



The Law Society of Saskatchewan Library's online newsletter
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Criminal Law - Sentencing - Appeal - Driving While Disqualified
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The Crown appealed the sentence imposed on the respondent by a Provincial Court judge for operating a vehicle while intoxicated and driving while disqualified. The Crown's principal argument on appeal was that the sentencing judge erred in law by finding that the Crown had failed to prove that it had notified the accused, K.K., of its intention to seek greater punishment based on his past convictions for drinking and driving matters.

HELD: The appeal was allowed. The sentencing judge erred in law in holding that s. 727(1) of the *Criminal Code* required proof of notice to seek greater punishment. When the Crown chooses to rely on previous convictions, it must provide notice to an accused

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person of its intention to seek a greater punishment prior to their plea. The notice required is to an accused person, not the court. In this case, counsel to the respondent conceded at the sentencing hearing that the notice to seek greater punishment had been given prior to plea. As a result, the sentencing judge erred in law in finding that s. 727(1) of the *Criminal Code* required the Crown to file proof of the notice to seek greater punishment.

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***R v Bijl*, [2024 SKKB 201](#)**

Stahl, 2024-11-18 (KB24198)

Regulatory Offence - Appeal - *Traffic Safety Act*

This was an appeal from a decision rendered by a justice of the peace which found the respondent not guilty of driving a vehicle in a school zone at a greater speed than the maximum speed indicated by any sign. The one witness called during trial had been unable to address the degree of accuracy of the radar equipment used in issuing the ticket to the respondent, other than to say it was not more than ten kilometres an hour. The justice of peace acquitted the accused based on a reasonable doubt regarding the accuracy of this radar equipment.

HELD: The appeal was dismissed. (1) The justice of peace properly considered whether the relevant evidence cumulatively proved beyond a reasonable doubt the proper functioning of the radar equipment. On an appeal against acquittal, an appeal court may only allow the appeal where it can be shown by the appellant that: (i) the verdict is unreasonable or cannot be supported by the evidence; (ii) there was an error of law by the lower court; or (iii) there was a miscarriage of justice. In this case, the justice of the peace considered the evidence cumulatively and correctly found reasonable doubt regarding the radar's accuracy. It was open for the justice of the peace to find that the Crown witness' testimony and notes were not enough to overcome this deficiency of proof, and therefore the Crown failed in proving the radar's accuracy beyond a reasonable doubt. (2) The justice of the peace rightly concluded certain evidence could not be considered in his deliberation in the absence of expert testimony. Admission of expert evidence requires the following elements: relevance, necessity in assisting the trier of fact, the absence of any exclusionary rule and a properly qualified expert. In this case, the discrepancies between the GHz values in Exhibits P 1 and P 3 were unexplainable without expert evidence stating otherwise, and neither was lay evidence

Case Name

Geiger v Saskatchewan Power Corporation

Klebaum v Luba (decision on Mental Health Review Panel members' application)

Klebaum v Luba (decision on registered psychiatric nurses' application)

Point View Cemetery Inc. v Arendt

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tendered to explain it. In this regard, the trial judge made no error.

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***Point View Cemetery Inc. v Arendt*, [2024 SKKB 202](#)**

Tomka, 2024-11-20 (KB24199)

Practice - Application for Summary Judgment - Disposition Without Trial
Real Property - Easements - Registration

The applicants claimed a right of way on the adjacent lands owned by the respondents as a result of the historical use of the said lands as access to the cemetery owned by the applicants. The applicants sought to register an easement on the titles of the lands belonging to the parties with the applicants' land registered as the dominant tenement and the respondents' land as servient tenement.

HELD: The application was granted. (1) The matter could be heard summarily. In determining whether to decide an issue summarily, the court should consider: (i) the nature and degree of the dispute between the parties; (ii) the completeness and complexity of the evidence; and (iii) the complexity of the legal issues involved. In this case, but for the dispute regarding the purported agreement for a right of way, the facts were not in dispute. The law relevant to this dispute was also not overly complex and the parties also desired to proceed summarily. (2) The facts did not support the declaration of an easement under the doctrine of equitable easement. The requirements of a valid easement are as follows: (a) a person claiming to exercise the right must have an interest in the land which is called the dominant tenement. The person against whom the claim is made must have an interest in the land said to be bound by the easement and is the servient tenement; (b) the easement claimed must better or advantage the dominant tenement land. The right claimed must be reasonably necessary for the dominant tenement; (c) both dominant and servient tenements cannot be owned by the same person; and (d) the right claim must be capable of being the subject matter of a grant. In this case, given the presence of a secondary access to the cemetery and its use over the past eight years along with insufficient evidence to conclude the temporary access was not sustainable, the applicants had not proven that a right of way on the access land was necessary. Further, the applicants did not prove that an easement of accommodation was available as there was no evidence that there was ever a common owner of the lands comprising the cemetery and the access land. (3) The facts did not support the declaration of an easement under the doctrine of proprietary estoppel.

Proprietary estoppel arises when: (a) a representation or assurance is made to the claimant, on the basis of which the claimant expects that he will enjoy some benefit or right over property; (b) the claimant relies on that expectation by doing or refraining from doing something, and his reliance is reasonable in all the circumstances; and (c) the claimant suffers a detriment as a result of his reasonable reliance, such that it would be unfair or unjust for the party responsible for the representation or assurance to go back on her word. In this case, there was an implied representation made by the respondents to the applicants by conduct and acquiescence that the access land could be used to access the cemetery. The evidence also showed that for the ten years after and several decades before the respondents owned the access land, the applicants, the community and the rural municipality maintained the right of way on the access land and expended time and resources in this regard and to build up the right of way. The evidence also showed that it would be unfair or unjust for the respondents to go back on their implied assurances considering the detriment suffered.

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***R v Provincial Court for Saskatchewan*, [2024 SKKB 203](#)**

Elson, 2024-11-20 (KB24200)

Administrative Law - Judicial Review - *Certiorari* - *Mandamus*

Criminal Law - *Controlled Drugs and Substances Act* - Possession for the Purpose of Trafficking - Sentencing

This was an application for judicial review arising from the imposition of a sentence by a Provincial Court judge. The sentencing judge had rendered a sentence in which he mischaracterized one of the subject counts and imposed sentence on a count to which the offender had not entered any plea. The sentencing judge had acknowledged his mistake, but no steps were taken to correct it. The Crown contended that the sentencing judge's decision amounted to jurisdictional error. The Crown had also launched an appeal on the merits of the imposed sentence.

HELD: The application was dismissed. (1) The sentencing judge made a jurisdictional error which was waived by the applicant. In the criminal context, jurisdictional error occurs where the court fails to observe a mandatory provision of a statute or where a court acts in breach of the principles of natural justice. Under s. 606 (1.1) of the *Criminal Code*, a court may accept a guilty plea only if it is satisfied that (a) the accused is making the plea voluntarily; (b) the accused understands: (i) that the plea is an admission of the essential elements of the offence; (ii) the nature and consequences of the plea, and (iii) that the court is not bound by any agreement made between the accused and the prosecutor; and (c) the facts support the charge. In this case, the evidence was that the offender never entered a guilty plea to the fifth count. Based on a joint reading of ss. 718.3 and 469 of the *Criminal Code*, it could be argued that the sentencing judge acted without jurisdiction in sentencing the offender on count 5, for which there was no guilty plea or guilty verdict. However, the offender's waiver of any jurisdictional error justified the court's jurisdiction to refuse the applicant's request. (2)

Given the pending appeal of the sentencing judge's decision, there was an equally effective alternative remedy to those sought in the application.

***Sun v Fan*, [2024 SKKB 204](#)**

Zerr, 2024-11-25 (KB24204)

Family Law - Date of Separation

Family Law - Distribution of Family Property

Family Law - Spousal Support

The petitioner and respondent married in 2008 in China and later lived in Canada. After separating in 2011, they disputed whether they reconciled and cohabited until 2014. The petitioner petitioned for the division of family property, designation of the family home, and spousal support. The court had to decide the date of separation; which property qualified as the family home; how the family property should be valued and divided; and whether the petitioner was entitled to spousal support.

HELD: The court concluded the separation date was December 2014 based on evidence of living arrangements, financial support, and joint property ownership. The Saskatoon home was deemed the family home due to joint ownership, living arrangements, and its significance in their relationship. The court adopted the test from *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65, assessing whether one spouse held a settled intention to separate and communicated it through their conduct. Based on the evidence, the court found the parties reconciled in 2011 and separated in December 2014. The court designated the Saskatoon property as the family home based on its joint registration and role in their spousal relationship after reconciliation. The court applied the framework from *Benson v Benson* (1994), 120 Sask R 17 (CA), evaluating property exemptions, valuation dates, and equitable considerations. It valued the real and personal property, accounting for market forces and property-specific evidence (see paragraph 47 of the decision). The petitioner demonstrated financial need and reduced income potential due to the marriage's impact on her career. The respondent's financial contributions during their marriage and post-separation were considered. The court upheld prior interim spousal support orders and calculated the final spousal support award under the *Spousal Support Advisory Guidelines*.

***R v Dumba*, [2024 SKKB 205](#)**

Robertson, 2024-11-26 (KB24201)

Criminal Law - Sexual Offences - Luring

Criminal Law - Child Pornography - Make Available

The accused was charged with, among other offences, possession of child pornography and invitation to sexually touch to a person under the age of sixteen. The Crown argued that the elements of the offences were proven and that the defence of mistaken belief as to age could not apply because, from the start, the accused either knew that the complainant was underage or was reckless in failing to take reasonable steps to ascertain her age. The defence argued that the complainant was not a credible witness. HELD: The charges against the accused were dismissed. (1) The Crown did not establish the offence of invitation to sexual touching beyond a reasonable doubt. In assessing evidence, the first step is to determine whether the trial judge believed the evidence of the accused. On the second step, the trial judge must ask whether the accused's evidence raises a reasonable doubt. On the third step, the trial judge must consider whether, on the basis of all of the evidence, the Crown has proven the charge beyond a reasonable doubt. In this case, the accused agreed that he lied to police during his interview, was contradictory about his memory of events in the summer of 2021 and used a false birthdate on his Facebook profile. A healthy scepticism of the accused's evidence was warranted and the accused's evidence on its own did not raise a reasonable doubt. However, the Crown did not satisfy the constituent elements of the offence of invitation to sexual touching beyond a reasonable doubt. (2) The defence of mistaken belief was established with respect to the remaining offences. The accused admitted to communicating with the complainant during the summer of 2021. They communicated by Snapchat and texting, during which they traded images of their naked bodies and sexual organs for a sexual purpose. The accused sent images of his erect penis on multiple occasions and the complainant sent images of her partially clothed body and of her bare vagina. The accused at the time was hoping this would lead to a sexual encounter. The accused invited the complainant to come to his home for that purpose, but the complainant was unable to attend. However, the accused took reasonable steps to ascertaining the age of the complainant and there was no evidence that the accused was trying to establish sexual communication or relationships with children. Additionally, the evidence was that when the accused had reason to suspect that the complainant might be younger than he originally believed, he questioned her again, at which time she revealed that she was a high school student and her true age. The evidence from both the accused and complainant agreed that the accused then immediately told the complainant they must stop their online relationship. While it was possible that the accused did continue sexual communications or did not immediately delete images of child pornography after he learned of the complainant's age, there was reasonable doubt on all the evidence that this occurred.

***Geiger v Saskatchewan Power Corporation*, [2024 SKKB 207](#)**

Tomka, 2024-11-27 (KB24203)

Civil Procedure - *King's Bench Rules*, Rule 7-9

Civil Procedure - Pleadings - Statement of Claim - Striking Out

The plaintiffs were the registered owners of 211.66 acres of land (lands) situated in northwest Regina. The action by the plaintiffs sought compensation due to the defendant's expropriation of a portion of the lands for a transmission line. The defendants sought to strike portions of the claim, which they asserted did not disclose a reasonable cause of action or were otherwise frivolous, vexatious, or an abuse of process.

HELD: The application was dismissed, save for paragraph 7 of the plaintiff's claim. (1) The plaintiff's claim, save for the claim relating to the overhead powerline, disclosed a reasonable cause of action. In determining whether to strike a plaintiff's claim, the conditions are that the pleading or other document: (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, it could not be concluded that the plaintiff's claim relating to the fence when considered as part of the overall concept of fair and due compensation under *The Expropriation Procedure Act* was devoid of merit, scandalous, vexatious, and/or an abuse of process. It could also not be concluded that the nuisance claim was devoid of merit. There was an arguable case that damages could be awarded to the plaintiffs for disturbance. There was also no merit in striking the plaintiffs' injurious affection claim. Only the plaintiff's claim relating to the overhead powerline did not disclose a reasonable cause of action.

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***Klebaum v Luba*, [2024 SKKB 208](#)**

Dovell, 2024-11-22 (KB24206)

Civil Procedure - Pleadings - Application to Strike Statement of Claim - Abuse of Process

Civil Procedure - *King's Bench Rules*, Rule 7-9 - Application to Strike

Statutes - Interpretation - *Mental Health Services Act*, Section 36, Section 39

The plaintiff, a self-represented litigant, initiated a \$5 trillion lawsuit against 16 defendants, including doctors, lawyers, and mental health nurses. The claim alleged mistreatment related to community treatment orders issued under *The Mental Health Services Act* (the Act). The Saskatoon Mental Health Review Panel (MHRP) member defendants applied to strike the claim under Rules 7-9(1) and 7-9(2) of *The King's Bench Rules*, asserting that the claim was an abuse of process, scandalous, frivolous, and vexatious, and

failed to disclose a reasonable cause of action. They also invoked section 39 of the Act, which grants immunity to individuals performing duties in good faith under the Act. The court had to decide whether the plaintiff's claim disclosed a reasonable cause of action, whether the defendants' statutory immunity under section 39 of the Act applied, and whether the claim was an abuse of process.

HELD: The court struck the \$5 trillion claim against the MHRP member defendants due to statutory immunity under the Act. Section 39 of the Act protects individuals acting in good faith while performing their duties under the Act. The court found that the MHRP members acted strictly within their roles as chairperson and official representative of the MHRP. Their actions were performed in good faith and in compliance with their statutory duties. No allegations of bad faith were made in the statement of claim. The court emphasized that a claim must provide a factual foundation for legal allegations, citing Rule 7-9(2)(a) of *The King's Bench Rules*. The court determined that the plaintiff's claim was an abuse of process, given the existence of a clear legal remedy under s. 36 of the Act, which allows individuals to appeal decisions of the MHRP to the Court of King's Bench. The plaintiff had repeatedly chosen not to pursue this avenue and instead launched a baseless lawsuit. The court highlighted the absurdity of the \$5 trillion claim and noted that its intent appeared to embarrass or harass the defendants, further justifying its dismissal under Rule 7-9(2)(b). The court struck the claim against the MHRP members, concluding that statutory immunity under s. 39 applied. The court awarded costs of \$2,500 to the defendants.

***Klebaum v Luba*, [2024 SKKB 209](#)**

Dovell, 2024-11-22 (KB24207)

Civil Procedure - Pleadings - Application to Strike Statement of Claim - Abuse of Process

Civil Procedure - *King's Bench Rules*, Rule 7-9 - Application to Strike

Professions and Occupations - Registered Nurses

Statutes - Interpretation - *Mental Health Services Act*, Section 24, Section 36, Section 39

The plaintiff, a self-represented litigant, filed a \$5 trillion lawsuit against 16 defendants, including doctors, lawyers, and mental health nurses. This claim alleged mistreatment related to community treatment orders (CTOs) issued under *The Mental Health Services Act* (the Act). The registered psychiatric nurses applied to strike the claim against them, arguing the claim disclosed no reasonable cause of action, was frivolous and vexatious, and constituted an abuse of process. The court had to decide whether the claim disclosed a reasonable cause of action against the nurses; whether they were entitled to statutory immunity under s. 39 of the Act, and whether the claim was scandalous, frivolous, vexatious, or an abuse of process under Rule 7-9 of *The King's Bench Rules*.

HELD: The court struck the plaintiff's \$5 trillion claim against the two mental health nurses, citing statutory immunity and abuse of process. Section 39 of the Act provides immunity for individuals performing duties in good faith under the Act. The court emphasized that the nurses were carrying out responsibilities as required under validly issued CTOs, which rendered them immune from civil liability. The plaintiff failed to allege bad faith, a necessary condition to overcome statutory immunity. The court highlighted that the nurses acted strictly within their professional roles, including administering prescribed injections and reporting non-compliance with

CTO conditions. The plaintiff alleged one of the nurses colluded with a doctor to send police to his home and mistakenly emailed information about patient rights to his parents. The court found these allegations insufficient to ground a reasonable cause of action, as the patient rights document was not confidential information. Allegations that the two nurses forced medications on him were also dismissed, as consent is not required under a valid CTO when the patient is deemed unable to understand or make informed decisions, per section 24.3(1)(a)(v) of the Act. The court deemed the \$5 trillion claim frivolous, vexatious, and scandalous, as it was baseless, intended to embarrass the defendants, and pursued without merit. The plaintiff had access to an appropriate remedy through the appeal process under s. 36 of the Act. However, he chose not to appeal review panel decisions and instead initiated collateral litigation. The court struck the claim against the two nurses in its entirety.

***Slemming v Sellar*, [2024 SKPC 34](#)**

Daunt, 2024-10-11 (PC24027)

Courts - Provincial Court - Small Claims
Small Claims - Practice and Procedure
Small Claims - Torts

The plaintiff, through his attorney, sued his neighbour, the defendant, alleging trespass, nuisance, mischief, conversion, and cruelty to animals. The claims included \$13,450 in damages for various issues: a missing gate, stud fees, loss of a stallion, burial costs, pound fees, and care of the defendant's horses while on the plaintiff's land. The defendant denied all claims and argued that the plaintiff's actions caused unnecessary conflicts. The court had to review the facts to decide on the issues raised by the plaintiff, including allegations of trespass, nuisance, mischief, conversion, and cruelty to animals.

HELD: The court ordered the return of a gate taken by the defendant but dismissed all other claims due to insufficient evidence. The plaintiff alleged that the defendant tampered with fences and left gates open, allowing livestock to escape. The court found no direct evidence proving the defendant tampered with the fences or left gates open deliberately. Testimonies from both parties were contradictory, and the court could not determine who was credible. The plaintiff sought the return of a gate removed by the defendant. The court determined the gate belonged to the plaintiff. The defendant removed it without proper authority, even if municipal orders required its removal. The defendant was ordered to return the gate by January 15, 2025, or pay \$604.80 plus pre-judgment interest. The plaintiff sought \$5,500 for stud fees, alleging the plaintiff's stallion impregnated the defendant's mares. The court accepted that the mares were likely impregnated by the plaintiff's stallion but found no evidence of intent or causation by the defendant. Moreover, the plaintiff failed to prove financial loss or benefit to the defendant. The claim was dismissed. The plaintiff sought \$3,000 for the loss of a stallion and \$400 for its burial after it was injured on the defendant's property. The court found no evidence linking the defendant to the stallion's injuries. The animal could have been harmed by wildlife or escaped due to its own behaviour. This claim was dismissed. The plaintiff sought \$3,750 in reimbursement for pound fees paid after his livestock strayed onto the defendant's land. The court held that the defendant acted within the authority of *The Stray Animals Act*, which provided immunity for actions taken in good faith. The claim was dismissed. The plaintiff sought \$1,350 for care and feeding of the

defendant's horses that allegedly stayed on the plaintiff's land for five months. The court found no evidence that the defendant intentionally placed his horses on the plaintiff's land or that the animals remained there for an extended period. The claim was dismissed. The court ordered the defendant to return the gate or pay damages. All other claims were dismissed. Each party was directed to bear their own costs.