to be a dangerous animal and ordered it to be destroyed. The appellant filed an appeal looking to set aside both the order for destruction and the underlying finding that the dog was a dangerous animal. The dog was taken into custody by the RCMP pending the outcome of the appeal. Prior to the setting of an appeal date, the appellant applied for the dog to be returned to her custody pending the appeal.
HELD: The application was dismissed. (1) The court had no power to change an order impounding an animal pending the disposition of the appeal. Section 377 of *The Municipalities Act* provides that when an order for destruction is appealed, the order is automatically stayed pending the disposition of the appeal. Section 377(3) of *The Municipalities Act* contemplates an animal being impounded pending the disposition of the appeal. The Act provides no power to the court to change the order impounding the animal pending disposition of the appeal. Furthermore, the court's inherent jurisdiction does not provide a legal basis for the court to effectively overrule the statutory provision.

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***Nazeer v Fink*, 2024 SKKB 185**

Wildeman, 2024-10-24 (KB24182)

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 - Striking Out - Abuse of Process

In June 2023, the plaintiff filed a statement of claim against several individuals in relation to challenges he faced, and resulting damages he says he suffered, trying to hire staff for two businesses, one in Foam Lake, Saskatchewan and the other in Theodore, Saskatchewan. The defendants applied under Rule 7-9 of *The King's Bench Rules* to strike out the claim.
HELD: The application was granted. (1) The plaintiff's claim against the government defendants was an abuse of process. Rule 7-9 of *The King's Bench Rules* allows the court to strike out claims that have no reasonable prospect of success as a valuable housekeeping measure essential to effective and fair litigation. The conditions for a pleading being struck out are that the pleading: (a) discloses no reasonable claim or defence, as the case may be; (b) is scandalous, frivolous or vexatious; (c) is immaterial, redundant or unnecessarily lengthy; (d) may prejudice or delay the fair trial or hearing of the proceeding; or (e) is otherwise an abuse of process of the court. In this case, the plaintiff pled material facts against two of the defendants to establish the requisite elements of the cause of action of misfeasance of a public office. The plaintiff also pled material facts to establish the requisite elements of the tort of conspiracy to injure against the government defendants. The plaintiff's claim that the government defendants acted with the intent to ruin his business was a pleading of bad faith. However, the plaintiff's claim was filed after the expiry of the limitation period. Section 5 of *The Limitations Act* provides that no proceeding shall be commenced with respect to a claim after two years from the day on which the claim was discovered. In this case, the plaintiff was presumed to have known of his claim by January 7, 2021, at the latest. On the basis of the plaintiff's own evidence, he was also aware of the financial loss in his claim by May 12, 2021. Given that the plaintiff did not commence the claim until June 19, 2023, more than two years later, the plaintiff's claim was presumed to have been brought after the end of the limitation period. The process available to the plaintiff through the ombudsman office did not provide the plaintiff with a realistic possibility of successful resolution of his claim, given that he was claiming damages for financial loss and mental anguish. As a result, his engagement of the ombudsman office to investigate the government defendants was not a legally appropriate reason for the delay in bringing his claim. It was plain and obvious that the plaintiff's claim was brought after the expiry of the applicable limitation period, and therefore an abuse of process pursuant to Rule 7-9(2)(e) of *The King's Bench Rules*, so the plaintiff's claim against the government defendants had to be struck. (2) The plaintiff's claim against the ombudsman defendants disclosed no reasonable chance of success as the plaintiff had not pled the material facts essential to establish the legal elements of the tort of misfeasance of public office nor the tort of conspiracy against the ombudsman defendants, nor had he pled material facts that would give rise to an allegation of bad faith.

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***Ghani v Islamic Association of Saskatoon, Inc.*, 2024 SKKB 186**

Gerecke, 2024-10-25 (KB24185)

Civil Procedure - Mandatory Injunction
Corporate Law - *Non-profit Corporations Act*
Corporate Law - Oppression Remedy

The applicants were members of the Islamic Association of Saskatchewan (IAS). They sought to reinstate the former imam, i.e., the religious leader, of IAS. The IAS terminated the imam's employment in 2022 based on allegations of theft and misappropriation of property. The dispute divided the IAS members, leading to multiple legal proceedings. At the 2023 annual general meeting (AGM), a resolution was put forward asking members to vote on whether the imam should be reinstated or his case handled through the legal system. Most members voted for reinstatement, but the IAS's board of directors (board) did not follow the vote results. The applicant brought a legal action seeking an oppression remedy and a permanent mandatory injunction. The Court of King's Bench (court) had to decide whether the application to reinstate the imam was an abuse of process, whether the board's refusal to implement the resolution gave rise to an oppression remedy under *The Non-Profit Corporations Act, 2022*, and whether the applicant met the requirements for a permanent mandatory injunction to compel the board to implement the resolution.
HELD: The court dismissed the application for the oppression remedy and the injunction. The applicants failed to demonstrate a reasonable expectation that the resolution would legally bind the board, and they did not meet the requirements for an injunction. The court did not consider the application an abuse of process. The respondents argued the current applications were similar to the wrongful dismissal application advanced by the imam, making them moot. The court acknowledged the overlaps but stated that the involved parties and remedies requested in the current applications differed. The applicants sought an oppression remedy under *The Non-profit Corporations Act, 2022*, arguing that the resolution was binding on the board and that its refusal to implement it was oppressive. The court concluded that the applicants' expectation that the resolution would be binding on the board was unreasonable. The court emphasized that under corporate law, directors have the exclusive authority to manage corporate affairs, including employment decisions, unless that authority is altered by a unanimous member agreement or the corporation's articles. The IAS bylaws could not change the directors' statutory authority to manage the corporation, and therefore, the board was not obligated to implement the resolution. The court found that while the resolution reflected members' wishes, it could only be considered advisory. The directors' fiduciary obligations were owed to the corporation itself, not to individual members or stakeholders. The court relied on the principles from *BCE Inc. v 1976 Debentureholders*, 2008 SCC 69, which requires establishing a "reasonable expectation" and demonstrating that the conduct violated that expectation in a manner that was oppressive, unfairly prejudicial, or unfairly disregarding of the complainants' interests. The applicants also sought a permanent mandatory injunction to compel the board to reinstate the imam. The court applied the legal test for injunctions from *Mosaic Potash Esterhazy Limited Partnership v Potash Corporation of Saskatchewan Inc.*, 2011 SKCA 120, which requires showing a serious issue to be tried, irreparable harm, and that the balance of convenience favours the applicant. The court found that the applicants failed to establish a serious issue to be tried, as the resolution could not legally bind the board. Consequently, no legal wrong was identified that would warrant an injunction. The court also emphasized that it would be inappropriate to order reinstatement without sufficient evidence about the wrongful acts alleged against the imam, and doing so would undermine the board's management authority.

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***Mangel, Re (Bankrupt)*, 2024 SKKB 188**

Shalashniy, 2024-10-30 (KB24184)

Bankruptcy - Conditional Discharge - Factors
Bankruptcy - Discharge Application - Conditional Discharge
Bankruptcy and Insolvency - Conditional Discharge

The applicant sought a discharge from bankruptcy. The bankruptcy trustee and the Minister of National Revenue (minister) opposed the discharge due to significant unpaid tax debts and non-compliance with obligations under the *Bankruptcy and Insolvency Act* (Act). The registrar in bankruptcy (registrar) had to decide whether the applicant met the requirements of the Act for a discharge, what arrangements should be made for the tax debts, and what conditions should be imposed on the discharge.
HELD: The court granted a conditional discharge with tax payment and tax filing conditions. The court found that s. 173 of the Act applied to this matter to preclude an automatic discharge because the applicant's assets were significantly less than his liabilities; he failed to show the debt arose based on circumstances outside of his control; and he did not sufficiently assist the trustee with the bankruptcy matters. The minister argued that s. 172.1 should be applied because of high tax debts. The registrar dismissed this argument because s. 172.1 applies to tax-driven bankruptcies, unlike this matter where the tax debt amount was significant and not the cause of the bankruptcy. The registrar awarded the conditional discharge and balanced the non-compliance issues with the importance of rehabilitation according to the broader purposes of the Act. In deciding this conditional discharge, the registrar considered that most of the applicant's debt was for taxes, and it was in the public interest to rehabilitate the applicant to become a tax-compliant citizen. It was also in his interest to secure a discharge to rebuild his financial situation. The registrar emphasized the importance of maintaining the integrity of the bankruptcy process, which required imposing certain conditions to deter similar conduct. The registrar also recognized the need for conditional discharge to reflect both the misconduct and the opportunity for rehabilitation. The registrar imposed a payment plan, an order to file outstanding tax returns, and compliance with future tax filing requirements.

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***Feraro v Bethel*, 2024 SKKB 190**

Smith, 2024-10-31 (KB24187)

Landlord and Tenant - Appeal - Damages
Landlord and Tenant - Appeal - *Residential Tenancies Act* - Damage Deposit
Landlord and Tenant - Security Deposit

The appellant (the landlord) appealed a decision from the Office of the Residential Tenancies (ORT) that directed him to return a $500 damage deposit plus $50 in costs to the respondents (the tenants). The ORT hearing officer found that the landlord failed to comply with statutory requirements under *The Residential Tenancies Act, 2006* (the Act) regarding handling a security deposit after the tenancy ended. The court had to decide whether the ORT hearing officer erred in directing the landlord to return the damage deposit.
HELD: The court dismissed the landlord's appeal. The court referred to s. 32(1) of the Act, which requires a landlord to either return the security deposit to the tenant or, within seven business days of the tenant vacating the premises, provide a notice of intention to retain part or all of the deposit. The appellant did not comply with these requirements. He neither returned the deposit nor provided written notice to the tenants within the specified timeframe. The court reiterated the importance of adhering to these statutory requirements and stated that landlords have an "absolute duty" to comply with the procedures for handling security deposits (see paragraph 9 of the decision). Failure to comply removes the landlord's right to retain the deposit as security. The court noted that s. 34(1) of the Act mandates that if a landlord fails to comply with s. 32(1)(b), the hearing officer must order the return of the security deposit to the tenant. The ORT decision was, therefore, consistent with the legislative framework and correctly applied the law. The court also highlighted that a security deposit remains the tenant's property until a landlord complies with the statutory requirements to retain it. The legislation provides a short window to ensure that tenants have clarity regarding the security deposit, which is often a significant financial commitment. The landlord alleged damages to his property caused by the tenants. However, the court noted and upheld the ORT decision that the landlord must still comply with the legislative requirements of proceeding with a claim for damages.

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***R v Thomas*, [2024 SKKB 189](#)**

Morrall, 2024-11-01 (KB24186)

Constitutional Law - *Charter of Rights*, Section 7, Section 12
Criminal Law - Appeal - Sentence
Criminal Law - Peace Officer - Use of Force

The applicant had pled guilty to the charge of manslaughter involving a firearm. He applied, initially for a stay of proceedings but ultimately to reduce his sentence, as a remedy for the police's use of excessive force during his arrest, which he alleged violated ss. 7 and 12 of his *Charter* rights. The court had to decide whether there was a sufficient connection between the alleged police misconduct during the applicant's arrest and the manslaughter offence to justify a *Charter* remedy; whether the police used excessive force during the arrest; if it were established, what the appropriate remedy would be; and whether the sentencing judge took the applicant's broken arm into account during sentencing even if excessive force was not proven.
HELD: The court dismissed the application for sentence reduction because the evidence did not establish the use of excessive force, and the alleged police misconduct was not sufficiently connected to the offence to justify a *Charter* remedy. The Supreme

Court of Canada in *R v Nasogaluak*, 2010 SCC 6 (*Nasogaluak*) allowed for a reduction in sentence where state misconduct is connected to the offender or offence. There must be a connection between the state misconduct and offence for a *Charter* remedy to apply. The court cited *R v Ogden*, 2018 ONCJ 84 in determining what a sufficient connection would be. The court found that while there was a temporal connection between the alleged misconduct and the manslaughter offence, the police arrested the applicant in connection with a separate break-and-enter complaint, not the manslaughter charge. The police were unaware of the murder warrant during the arrest. Therefore, the court concluded that the connection between the misconduct and the offence was too remote to justify a reduction in the manslaughter sentence under *Nasogaluak*. The court reviewed the evidence from multiple witnesses, including police officers involved in the arrest and the applicant, and applied the principles from *R v Jarrett*, 2021 ONCA 758, which state that an accused must demonstrate the existence of a *Charter* breach but does not have the burden of proving that excessive force was used. The court found inconsistencies in the testimonies, raising doubts about the reliability of certain evidence. Ultimately, the court was unable to find, on the balance of probabilities, that excessive force was used. Since the court determined that there was no sufficient connection between the state misconduct and the offence, and it was not proven that police applied excessive force, no *Charter* remedy was granted. The court also considered whether the applicant's broken arm should factor into the sentencing even if no *Charter* breach were found. The court noted that, under *Nasogaluak*, state misconduct could be considered in crafting a fit sentence without necessarily invoking s. 24(1) of the *Charter*. However, given the lack of clear evidence that police misconduct caused the injury, the court declined to adjust the sentence on this basis.

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***R v Pengelly*, 2024 SKKB 191**

Bergbusch, 2024-11-01 (KB24188)

Criminal Law - Child Pornography - Intention
Criminal Law - Child Pornography - Possession
Criminal Law - Possession of Child Pornography

The accused was charged with possession of child pornography contrary to s. 163.1(4) of the *Criminal Code*. The evidence included images that were found in the cache directory of his phone's gallery. The primary issue was whether the accused knowingly possessed these images or whether they could have been unintentionally saved to the phone. The court had to decide whether the accused knowingly possessed the images of child pornography and whether the circumstantial evidence provided by the Crown was sufficient to prove beyond a reasonable doubt that the accused had control over the unlawful images.
HELD: The court found that the Crown did not prove beyond a reasonable doubt that the accused knowingly possessed the images of child pornography. There were reasonable alternative explanations as to how the images could have been downloaded without his intent or knowledge. *R v Morelli*, 2010 SCC 8, requires that to establish possession of electronic images, the accused must have knowledge and control over the illicit material. Possession includes awareness of having the images, as well as knowledge of their

character. The court found that while the accused had exclusive possession of the phone, the Crown's evidence did not establish how the images got into the gallery memory of the device. The images could have been downloaded unintentionally through applications like KiK, WhatsApp, or Snapchat. The Crown's expert confirmed that these apps could automatically save images without the user's explicit knowledge or consent. The court applied the principles from *R v Villaroman*, 2016 SCC 33, which state that circumstantial evidence must exclude all other reasonable alternatives before an accused can be found guilty beyond a reasonable doubt. The court considered whether other reasonable alternatives, such as inadvertent download, were consistent with the evidence. The court found that while it was possible that the accused intentionally downloaded the images, the alternative explanation that they were downloaded without his knowledge could not be ruled out beyond a reasonable doubt. The court referenced *R v Gauthier*, 2021 ONCA 216, which dealt with a similar issue involving images saved automatically to a folder without user knowledge. In that case, the court found that possession could not be established without clear evidence that the accused had deliberately saved the images. This was analogous to the scenario involving the accused in this matter. The court also discussed *R v Chalk*, 2007 ONCA 815, which states that if an individual only possesses illicit material momentarily intending to destroy it, this does not constitute criminal possession. The accused may have viewed the images in the gallery app for the sole purpose of deleting them, indicating an intention to divest control, not to possess the material criminally. For these reasons, the court did not find the accused guilty.

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***R v Pengelly*, [2024 SKKB 192]**

Bergbusch, 2024-11-01 (KB24189)

Constitutional Law - *Charter of Rights*, Section 7, Section 8
Criminal Law - Defences - *Charter of Rights* - Exclusion of Evidence
Criminal Law - Evidence - Admissibility
Criminal Law - Search and Seizure - Unreasonable Search - Right to Privacy

The accused applied for an order declaring that his rights under ss. 7 and 8 of the *Charter* were breached during an investigation that led to his being charged with possession of child pornography, contrary to s. 163.1(4) of the *Criminal Code*. He also sought to exclude all evidence obtained through search warrants and production orders from the trial. The court had to determine whether there was a breach of *Charter* rights and whether the evidence obtained as a result should be excluded.
HELD: The court found no *Charter* breaches and dismissed the application. The court examined the reasonableness of the search and seizure under s. 8 of the *Charter*. The court considered whether the accused had a reasonable expectation of privacy regarding the IP address, subscriber information, and data obtained during the investigation, finding that the accused had a reasonable expectation of privacy in the IP address and associated subscriber information. However, the initial provision of the IP address to law enforcement authorities by the National Center for Missing and Exploited Children (NCMEC), a private, non-profit U.S. corporation, did not engage the *Charter*. The court concluded that NCMEC's voluntary assistance in providing information did not

constitute a *Charter* breach because it was not considered a state actor. The court further addressed the police using an administrative subpoena through U.S. Homeland Security to obtain subscriber records from Microsoft. The court held that since the request for assistance was made to a foreign authority, the *Charter* did not apply (see: *Schreiber v Canada (Attorney General)*, [1998] 1 SCR 841, and *R v Hape*, 2007 SCC 26). The court assessed whether the police had made full and frank disclosure when applying for the production orders and search warrants, as required by *R v Araujo*, 2000 SCC 65. The accused argued that the police should have disclosed the disclaimers regarding the accuracy of subscriber information provided by third parties, such as KiK, Microsoft, and SaskTel. The court concluded that the omission of such disclaimers did not mislead the issuing justice, relying on the reasoning from *R v Cusick*, 2019 ONCA 524, which held that hearsay evidence could still support a search warrant despite not being verified for accuracy. The court determined that the disclaimers were not material and did not affect the reliability of the facts. The accused argued that the police failed to comply with s. 489.1(1) of the *Criminal Code*, which requires police to provide reports to justice for items seized, including data extracted from electronic devices. The court noted a divergence in the interpretation of whether data extracted from electronic devices constitutes a "thing" that requires a separate report. The court relied on the case of *R v Dick*, 2024 SKKB 155, and stated that data extracted from a seized device is a product of the search and not a separate "thing" that must be reported. Therefore, the police did not breach s. 489.1(1). Although the court did not find any *Charter* breaches, it still addressed the question of whether the evidence should be excluded if a breach had occurred. Applying the three-part test from *R v Grant*, 2009 SCC 32, the court concluded that even if there had been breaches, the breaches would have been relatively minor and would not justify the exclusion of the evidence. The court emphasized that the public interest in adjudicating the case on its merits outweighed any potential *Charter* breach and dismissed the application.

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***Duboff Edwards Schachter Law Corporation v Buffalo River Dene Nation*, [2024 SKKB 193](#)**

Norbeck, 2024-11-05 (KB24190)

Barristers and Solicitors – Fees
Civil Procedure - Costs - Expert Witness Fees

In 2013, the plaintiff was jointly retained by the respondents to assist with a treaty rights claim relating to the Cold Lake Air Weapons Range (CLAWR). The parties did not enter a written contract respecting legal fees. In 2019, the respondents reached a settlement with Canada for $81.5 million in monetary compensation and non-monetary benefits. However, before settlement discussions with Canada concluded, there was a disagreement between the respondents over their respective shares of the $81.5 million in monetary compensation. The plaintiff thereafter secured an additional $1 million from Canada to settle the claim and agreed to reduce his counsel fee to $4,000,000 to secure the settlement. In April 2021, the plaintiff issued the respondents a final account of $5,185,334.21. The respondents refused to pay.
HELD: The application was granted in large part. In determining whether legal fees are fair and reasonable, there are a list of non-exhaustive factors: results achieved; risk undertaken; time expended; complexity of the issue; importance of the litigation to the

plaintiffs; the degree of responsibility assumed by counsel; the quality and skill of counsel; any relevant agreement between lawyer and client; and fees in similar cases. In this case, it was undisputed that the results achieved by the plaintiff exceeded the respondents' expectations. The risk undertaken by the plaintiff included carrying significant disbursements and not receiving full payment for their legal fees. The plaintiffs expended significant time working on the action file. The file was also complex from the start and was significant to the respondents. Furthermore, the plaintiffs took on a high degree of responsibility to salvage the action and pursue an acceptable resolution and exercised a high degree of skill and competence in their handling of the action. The evidence further supported the view that the respondents agreed to pay a $5,000,000 counsel fee. The plaintiff's final invoice included the counsel fee plus previously billed but outstanding fees. It would be counterintuitive to rely on the parties' verbal agreement to pay a counsel fee of $5,000,000 and not agree on the verbal agreement to reduce the counsel fee to $4,000. Considering the circumstances, the counsel fee of $4,000,000 was fair and reasonable.

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***Tanyi-Remarck v Joint Medical Professional Review Committee*, 2024 SKKB 195**

Currie, 2024-11-06 (KB24192)

Administrative Law - Bias
Administrative Law - Judicial Review - Natural Justice/Procedural Fairness
Physicians and Surgeons - Billings

The appellant doctor appealed a decision of the respondent which involved the reassessment by the respondent of the appellant's billings for some services, resulting in the respondent ordering the appellant to pay $224,223.81 to the Minister of Health.The appellant asserted that the respondent breached the principles of natural justice. The appellant also asserted that the respondent engaged in reversible error in its reassessment of specific services, and that the respondent exceeded its jurisdiction.
HELD: The application was dismissed. (1) There was no inherent bias in the process as alleged by the appellant. The respondent appropriately focused on the anomalies that had attracted its attention, in the context of determining whether any payment had been made in relation to any departure from a pattern of medical practice acceptable to the respondent. The respondent was also an independent adjudicator, and its motivation was the protection of the interests of the people of Saskatchewan in the provision of medical services. There was no provision in *The Saskatchewan Medical Care Insurance Act* (Act) for members of the respondent to be cross-examined, nor was it a part of the respondent's practice and procedure to make its members available to be cross-examined by the appellant. (2) There was adequate notice given to the appellant. First, there was no case to be met. Secondly, the notice of interview that was given to the appellant was sufficient to make her aware of the subject of the respondent's review. The notice of review was also sufficient to direct the appellant's attention to the issue of her having altered some medical records. The appellant had not objected to a lack of sufficient notice at any point in the proceedings. The respondent also addressed the appellant's comments in detail in its final decision. (3) There was no breach of natural justice in the element of onus that the appellant faced in the proceedings. (4) There was no breach of natural justice in the manner in which the interview was conducted. The questions from the respondent were open-ended questions, aimed at gathering information. The appellant was allowed the time that she wished to take in order to provide complete answers and to volunteer information. The interview was far from

confrontational. The appellant’s counsel also raised no objection to the manner in which the interview was proceeding. (5) There was no breach of natural justice in the respondent’s consideration of the appellant’s work at Alliance Health. The respondent had made the Alliance Health records available to the appellant within a few days after receiving them. The appellant had access to the records for almost a year before her interview with the respondents. The appellant did not raise any concern about the sufficiency of the Alliance Health records. (6) There was no breach of natural justice in the respondent’s consideration of the appellant’s evidence and submissions. (7) There was no palpable and overriding error in the respondent’s decision relating to the percentages of billings that the respondent had ordered the appellant to repay. In hearing an appeal against a reassessment in billing, the court is not to determine whether the reassessment was the best reassessment, but rather whether there was an error in law and whether the decision can reasonably be supported by the evidence. In this case, the respondent explained its approach. While the respondent could have applied a much stricter application of the rules governing how a physician establishes entitlement to payment, the respondent took a practical approach and made its best estimate of the billings that should be repaid to the health care system, on the basis that those billings did not qualify for payment. The amounts ordered to be repaid by the respondent were reasonably supported by the evidence and the respondent’s decision was within a range of possible, acceptable outcomes. (8) There was no basis for concluding that there was a palpable and overriding error in the respondent’s application to the payment schedule to the circumstances. (9) There was no palpable and overriding error in the respondent’s decision relating to the percentages of billings that the respondent had ordered the appellant to repay. (10) There was no palpable and overriding error in the respondent’s reassessment relating to minor procedures. The requirement specified by the respondent appeared in the payment schedule and the appellant’s records did not include the detail that was necessary to determine the type of lesion being treated and, consequently, whether it was a service for which payment could be made under one of the codes. (11) The respondent did not exceed its jurisdiction in ordering the appellant to pay a further $50,000 in addition to repayment of assessed billings. Section 49.2(7) of the Act empowers the Joint Medical Professional Review Committee to make a further order requiring a physician to pay to the minister an amount not exceeding $50,000. In this case, the respondent’s decision was a matter of applying s. 49.2(7) to the circumstances.

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***Heck v Meszaros*, 2024 SKKB 194**

Megaw, 2024-11-06 (KB24191)

Family Law - Child Support - Section 7 Expenses
Family Law - Child Support - Variation
Family Law - Custody - Access - Variation
Family Law - Variation Application - Material Change in Circumstances

The parties were the parents of three children aged 16, 15, and 13. At the preliminary interim stages, the mother took the position that the father’s parenting time should be rather limited while the father took the position that there should be a shared parenting regime. On an interim basis, the Court of King’s Bench determined a shared parenting arrangement was in order with the parties to parent the children on a week on/week off basis. That arrangement remained in place until the trial of the action in late 2018. The judgment following trial determined that the shared parenting arrangement continue. In 2020, the respondent made an application to vary the parenting aspect of the judgment to permit all the children to relocate to Cochrane, Alberta but subsequently withdrew the application. In 2022, the respondent renewed an existing application seeking to engage counselling to attempt to repair his fractured relationship with the eldest child, which was granted. In 2023, the youngest child decided she no longer wished to engage with the respondent and the petitioner applied for an order varying the judgment to designate her the primary parent of the two children living with her and to change the child support to reflect the fact these children would be living with her full-time. This application was dismissed. In March 2024, the last of the three children decided to live exclusively with the petitioner and severed all ties with the respondent. The most recent application was by the petitioner to vary the parenting arrangement to provide that she be the primary parent and that she be solely responsible for any and all decisions concerning the children. She also sought to have the father pay basic child support and participate in the payment of expenses under s. 7 of the *Federal Child Support Guidelines* (Guidelines). HELD: The application was dismissed. The court determined on an interim basis that each of the parties pay 50% of expenses under s. 7 of the Guidelines and directed that the issue of s. 7 expenses proceed to a *viva voce* hearing. (1) The circumstances did not warrant a variation of the existing order. In determining an application to vary a parenting order, the reviewing judge must determine whether there has been a change in the condition, means, needs or other circumstances of the children. If the applicant has demonstrated a material change in the conditions, means, needs or other circumstances of the child, the court must decide whether the material change is such that the best interests of the child require a variation of the order. In the instant case, the mother advanced no specific need or reason for a change. While the last of the children had made the decision to live with the mother, there was nothing else in the materials that warranted a change. Any change to the wording of the order on parenting, or lack of requirement to include the father in the decision making with respect to the children, would result in his complete and permanent exclusion from the children's lives and completely sever any possibility of a connection. (2) In deciding on both child support and contributions towards extraordinary expenses pursuant to s. 7 of the Guidelines, there are three issues to be determined by the court. The first is to determine the father's income for child support purposes. The second is to determine the mother's income. The final issue is to determine the legitimate s. 7 expenses and the proportionate sharing of those expenses. In this case, the father's income was found to be $85,000. There was no indication why the mother was incapable of earning an income equivalent to that assessed for her following the trial. With respect to s. 7 expenses, it was unclear how much of his share of s. 7 expenses the father had paid.

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***K.A.D. v K.M.M.*, [2024 SKKB 197]**

Wildeman, 2024-11-08 (KB24194)

Family Law - Jurisdiction - *Forum Conveniens*
Family Law - Parenting Time - Best Interests of Child - *Children's Law Act, 2020*
Statutes - Interpretation - *Court Jurisdiction and Proceedings Transfer Act*

The parties were married on August 15, 2023, and separated on or about September 19, 2023, after residing together in Sherwood Park, Alberta. In early January 2024, the petitioner moved from Sherwood Park to Regina, Saskatchewan, where the child was born a few weeks later. The petitioner filed a petition in March 2024 seeking primary care of the child with parenting time for the respondent a few hours a day, a few times a week. The petitioner also sought child and spousal support. Shortly thereafter, she applied for a judicial case conference seeking an interim parenting order, child support, spousal support, and costs. In April 2024, the respondent filed an application under Rule 3-14 of *The King's Bench Rules* and *The Court Jurisdiction and Proceedings Transfer Act* (CJPTA) for an order transferring the proceedings to the Alberta Court of King's Bench, Judicial Centre of Edmonton or, alternatively, declining to exercise territorial competence. The respondent's jurisdiction application was the subject of determination before the court.

HELD: The application was dismissed. (1) The court's jurisdiction to make a parenting order had to be determined by s. 6 of *The Children's Law Act, 2020* (CLA), not the CJPTA. Under s. 11 of the CJPTA, if there is a conflict or inconsistency between the CJPTA and another Act of Saskatchewan or of Canada, the other Act prevails if it expressly or implicitly confers jurisdiction or territorial competence on a court or denies jurisdiction or territorial competence to a court. In this case, the tests for determining the court's jurisdiction differed between s. 6 of the CLA and s. 4 of the CJPTA. As a result, the court's jurisdiction was to be determined by s. 6 of the CLA and not s. 4 of the CJPTA. (2) The court had jurisdiction to make a parenting order. Under s. 6 of the CLA, the court has jurisdiction to make a parenting order when the child is habitually resident in Saskatchewan at the commencement of the application for the order. In this case, the child had not lived anywhere other than Saskatchewan. While the respondent indicated the parties' plan was to raise the child in Alberta, the petitioner disputed this. Although the court was permitted to consider the parents' intention when determining a child's habitual residence, the respondent's parental intentions could not override the uncontradicted evidence that the child had only ever resided in Saskatchewan. (3) It was not in the child's best interests to transfer jurisdiction. Section 7 of the CLA allows the court to transfer jurisdiction if it is in the best interests of the child to do so. To this end, the court may refer an application for a parenting order to the jurisdiction in which: (a) the child is a national; (b) the child has property; (c) the parties have commenced an action for separation or divorce; or (d) the child has a substantial connection. In this case, the child resided in Saskatchewan with the petitioner, who was breastfeeding him. The respondent was also exercising parenting time in Saskatchewan. It was also agreed that both parties had a support network in Saskatchewan that was particularly important at the child's young age and in light of the parties' separation. The child also had a physician and other medical providers in Saskatchewan. In addition, the petitioner was seeking employment in Saskatchewan and the respondent had business interests in Saskatchewan. Based on the evidence, while the parties had some connection to Alberta, the child had a substantial connection to Saskatchewan. (d) The court had jurisdiction to order child and spousal support. Under s. 4(b) of the CJPTA, the court has territorial competence in a proceeding brought against a person if, during the course of the proceeding, that person submits to the court's jurisdiction. Section 4(e) of the CJPTA also vests jurisdiction in the court where there is a real and substantial connection between Saskatchewan and the facts on which the proceeding is based. In this case, the child resided in Saskatchewan with the petitioner, which had been the case since the child was born. The respondent's parenting time with the child was taking place in Saskatchewan. The calculation of child support would be based on an interim parenting order made by the Saskatchewan court. In the circumstances, there was a real and substantial connection between Saskatchewan and the facts on which the proceeding was based. This was also not an appropriate case for the court to decline to exercise its territorial competence.

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