



**The Law Society of Saskatchewan Library's online newsletter
highlighting recent case digests from all levels of Saskatchewan Court.
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Leurer McCreary Kilback, 2025-04-08 (CA25038)

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The appellant appealed from the chambers judge's decision to dismiss the appellant's order for a further accounting. The chambers judge found that the accounting provided by the respondent covered the appropriate period and that the requests for a further accounting and additional document disclosure were unreasonable. The chambers judge found that the respondent was only required to provide an accounting for the period during which she exercised her authority as her father's power of attorney. The appellant agreed that this was a correct statement of the law, but that the respondent had exercised her authority as the testator's attorney starting two months earlier than the accounting provided. The appellant appealed the chambers decision, arguing that the judge erred in determining the appropriate accounting period, and erred in failing to order a further accounting or additional document disclosure.

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HELD: The Court of Appeal (court) dismissed the appeal. The court found there was no error in the chambers judge's determination that the respondent did not exercise her authority as the testator's attorney prior to when the accounting started. The chambers judge accepted the respondent's evidence of when she first used the power of attorney. The chambers judge did not err in declining to order a further accounting for the two preceding months as requested by the appellant. The court also concluded that the judge did not err in dismissing the application for document disclosure. The chambers judge found that the appellant was requesting information and documents about the testator's own actions and business decisions, not about the respondent's actions as power of attorney. The chambers judge held that a person holding power of attorney is required to account for his or her actions, not the actions of the person who granted it. There was no basis for the court to interfere with the costs award.

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***Mosiuk v Black*, [2025 SKCA 39](#)**

Tholl McCreary Drennan, 2025-04-09 (CA25039)

Appeal - Dismissal for Delay

Civil Procedure - *King's Bench Rules*, Rule 4-44(a) - Application to Strike for Delay

The appellants appealed from the chambers decision to strike the appellants' claim under Rule 4-44(a) of *The King's Bench Rules* for delay of prosecution. The background facts involved the appellants hiring the respondent to custom seed a portion of farmland. When the crops did not grow as expected, the appellants sued the respondent. The statement of claim was issued in June 2018. After requesting particulars several times and receiving an order for particulars, the respondent served his statement of defence. After that, the appellants did little to advance the claim, and the respondent brought his first application to dismiss the claim for delay in February 2022, which was dismissed. Mediation was unsuccessful. The respondent requested document production and provided a formal offer to settle in October 2022. The respondent's legal counsel asked for disclosure in December 2022 and January 2023. Nine months later, the respondent served the second notice of application to strike for delay. In November 2023, the chambers judge allowed the application and dismissed the appellants' claim, concluding that the delay was inordinate and inexcusable, and that it was no longer in the interests of justice to allow the claim to proceed. The appellants argued that the hearing was procedurally unfair because they had not filed evidence.

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Abduction*

HELD: The Court of Appeal (court) dismissed the appeal. The court noted that a judge's decision to dismiss a claim for inordinate and inexcusable delay was discretionary and reviewable by the court on the standards set out in *Arkell v Komodowski*, 2023 SKCA 79. The court disagreed that there was a breach of procedural fairness. The standard of review of breaches of procedural fairness is correctness. The appellants had the opportunity to file evidence in advance of the hearing but did not. The chambers memo they filed did not request any procedural remedy, and there was no reason for the chambers judge to adjourn the matter on his own motion. The chambers judge appropriately reviewed the entirety of the proceedings in his consideration of the character of the delay. The clock was not re-set simply by successfully defending the first application to dismiss for delay. The chambers judge concluded that it was not in the interests of justice to allow the claim to proceed based on evidence of a further 18 months of delay.

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***Hollinger v SaskTel Centre*, [2025 SKCA 40](#)**

Tholl McCreary Drennan, 2025-04-11 (CA25040)

Appeal - Dismissal - Failure to Disclose a Reasonable Claim
Civil Procedure - *King's Bench Rules*, Rule 7-9(2)(a) - Application to Strike

The appellant's claim against the city of Saskatoon was struck by a chambers judge for failing to disclose a reasonable claim. The appellant claimed that she was constructively dismissed from her employment at SaskTel Centre. In her statement of claim, she named SaskTel Centre, its Chief Executive Officer, and the city of Saskatoon as defendants. She claimed that the city owed her a duty of care to investigate a complaint she made to the city's ombudsman, and that it failed in that duty. The chambers judge struck the claim against the city because it failed to disclose a *prima facie* duty of care on the part of the city for the claims for negligence and negligent investigation. The chambers judge found that the appellant's pleadings were so deficient it would be inappropriate to grant her leave to amend them. The appellant appealed and argued that the chambers judge erred by: 1) failing to apply the correct test to strike a claim pursuant to Rule 7-9(2)(a); 2) misapprehending the facts pled in the claim; 3) violating the rule of *audi alteram partem*; and 4) refusing to grant leave to amend the deficient pleadings. HELD: The Court of Appeal (court) dismissed the appeal and awarded costs to the respondent. 1) The chambers judge did not err in the test he used to strike the claim. He correctly applied the *Anns/Cooper* test for determining if the facts pled in the claim established a *prima facie* duty

Family Law - Custody and Access - Appeal

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of care. He found that the facts pled did not establish foreseeability or proximity and therefore concluded that the claim had no reasonable chance of success. 2) The chambers judge did not misapprehend the facts pled in the claim; he found that there were insufficient material facts pled to establish a *prima facie* duty of care. 3) The chambers judge did not breach the rule of *audi alteram partem*. The court noted that while the chambers judge cited cases other than those relied upon by the parties, this was not an error in and of itself. It was not a breach of procedural fairness for a judge to rely on authorities not specifically referred to by the parties when those authorities are relevant to an issue already raised by the parties. To commit a breach of *audi alteram partem*, a new issue or point of law must be raised without providing the parties an opportunity to make argument on it. Here, the chambers judge cited additional precedents relevant to the parties' arguments. 4) There was also no error in the chambers judge's refusal to grant leave to amend the deficient pleadings. He clearly understood that he had the discretion to allow an amendment but concluded that because the material facts pled were so deficient, an amendment would be inappropriate.

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Airir v Tamri, [2025 SKCA 41](#)

Tholl McCreary Drennan, 2025-04-10 (CA25041)

Family Law - Custody and Access - Appeal

Family Law - Custody and Access - *Hague Convention*

Family Law - Custody - Jurisdiction - *Hague Convention on the Civil Aspects of International Child Abduction*

The appellant appealed a chambers judge's decision denying his application under *The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (*Convention*) seeking the return of two children to Morocco. The parties had lived in Regina for years, though from 2021 to 2023, the respondent and the children resided in Morocco with the appellant's family while the appellant continued working in Canada. They returned to Regina in July 2023. In September 2023, the appellant left Canada and returned to Morocco, while the respondent and the children remained in Regina. The appellant subsequently brought proceedings under the *Convention* for the children's return, asserting their retention in Canada was wrongful. The chambers judge denied the application, finding that the children were habitually resident in Canada and, alternatively, that the appellant had acquiesced to their retention and was not exercising custody rights. The Court of Appeal (court) had to decide whether the chambers judge erred in law or made palpable and overriding errors on the facts in

Levesque v Klarenbach

Mosiuk v Black

R v A.S.

R v Munro

*Saskatchewan Government and
General Employees' Union v
Lapchuk*

*Saskatoon Minor Basketball
Association v MacDonald*

T.P. v Bytedance Ltd.

Tarasoff v Saskatoon (City)

*United Food and Commercial
Workers Union, Local 1400 v Affinity
Credit Union*

concluding that the children were habitually resident in Canada and that the requirements of Article 3(a) of the *Convention* were not met.

HELD: The court dismissed the appeal. The court found that while the chambers judge made a minor factual error regarding the appellant's stated intention to continue working in Canada, that error was not overriding and did not affect the outcome. The court held that the chambers judge applied the correct legal framework for determining habitual residence, following the hybrid approach from *Office of the Children's Lawyer v Balev*, 2018 SCC 16 (*Balev*). That approach requires courts to consider the entirety of the child's circumstances, including parental intentions, the duration and nature of residence, and the social and family environment in the period immediately before the alleged wrongful retention. Applying this approach, the chambers judge found that the children were habitually resident in Canada as of September 2023. The family had long resided in Regina, the children were Canadian citizens, and the appellant had unilaterally left the home and his employment without providing a reason or making arrangements, suggesting a permanent relocation to Morocco. The judge also found that the appellant had consented to or acquiesced in the children remaining in Canada and was not exercising custody rights at the time. The court concluded these findings were supported by the record and consistent with legal standards established by precedents such as *Balev*. Because the children were not habitually resident in Morocco immediately before the alleged retention, the *Convention* did not apply, and there was no need to assess other exceptions under Article 13 of the *Convention*. The appeal was dismissed, with costs awarded to the respondent, payable to the Legal Aid Commission.

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***Saskatoon Minor Basketball Association v MacDonald*, [2025 SKCA 42](#)**

Caldwell Tholl Bardai, 2025-04-17 (CA25042)

Employment Law - Appeal

Employment Law - Employee - Independent Contractor

Employment Law - Mitigation - Notice - Damages

Employment Law - Wrongful Dismissal

The appellant appealed a chambers judge's decision granting summary judgment in favour of the respondent. The respondent worked with the appellant for over 16 years in various roles, eventually becoming executive director. The appellant had treated the respondent as an independent contractor, relying on unsigned contracts that specified minimal notice periods for termination. Following organizational changes in 2021, the appellant ended the working relationship. The respondent filed a wrongful dismissal claim, asserting she was an employee entitled to common law reasonable notice. The chambers judge found the respondent to be

an employee and awarded 22 months of notice (less three months of working notice) along with \$11,000 in costs. The appellant challenged several of the chambers judge's findings. The Court of Appeal (court) had to decide whether the chambers judge erred in: (1) using the summary judgment process; (2) determining the respondent was an employee rather than an independent contractor; (3) determining the length of the reasonable notice period; (4) finding the respondent had not failed to mitigate her losses; (5) providing adequate reasons; and (6) awarding \$11,000 in costs.

HELD: The appeal was dismissed. The court upheld the summary judgment decision and all findings made by the chambers judge. (1) The court found that the chambers judge was entitled to resolve the matter via summary judgment because the core facts were undisputed, and a full trial was not necessary. (2) The chambers judge reasonably concluded that the parties' long-standing working relationship, lack of control by the respondent, integration with the organization, and the evolution of her responsibilities supported an employment relationship. *671122 Ontario Ltd. v Sagaz Industries Canada Inc.*, 2001 SCC 59 evaluates whether a worker is in business on their own account by considering control, ownership of tools, financial risk, investment, and opportunity for profit. In the current matter, despite the unsigned contracts labelling the respondent's work as an "independent contract," the court found she was not in business for herself and was effectively functioning as an employee. (3) The court upheld the 22-month reasonable notice award. The court noted that the length of service, age, position, and lack of similar employment opportunities supported the high-end notice award. The appellant's argument that the notice period was excessive was rejected, as the judge's determination fell within a reasonable range based on similar cases. (4) Regarding mitigation, the court concluded that the respondent reasonably declined the appellant's post-termination offer of a different position, which involved new duties for which she had no training and required a full and final release of claims. Applying the principles from *Evans v Teamsters Local Union No. 31*, 2008 SCC 20, the court emphasized that a dismissed employee is not obligated to accept re-employment where doing so would require surrendering their legal rights or working in a humiliating environment. (5) The court also held that the chambers judge provided adequate reasons. (6) Finally, the cost award was upheld. The court found no error in the judge's discretionary decision to increase costs. The cost decision was properly considered under Rule 11-1 of *The King's Bench Rules* and the contextual circumstances of the case. The appeal was dismissed in full, with the respondent awarded her costs on appeal.

***T.P. v Bytedance Ltd.*, [2024 SKKB 226](#)**

Wildeman, 2024-12-17 (KB24225)

Civil Procedure - Applications - Sequencing
Civil Procedure - Class Actions - Application to Strike
Civil Procedure - Class Actions - Certification - Evidence
Class Actions - Certification - Procedure
Class Action - Management

The plaintiff brought a proposed class action on behalf of children in Saskatchewan against the owners and developers of the social media application TikTok. The action alleged that TikTok was unsafe for children, causing addiction and mental health harms, and

asserted various causes of action, including negligence, misrepresentation, breach of duty to warn, unjust enrichment, civil fraud, and conspiracy. As part of the certification application, the plaintiff filed an affidavit of one of his lawyers, attaching 33 exhibits. The defendants applied to strike 15 of these exhibits before the certification hearing, arguing they contained inadmissible hearsay, opinion evidence, or were improper because a lawyer cannot act as both witness and advocate. The plaintiff opposed hearing the strike application first, arguing that evidentiary rulings should be made in the context of the full certification record. The court had to decide whether the defendants' application to strike portions of the affidavit should be heard and decided before the certification hearing or deferred until the certification application was heard in full.

HELD: The court ruled that the defendants' strike application should be heard and decided before the certification application. The court held that determining the admissibility of the impugned exhibits in advance would serve the interests of fairness, judicial efficiency, and clarity for both parties. The court applied the contextual approach to sequencing established in *Hoedel v WestJet Airlines Ltd.*, 2023 SKCA 135, and adopted the non-exhaustive list of factors from *British Columbia v The Jean Coutu Group (PJC) Inc.*, 2021 BCCA 219. These factors included delay, cost, potential for multiple proceedings, judicial efficiency, and fairness to the parties. In applying these factors, the court concluded that the admissibility issues raised in the strike application were distinct and not intertwined with the substantive certification issues. The defendants challenged the admissibility of exhibits, including internet-sourced statistics, reports from regulatory and advocacy organizations, and court documents from U.S. litigation. The court noted that if this evidence were allowed to stand without pre-screening, the defendants might unnecessarily file extensive reply evidence, leading to a "ballooning" record and more complex arguments at the certification hearing. The court further noted that determining admissibility in advance would help both sides prepare their evidentiary and legal arguments more efficiently and allow for potential supplementary evidence from the plaintiff if the challenged material were struck. The court distinguished prior cases in which admissibility was left to the certification stage, noting that those matters often involved relevance or expert qualification issues that were more intertwined with the certification criteria. While acknowledging that sequencing the strike application first could delay the proceedings due to potential appeals or further motions, the court concluded this risk was outweighed by the benefit of ensuring the certification hearing would proceed on a clear and properly limited evidentiary record. The court ordered the defendants' application to strike affidavit evidence to be heard and determined before the certification hearing. A case management conference would be scheduled to manage timelines for the next steps.

***R v Munro*, [2025 SKKB 20](#)**

Crooks, 2025-02-06 (KB25046)

Constitutional Law - *Charter of Rights*, Section 8 - Unreasonable Search and Seizure

Constitutional Law - *Charter of Rights*, Section 24

Constitutional Law - IP Address - Reasonable Expectation of Privacy

Criminal Law - Child Pornography - Accessing

Criminal Law - Child Pornography - Possession

Criminal Law - Making Child Pornography Available

The accused brought a Charter application seeking to exclude evidence obtained during a child pornography investigation. The accused was charged with possession, accessing, and making child pornography available, contrary to ss. 163.1(3), (4), and (4.1) of the *Criminal Code*. He argued that law enforcement (RCMP) had violated his rights under s. 8 of the *Charter* by using his Internet Protocol (IP) address, obtained through the Child Protection System (CPS), without judicial authorization. He relied on the recent Supreme Court of Canada decision in *R v Bykovets*, 2024 SCC 6 (*Bykovets*), which recognized a reasonable expectation of privacy in IP addresses. The court had to decide whether the accused's rights under s. 8 of the *Charter* were breached when the RCMP used the CPS to identify his IP address and whether any resulting evidence should be excluded under s. 24(2) of the *Charter*. HELD: The court dismissed the application. The court found that s. 8 of the *Charter* was not engaged because the CPS obtained the accused's IP address from publicly available information on a peer-to-peer (P2P) file sharing network, not through a state request. Therefore, there was no "search" within the meaning of s. 8. Even if a search had occurred, the accused did not have a reasonable expectation of privacy in the IP address because he voluntarily used the P2P network, making his IP address accessible to any user on the network, including law enforcement. The court distinguished *Bykovets*, where police directly requested IP addresses from a third party (Moneris) in the context of a specific commercial transaction. In contrast, in this case, the CPS, which is an independent, non-state entity, flagged the accused's IP address based on its automated monitoring of publicly shared files with known child pornography hash values. Law enforcement acted only after the CPS independently shared this information. The court relied on *R v Tessling*, 2004 SCC 67; *R v Marakah*, 2017 SCC 59; and *R v Spencer*, 2014 SCC 43, to emphasize that the existence of a reasonable expectation of privacy must be determined based on the totality of the circumstances. The court found that the accused's use of the P2P network was voluntary and public, and his shared folder and IP address were visible to all other users. Further, the court noted that the CPS did not act as a state agent but as a private actor collecting data available to any P2P user. Because there was no request from law enforcement, and the information was obtained independently and lawfully, the *Charter* was not engaged. Even if it had been, the court found that excluding the evidence would not be warranted under s. 24(2). Applying the framework from *R v Grant*, 2009 SCC 32, the court concluded that any breach would have been minor, the impact on the accused's *Charter* rights minimal, and the society and public interest in adjudicating serious allegations of child pornography on their merits strongly favoured inclusion of the evidence. The application to exclude the evidence was dismissed, and the matter was allowed to proceed to trial.

***Tarasoff v Saskatoon (City)*, [2025 SKKB 41](#)**

Gerecke, 2025-03-13 (KB25041)

Administrative Law - Saskatchewan Information and Privacy Commissioner - Access to Information

Statutes - Interpretation - *Local Authority Freedom of Information and Protection of Privacy Act*, Section 38, Section 45

The applicant made a freedom of information request to the city to be provided with emails related to the executive committee of the Community Safety and Well-Being Partnership (CSWBP), on which the mayor had been included. The city

withheld portions of its records, relying on exemptions in *The Local Authority Freedom of Information and Protection of Privacy Act* (Act). The applicant then applied for a review of the city's refusal under s. 38 of the Act. The Saskatchewan Information and Privacy Commissioner recommended the release of a substantial portion of the remaining records. The city declined, relying on s. 45 of the Act. The applicant appealed to the Court of King's Bench. The court determined: 1) the nature of the city's participation in the CSWBP and whether exemptions under s. 16 of the Act could apply where records were created in connection with its activities; and 2) whether individual exemptions claimed by the city were valid under the Act.

HELD: The court found that most of the city's exemptions were lawful, but did direct the city to release certain records. 1) The court found that the commissioner unduly restricted s. 16(1)(a) of the Act when he found that it could not apply to the work of the CSWBP. The court noted that the CSWBP was external to the city but that the city organized it to assist in carrying out its mandates under *The Cities Act*. 2) The exemption under s. 16(1)(a) was available to the city with respect to the CSWBP. The court specified which parts of the records needed to be released and ordered the city to pay costs to the applicant fixed at \$750. The court noted that the city's approach was inconsistent, with some duplicate documents receiving different treatment. The court noted that the appeal was to be conducted de novo according to s. 47(1) of the Act. Therefore, the commissioner's findings and recommendations did not bind the court. The city had the onus to prove that the records should not be disclosed in full. Freedom of information legislation exists to increase transparency, but the court noted that there are circumstances where better governance is made possible by sheltering discussion involving public servants from scrutiny.

***A.W. v G.S.*, [2025 SKKB 42](#)**

Sinclair, 2025-03-13 (KB25042)

Family Law - Child Support - Arrears
Family Law - Child Support - Retroactive
Family Law - Parenting Orders

The parties started a relationship and had a child shortly after, in 2012. They only lived together for a short period; the child always lived with the mother. A parenting order and child support order were granted by an Alberta Provincial Court judge in 2013, with the mother having primary residence and day-to-day care of the child, and the father having the child every second weekend. The father assaulted the mother while the couple lived together and while the child was present, and the father was criminally convicted. The mother moved to Saskatchewan. The father's new partner initially got along with the mother, but the relationship broke down to the point that she obtained a civil restraining order against the mother, which was no longer operative. The court determined the following issues: 1) what parenting arrangement was in the child's best interests; and 2) whether child support, both retroactive and ongoing, should be ordered.

HELD: The court ordered that the parties be joint decision-makers for the child. The court also concluded that it was in the child's best interests to continue to primarily reside with the mother but set out the holiday schedule for the father's parenting time. The court noted that the father was a considerably different person today than in 2015 when the parties separated. The court found he

had exercised considerable restraint in responding to inappropriate messages sent by the mother. 1) The court found it was in the child's best interests to have two parents having input into the major decisions affecting his life. The court noted that the stated parenting times were not suggestions; they were mandated by the court. The court did not order specified telephone or electronic parenting time. The child had his own personal electronics, and the court left it to the child to decide whether he wanted to communicate. Given the mother's significant history of non-compliance with court orders, the court considered a police enforcement clause, but did not order it. Instead, the court seized itself with the enforcement of the parenting arrangements for the next 12 months. 2) The court set the amount of ongoing child support and considered the mother's request for retroactive support. The court noted the difference between retroactive child support and arrears of child support. Arrears of child support are monies which a payor parent has been ordered to pay but which he or she has not paid. Retroactive child support is support that ought to have been paid and would have been ordered to be paid had the ordering court been apprised of the basis for it. The court found that the father had not accumulated any arrears or retroactive support from 2023 to the present. The court stated that a retroactive increase to child support from 2015 to the commencement of the action in 2022 was not warranted. The court did find that the father was in arrears of child support. The father argued that he should not be obligated to pay arrears of support because he paid for debts that the mother incurred during the relationship. The court stated that payment of debt incurred by the mother did not justify the non-payment of child support. Child support is the right of the child and cannot be abrogated because of payment of an unrelated debt.

***United Food and Commercial Workers Union, Local 1400 v Affinity Credit Union*, [2025 SKKB 45](#)**

Gerecke, 2025-03-18 (KB25043)

Administrative Law - Judicial Review - Premature Application

The parties were engaged in a grievance arbitration. The tribunal had not heard evidence on the merits of the underlying grievance. Before the hearing was to begin, the applicant raised a preliminary objection to a member who was to serve on the panel and applied to have her disqualified. In a unanimous decision, the tribunal found that no reasonable apprehension of bias existed and dismissed the application to disqualify. The applicant filed this application for judicial review of that decision. The court determined whether the application was premature, and if so, whether there was an apprehension of bias.

HELD: The court dismissed the applicants' judicial review application because it was premature. Here, the application related to a preliminary issue. Courts are reluctant to intervene in administrative proceedings that are not final, except in extremely rare circumstances (*Saskatoon (City) v Wal-Mart Canada Corp.*, 2019 SKCA 3). Generally, challenges on apprehension of bias, procedural fairness, and jurisdiction were not exceptional circumstances. The court also indicated that the applicants' apprehension of bias case was weak.

***Cheekinew v Saskatchewan (Government)*, [2025 SKKB 49](#)**

Bergbusch, 2025-03-25 (KB25044)

Class Actions - Proposed Class Action - Certification Application - Sequencing

The government (defendant) filed a sequencing application, and applied for leave to cross examine the plaintiff's expert on her qualifications and to have its application to strike the expert's report heard in advance of the certification hearing. The factual background involved a class action against alleged "birth alerts" where hospitals received notices requiring them to contact child protection authorities. The court determined: 1) whether the defendant's application to strike the expert report should be heard before the certification application; and 2) whether the court should grant leave to the defendant to cross-examine the expert on her qualifications.

HELD: The court granted leave to the defendant to cross-examine the plaintiff's expert on her qualifications for no more than half a day. The costs of the cross-examination would be borne by the defendant. The defendant's application to strike the expert's report and portions of her affidavit would be heard concurrently with the production application and the balance of the strike application. 1) Each sequencing application must be assessed on a case-by-case basis. The King's Bench Rules apply to class actions to the extent that they do not conflict with The Class Actions Act (CAA). The court stated that the overarching considerations were fairness to all parties, efficiency, and judicial economy, noting that Saskatchewan judges have decided applications to strike expert evidence pre-certification on many occasions, and have also ruled on the admissibility of affidavit evidence, including expert evidence, concurrently with the certification application. Leave to cross-examine on affidavits is discretionary and the applicant must show that cross-examination will assist in resolving the issue before the court and will not result in an injustice. For the certification application, the plaintiff must demonstrate "some basis in fact" for each of the certification criteria set out in the CAA. 2) The court stated that generally, a party seeking to cross-examine affiants in advance of the certification hearing must establish that cross-examination will assist the court in resolving whether there is an identifiable class, the claims of the class members raise common issues, a class action would be the preferable procedure for the resolution of the common issues, and that there is a person willing to be the representative plaintiff. Here, the defendant was requesting to cross-examine the plaintiff's expert on her qualifications only. The court found that all parties would benefit from knowing whether the expert report was admissible.

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***Fedyk Estate v Karmarznuk*, [2025 SKKB 50](#)**

Brown, 2025-03-27 (KB25045)

Wills and Estates - Application for Direction

Wills and Estates - Will - Interpretation - Extrinsic Evidence

The executor applied for direction from the court with regards to the language of the residual clause in the deceased's will. The will could be interpreted as having the residue invested in a manner to protect it for the benefit of the testator's daughter; or that a

portion of the residue should be invested for the benefit of the daughter and the balance be distributed to the daughter. The respondent daughter was of the view that the clause should be interpreted as having her receiving the benefit of an annuity and all of the residue. The executor was a friend of the deceased and sought to ensure his actions as trustee were appropriate. The court determined how to interpret the provisions in the will related to the residue and annuity, and whether extrinsic evidence could be considered.

HELD: The court found this was a clear situation where indirect extrinsic evidence was to be considered; however, direct evidence of the testator's intention was not admissible as it was not necessary to resolve the nature of the confusion. The court noted that the language of the will was internally contradictory. What appeared to be a complete gift was limited by a subsequent direction and possibly contradicted by language in the will itself. This constituted a patent ambiguity rather than a latent ambiguity or equivocation. After reviewing the jurisprudence, the court concluded that direct extrinsic evidence was only admissible to resolve a latent ambiguity. Direct evidence of a testator's intention was only to be admitted when truly necessary. The court found that there was a common sense requirement to first read the words of the will in their ordinary sense without regard to surrounding circumstances. Here, the court noted the importance of indirect extrinsic evidence that the respondent was the testator's only child. The court found it was clear that the testator sought to provide for her monthly and annually rather than gifting one lump sum payment. Looking to the structure of the will, the indirect external evidence of the relationships the testator had to the beneficiaries, the size of the estate, and the language used in the provision at issue and the rest of the will, the court found the testator's intention was for the respondent to receive the residue of the estate but for an amount to be used to purchase an annuity to ensure she would receive a specific amount per month for life. The court found that the testator's intention was that the corpus of the annuity should not be used during the lifetime of the respondent, and at her death it was to go to the granddaughters.

***Saskatchewan Government and General Employees' Union v Lapchuk*, [2025 SKKB 53](#)**

Megaw, 2025-04-01 (KB25047)

Labour Law - Judicial Review - Labour Relations Board

Labour Law - Labour Relations Board - Judicial Review

Labour Law - Unfair Labour Practices

This case involved a judicial review of two decisions by the Saskatchewan Labour Relations Board (SLRB) which found that the Saskatchewan Government and General Employees' Union (SGEU) breached its duty of fair representation to a member, the respondent, a former government employee who was dismissed following a workplace altercation. The dispute began with the respondent's grievances over his termination, improper discipline, denial of accommodation, and lack of union representation at a disciplinary meeting. An arbitration was conducted and resulted in the dismissal of all grievances. The respondent then applied to the SLRB, alleging that SGEU failed to represent him during the arbitration and grievance processes fairly. The court had to decide whether the SLRB reasonably concluded that SGEU: (1) breached its duty of fair representation in how it pursued the termination

grievance and accommodation issues; and (2) acted arbitrarily or in bad faith by proceeding before a single arbitrator and by delaying arbitration proceedings. Furthermore, the court had to decide whether the SLRB erred in awarding damages without properly addressing causation, and whether the dismissal of SGEU's separate claim against the government was reasonable. HELD: The court upheld in part and set aside in part the SLRB's decisions. The court found that the SLRB reasonably concluded SGEU breached its duty of fair representation in two core areas: (1) its handling of the termination grievance, by failing to arrange sufficient medical evidence regarding the respondent's PTSD and its relevance to the altercation, and (2) its failure to pursue the accommodation grievance substantively. However, the court set aside the SLRB's findings that SGEU acted arbitrarily or in bad faith by not insisting on a full arbitration panel and by delaying the arbitration, concluding these aspects lacked sufficient evidentiary grounding or failed to meet the legal threshold of arbitrariness or bad faith. The court also found that the SLRB erred by failing to address the issue of causation: specifically, whether the breaches by SGEU actually caused the losses for which nearly \$295,000 in damages were awarded. Accordingly, one decision was quashed and remitted to the SLRB for reconsideration. The court dismissed SGEU's application regarding the SLRB's dismissal of its claim against the government, finding that decision reasonable.

***R v A.S.*, [2024 SKPC 44](#)**

Korpan, 2024-12-10 (PC24040)

Constitutional Law - *Charter of Rights*, Section 10(b) - Right to Counsel - Language Barrier
Criminal Law - Evidence - Admissibility - Statement of Accused

The court determined whether a statement provided by the accused was admissible. The accused was charged with sexual assault contrary to s. 271 of the *Criminal Code* and touching for a sexual purpose contrary to s. 151. The accused argued that his right to counsel as guaranteed under s. 10(b) of the *Charter* was infringed because the accused could not meaningfully exercise his right to counsel due to English language comprehension difficulties. The defence asserted that the interview video, transcript, and statement should be excluded from evidence. During the voir dire, the court accepted the officer's largely uncontroverted testimony. The officer went to the accused's house with a social worker, advised the accused he was a suspect in a sexual assault investigation, and then the officer asked the accused to come to the police station a few days later for an interview about his involvement in the alleged offence. The officer noted that the accused had an accent, but they spoke to each other in English. The accused attended the police station for the interview. The court noted that inaccuracies in the transcription of the interview made the accused's command of the English language appear worse than in the interview video.

HELD: The court found there was no breach of the accused's s. 10(b) rights and found that the Crown proved beyond a reasonable doubt that the statement to police was made voluntarily. The Crown evidence from the voir dire, including the interview video and the accused's statement, were admissible and would be introduced into evidence in the trial proper. The court held that the accused's English comprehension was sufficient to understand his rights and warnings, the legal advice he received, and the substance of the allegations. The court found that the officer took sufficient further reasonable steps to ensure that the accused understood his right

to counsel; the informational component of the accused's right to counsel was met. After the officer explained that Legal Aid was free of charge, the accused exercised his right to counsel. The court also found that the implementational component of the accused's right to counsel was met.