CaseMail

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

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Jackson McCreary Kilback, 2025-05-07 (CA25047)

Civil Procedure - Dismissal - Delay
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Civil Procedure - Prejudice - Want of Prosecution - Delay
Municipal Law - Property Taxes - Appeal

The appellants commenced an action in 2010 against the respondent, the Rural Municipality of Sherwood, alleging property tax assessment errors that resulted in overpayment. After an initial partial motion to strike, which allowed the substance of the claim to proceed, the appellants failed to move the case forward. A notice of intention to proceed was filed in 2013, but no further steps were taken over the next nine years. The respondent applied to have the action dismissed for delay under Rule 4-44 of *The King's Bench Rules*, and the Court of King's Bench granted the dismissal in 2023. The

appellants appealed, acknowledging that the delay was both inordinate and inexcusable, but they argued that it was still in the interests of justice to allow the matter to proceed. The court had to decide whether the chambers judge erred in concluding that, despite the inordinate and inexcusable delay, it was not in the interests of justice to allow the claim to proceed.
HELD: The court dismissed the appeal, upholding the chambers judge's application of the three-part test from *International Capital Corporation v Robinson Twigg & Ketilson*, 2010 SKCA 48 (*ICC*). That test requires the court to determine whether a delay is inordinate, inexcusable, and whether it is in the interests of justice to allow the action to continue despite the delay. The appellants conceded the first two elements but challenged the third. The court found no palpable and overriding error in the judge's conclusion that it was not in the interests of justice to permit the claim to continue. The court rejected the argument that excessive weight was given to prejudice suffered by the respondent. The court found that the chambers judge properly considered the factual circumstances, including the complete absence of the municipal staff and council members who dealt with the matter after this long delay, as they were no longer with the municipality. The court also affirmed that responsibility for advancing litigation lies with the plaintiff, even if the defendant did not press for progress. The court further rejected arguments that the withdrawal of the appellants' counsel or issues about arranging mediation explained and excused the delay. The court held that these factors could not justify nearly a decade of inactivity. Finally, the court declined to revise the *ICC* test to emphasize case management over dismissal, stating that concerns about access to justice are already incorporated into the current legal framework. The appeal was dismissed, and costs were awarded to the respondent.

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***Odelein v Odelein Farms Ltd.*, 2025 SKCA 48**

Caldwell Schwann Bardai, 2025-05-13 (CA25048)

Contract Law - Estoppel
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Corporations - Shareholder - Gift to Corporation

The appellant sought summary judgment to recover over $2 million that he claimed was owed to him by the respondent. This amount represented his net contributions to the

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family farm corporation, both before and after its incorporation. The respondent acknowledged the amount was recorded as a shareholder loan in its financial statements but contended that the money was a gift or otherwise not collectible. The Court of King's Bench chambers judge dismissed the appellant's application, concluding that his initial contributions were barred by equitable doctrines of promissory estoppel and waiver and that his post-incorporation contributions were gifts. The court had to decide whether the chambers judge erred in finding that the family intended to establish a multi-generational farm corporation such that the respondent was estopped and had waived his right to repayment of initial contributions, and the respondent's post-incorporation contributions were gifts.
HELD: The Court of Appeal dismissed the appeal, finding no palpable or overriding error in the chambers judge's factual findings or legal conclusions. The court accepted the chambers judge's credibility assessments of the witnesses, particularly the reliable and consistent evidence from family members other than the respondent (who had limited recollection). The foundational finding was that the family intended the corporation to be a permanent multi-generational farm, with the understanding that assets contributed on incorporation would remain with the corporation indefinitely and would not be repaid as loans. This intention was reflected in family discussions and was binding on the respondent as well. Applying the equitable doctrine of promissory estoppel, the court upheld the finding that the respondent had made clear representations that he would not demand repayment of his initial contributions and that the family farm corporation relied on these representations to its detriment. The doctrine of waiver was similarly applied to bar the respondent from demanding repayment. Regarding post-incorporation contributions totalling approximately $1.78 million, the court agreed these were gifts. The chambers judge found the respondent made assurances that he did not expect repayment, and that other family members understood these contributions to be gifts. The court rejected the respondent's technical legal arguments on intention, acceptance, and delivery of gifts, finding the evidence supported the finding of gifts. Secondary arguments related to contract law, the parol evidence rule, corporate law, and the timing of incorporation were also rejected. The court noted that promissory estoppel and waiver do not require a pre-existing contract, and the representations were made both before and after incorporation to the corporation itself.

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C.M. v J.C., **2025 SKCA 49**

Leurer Jackson Bardai, 2025-05-13 (CA25049)

Family Law - Division of Family Property - Appeal
Family Law - Division of Family Property - Interim
Family Law - Division of Family Property - Interim Distribution
Family Law - Family Home - Order for Sale of Family Home

The appellant appealed an interim family law order made by a chambers judge, compelling the sale of the family home and directing that the proceeds be held in trust pending the final division of family property. The parties separated in July 2023, but the appellant remained in the home with their ten-year-old son under an interim exclusive possession order. The chambers judge ordered the sale due to significant unpaid mortgage arrears and financial strain, noting the risk of foreclosure. The judge also fixed spousal and child support payments from J.C. and ordered shared responsibility for home expenses. The court had to decide whether the chambers judge erred in ordering the sale of the family home.
HELD: The court dismissed the appeal. The court found no error in the chambers judge's exercise of discretion. The court acknowledged that while courts are generally reluctant to order interim sales of family homes pending final resolution, there is no absolute prohibition against such orders where circumstances justify them. The court agreed that the substantial unpaid mortgage, amounting to over $1.1 million, and the expensive monthly costs of the home posed a real threat to the family's financial stability. Neither party had the means to meet these obligations, and the risk of foreclosure was imminent. The court held that it was not in the child's best interests to allow the parties' financial situation to deteriorate further, potentially jeopardizing all assets. The respondent's argument that the judge improperly disturbed her interim exclusive possession was rejected. The court noted that the situation had changed materially since the exclusive possession order, justifying reconsideration without the need for a formal variation application. The ultimate division of property would address any inequities or concerns arising from the interim sale order. Given the comprehensive evidence and the nature of the dispute, the chambers judge did not err or misapply the law. The appeal was dismissed with no order for costs.

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***Concorde Group Corp. v Regina (City)*, [2025 SKCA 61]**

Schwann Tholl Kilback, 2025-06-18 (CA25061)

Municipal Law - Property Tax Assessment
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Municipal Law - Property Taxes - Appeal - Disclosure

The appellant owned a strip mall located in downtown Regina. Its appeal from its 2021 property assessment was dismissed by the Regina Board of Revision (board) and its appeal to the Assessment Appeals Committee of the Saskatchewan Municipal Board (committee) was also dismissed. The issue in this appeal was whether the committee erred in finding that no duty of disclosure had been breached.
HELD: The appeal was allowed. The committee erred by affirming the board's finding that the assessor was not in any breach of any duty to disclose. Assessors do not have a general obligation to disclose assessment information to the owners of assessed property as part of its duty of fairness. They are, however, statutorily obliged to disclose to those persons all the information that is relevant to their assessments when those assessments have been appealed. In this case, neither the board nor the committee mentioned, let alone grappled with, the undisclosed information that the appellant had requested or considered whether it was relevant to the appeal at issue. The board did not put its mind to whether the assessor and the city had disclosed all information relevant to the assessment appeal. By affirming the board's conclusion that disclosure was limited to the documents an assessor is statutorily obliged to disclose and not considering whether, as a matter of procedural fairness, an order for further disclosure could or should be made, the committee erred in law.

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***R v Levac*, [2025 SKCA 62]**

Kalmakoff McCreary Drennan, 2025-06-18 (CA25062)

Criminal Law - Appeal - Sentencing - Dangerous Offender
Criminal Law - Dangerous Offender Application - Dangerous Offender - Long-term Supervision Order
Criminal Law - Sentencing - Sexual Assault

The respondent in this case had been convicted of sexual assault. The Crown applied to have him designated as a dangerous offender and sentenced to an indeterminate period of imprisonment. The sentencing judge found that the Crown had proven what was necessary to designate the respondent as a dangerous offender but determined that a lesser measure would adequately

protect the public, and concluded that an appropriate fixed-term sentence for the respondent was a period of imprisonment of 14 years, followed by a 10-year long-term supervision order (LTSO). The Crown appealed the imposition of a determinate sentence.
HELD: The appeal was dismissed. The sentencing judge did not fail to apply the proper legal test when considering the appropriate sentence for the respondent. Where an offender is found to meet the statutory criteria for designation as a dangerous offender, an indeterminate sentence shall be imposed unless the sentencing judge is satisfied, by evidence adduced during the sentencing hearing, that there is a reasonable expectation that a lesser measure, such as a determinate sentence coupled with a LTSO, or a conventional sentence, will adequately protect the public. After an offender has been designated as a dangerous offender, a sentencing judge must first exhaust the less coercive sentencing options to address the risk posed by the offender before imposing an indeterminate sentence. The proper focus for a judge when considering the availability of a lesser measure than an indeterminate sentence for a dangerous offender is risk management, not risk elimination. In this case, the sentencing judge's reasons explained why, in his assessment of the evidence, the prospects of the respondent's manageability differed from his previous sentences due to the supervised and graduated release into the community available as part of a long-term supervision risk-management plan. The sentencing judge's analysis demonstrated a clear and proper focus on risk management and control in the community. The sentencing judge's initial emphasis on treatment and his finding that the respondent would benefit from the available treatment options was also responsive to both the evidence and the focus on risk management. The reasons given in the sentencing decisions demonstrated that the sentencing judge well understood that he was required to impose an indeterminate sentence unless he was satisfied that there was a reasonable expectation that a lesser sentence would adequately protect the public, and that he assessed the evidence from that angle. He also made a factual finding that a reasonable expectation had been established, and that finding was available to him on the evidence.

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***Fraser v Saskatchewan (Advanced Education)*, 2025 SKCA 63**

Tholl Kalmakoff McCreary, 2025-06-19 (CA25063)

Civil Procedure - Application to Strike Statement of Claim - No Cause of Action
Civil Procedure - Pleadings - Striking Out

The appellant's claim had been struck in its entirety at the Court of King's Bench for failing to disclose a reasonable cause of action. The appellant argued on appeal that by striking the claim against the respondents, his *Charter* rights and his rights under Part II of the *Constitution Act 1982* (UK) had been violated.
HELD: The appeal was dismissed. There was no merit to the appellant's contention that his *Charter* rights were violated. In this case, the claim failed to plead any facts that would demonstrate the necessary factual foundation to establish a reasonable cause of action against the respondents. Further, it did not plead any facts capable of establishing that the respondents could be liable to the appellant.

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***Michel v Cunningham*, [2025 SKKB 73]**

Morrall, 2025-06-06 (KB25070)

Statutes - Interpretation - *Intestate Succession Act* - "Spouse"
Wills and Estates - Estate Administration
Wills and Estates - Estate Administration - Administrator - Removal
Wills and Estates - Letters of Administration

The respondent had been appointed as the administrator of the deceased's estate in 2022. The applicant, who was litigation guardian for the deceased's only biological child, claimed that the respondent and the deceased were only in a spousal relationship that lasted at best for less than a duration of two years. The applicant sought a determination with respect to whether the respondent was the deceased's spouse. The applicant also requested an order for an accounting, an order that the respondent's grant of letters of administration be revoked, an order that the applicant be appointed as the administrator of the estate and costs on behalf of her and the estate on a solicitor client basis.
HELD: The respondent's appointment as administrator of the estate was revoked. The applicant was also appointed as the administrator of the estate. The court ordered that the respondent render an accounting to the applicant's solicitors. (1) The respondent was a spouse of the deceased. An assessment of whether a party falls within the definition of a spouse must take into account disparate factors such as, but not limited to, shelter, sexual and intimate behaviour, the division of labour within the household, the societal and social perception of the couple within the community and their families, their financial arrangements, their planned future, the motivation for the relationship and provisions in the event of illness or death in an objective, flexible and holistic fashion. In determining when a spousal relationship commences, there must be some evidence demonstrating that the parties are making a choice that has more to do with permanence and commitment than convenience in these circumstances. A purchase of a shared home along with other deliberate decisions can affirm a relationship of "permanence and commitment". In this case, the respondent and the deceased first began looking for an apartment together on September 5, 2018, which meant the commencement of a spousal relationship. (2) The respondent did not prove she was in a continuous spousal relationship with the deceased for a period of two years. Short periods of separation do not necessarily terminate the continuity of cohabitation. The evidentiary factors that a court must take into account in making a finding include the overall length of the relationship, the frequency and duration of the temporary separations, the purpose of the separations, the conduct of the parties towards each other during and after these separations. To end cohabitation, there must be a physical withdrawal between the parties from the cohabitation with an intent to end the relationship. In this case, having regard for all the concepts related to defining a continuous spousal relationship, the spousal relationship between the respondent and the deceased terminated in May of 2020 when the respondent moved to Vancouver Island out of the apartment she had shared with the deceased to live with her mother, where she still resides. The respondent and the deceased continued to have some form of relationship after May 2020, not just a spousal one. (3) An order for accounting was appropriate as more than two years had elapsed since the grant of administration with no account being rendered.

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***Canadian Imperial Bank of Commerce v Johnson*, [2025 SKKB 75]**

Zerr, 2025-06-09 (KB25071)

Debtor and Creditor - Mortgage - Foreclosure
Foreclosure - Costs

The plaintiff applied for a deficiency judgment against the defendant, who defaulted on a mortgage for a property. The plaintiff sought to recover property management charges incurred while managing and securing the property during foreclosure proceedings.
HELD: Deficiency judgment was awarded in the amount of $11,287.13. (1) The plaintiff was entitled to claim property management charges incurred at the pre-leave stage. Under s 8(3) of *The Land Contracts (Actions) Act, 2018*, the judge may order any party to an application for leave to commence an action to pay all or any portion of the costs of the application. This was not an absolute prohibition against the recovery of the property management charges. (2) A reduction in the property management charges was appropriate. In this case, the plaintiff was responsible for about six months' delay in the foreclosure proceedings.

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***R v Haider*, [2025 SKPC 17]**

Martinez, 2025-06-05 (PC25015)

Criminal Law - Defences - *Charter of Rights* - Delay
Criminal Law - Defences - Delay
Criminal Law - Human Trafficking
Criminal Procedure - Trial Delay - Stay of Proceedings
Criminal Procedure - Trial Delay - Translation

The accused and co-accused faced charges of human trafficking related to the recruitment, transportation, and control of an employee over eight months. The co-accused also faced additional charges of sexual assault involving the same complainant. The trial began in September 2024 but was initially scheduled for just five days. Due to the complexity of the case and procedural issues, including the need for continuous interpretation in Bengali for the accused and complainant, the trial is now expected to continue into late 2025. The accused applied for a stay of proceedings on the grounds of unreasonable delay. The court had to decide whether the trial delay was unreasonable under s. 11(b) of the *Charter* and whether a stay of proceedings was warranted.
HELD: The court denied the accused's application for a stay. The court found that although the total delay from charge to trial completion was approximately 29 months, exceeding the presumptive ceiling of 18 months for Provincial Court trials, much of the delay was attributable to defence unavailability and exceptional circumstances beyond the Crown's control. The court applied the

Jordan framework for assessing unreasonable delay (see *R v Jordan*, 2016 SCC 27 and *R v Coulter*, 2016 ONCA 704). The Crown established that exceptional circumstances existed due to unforeseen and unavoidable issues related to continuous translation needs, which extended the trial duration. The court found the Crown took reasonable steps to mitigate delay, including reducing the witness list and scheduling additional trial days. The requirement for continuous translation and the novelty and complexity of the human trafficking offence in Saskatchewan, combined with multiple accused and the need for translation, justified the longer trial time. The court concluded the trial delay was justified and refused to stay the proceedings.

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***Genoway v Amalgamated Charities Inc.*, 2025 SKPC 15**

Demong, 2025-05-23 (PC25013)

Constitutional Law - *Constitutional Questions Act* - Notice
Employment Law - Wrongful Dismissal
Evidence - Expert Witness - Qualifications
Small Claims - Breach of Contract
Statutes - Interpretation - *Health Information Protection Act*, Section 11

This matter proceeded in small claims court regarding the dismissal of two employees due to their non-compliance with COVID-19 vaccination and testing policies. Both plaintiffs were represented in court by a non-lawyer agent. Each sought damages totalling $30,000, which was the jurisdictional limit of the court at the time. Both filed pleadings containing organized pseudolegal commercial arguments, techniques engaged by individuals also commonly referred to as de-taxers. These pleadings were filed within two years of the dates the plaintiffs were respectively dismissed. Due to some legal defects in the pleadings, the court permitted the plaintiffs to amend their claims to more closely resemble claims falling within the court's jurisdiction, i.e. claims for damages for wrongful dismissal, including for acting in bad faith. The claims nevertheless still made allegations unknown to the Canadian legal system, such as for breach of liberty rights and absolute rights of individuals. The defendant admitted it terminated both plaintiffs without notice in November 2021 on the basis of a refusal to comply with a health policy applicable to all employees. The defendant raised several legal and statutory defences to the claims. The actions were consolidated for trial because of almost identical issues of law and fact.
HELD: The plaintiff J.G. had been a bingo hall manager for the defendant and had several medical conditions. The plaintiff E.C. was a concession manager at the bingo hall. Both of them had to be physically present in the workplace and engage with customers to do their jobs. The court was called upon to make a number of rulings regarding questionable claims and evidence brought before the court. The court concluded: (1) E.C. alleged that she was entitled to a verbal warning followed by three written reprimands prior to being terminated. The court dismissed this contention as having no basis in law; (2) J.G. attempted to introduce an expert on employment law who turned out to be his daughter, a human resources manager, who also had virtually no understanding of wrongful dismissal law; (3) a number of board members of the defendant were called as witnesses for the plaintiff, but were able to offer very little in the way of pertinent evidence, particularly lacking in any evidence that they engaged in bad faith decision making;

(4) although the plaintiffs' claims were not perfected until after the two-year limitation period had lapsed, they had filed commencing documentation within the two years, and accordingly the court dismissed the defendant's contention that they were out of time; (5) the claims brought alleging breach of the *Charter of Rights and Freedoms* and *Bill of Rights* were both dismissed, on the basis that neither applies to private contractual relationships; (6) the court further pointed out that a Provincial Court judge does not possess the authority to declare the defendant's actions unconstitutional without notice having been given under *The Constitutional Questions Act* to permit the attorney general to respond and make representations; (7) the plaintiffs' respective privacy rights were not infringed by being asked to provide relevant private health information to their employer, nor was a "trespass" against them committed by so doing; (8) although the plaintiffs incorrectly named the Saskatchewan legislation governing the protection of personal health information, the court nevertheless applied the applicable principles of *The Health Information Protection Act* in concluding that their employer's request for vaccination status did not violate that legislation or their privacy rights more generally; (9) there is no such thing as a tort based on "informed refusal," and furthermore, there is valid Saskatchewan legislation authorizing the employer's request for vaccination/COVID negative status; (10) At most, the employer's request for vaccination/infection status could constitute a breach of the employment contract, but that claim was not made out either, as the demand was made based on valid provincial legislation; (11) none of the hallmarks of bad faith known under the common law were established in evidence; (12) the exception in *The Employer's COVID-19 Emergency Regulations* permitting an employer to be sued if it acted with gross negligence did not apply, as there was no evidence of gross negligence; (13) arbitration decisions adduced by the plaintiffs that had ruled on the availability of summary termination as a consequence for failure to comply with COVID disclosure obligations were not binding on the court; (14) a provisional assessment of damages was performed in the event of a successful appeal on the merits. The court assessed damages including potential aggravated or punitive damages despite the plaintiffs' failure to properly plead those heads, in deference to their being unrepresented by professional counsel. It concluded there was no evidence of misconduct by the defendant whatsoever so as to give rise to those additional heads. In relation to general damages, the court applied the test set out in *Capital Pontiac Buick GMC Ltd. v Coppola*, 2013 SKCA 80, 417 Sask R 213 regarding reasonable notice, and concluded that J.G. would have been entitled to seven months' notice, and E.C. to six months; and (15) costs were awarded to the defendant given its success, set at 10% of the amount being sought by each plaintiff as against each of respectively, as permitted by s. 36(3) of *The Small Claims Act*.

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R v Potash Corporation of Saskatchewan, Inc., [2025 SKPC 16]

Anand, 2025-05-23 (PC25014)

Criminal Law - Procedure - Particulars
Employment Law - Labour Standards
Occupational Health and Safety - Offences

The Provincial Crown brought charges against the defendant for violation of both *The Saskatchewan Employment Act* and *The Occupational Health and Safety Regulations* in relation to a serious workplace accident at the Allan potash mine on December 9, 2022. This was an application by the defendant for particulars under s. 587 of the *Criminal Code* in relation to two of the charges.

The defendant alleged that the charges outlined only a “general duty” and that further detail was necessary to enable it to make full answer and defence. The legal issue involved was whether the information standing alone must contain full particulars, or if disclosure and other information available to an accused is sufficient to enable it to make full answer and defence.
HELD: Application for particulars was dismissed. The court commented on the fact that the disclosure package provided to the accused was not made available to the court, and therefore it was obliged to make a finding based only on the general context provided in the Information and the filed affidavits. In *R v ConocoPhillips Canada Resources Corporation*, 2016 ABPC 176, the court outlined the policy reasons behind ordering disclosure under s. 587. Firstly, the defendant should be able to ascertain the factual basis for the alleged offence. If the disclosure outlines the transaction complained of, the potential witnesses, and any hard evidence, the court in that case suggested that it would be an exercise in theory to conclude that the defendant was not sufficiently informed. Section 587 also specifically enables the court to consider any evidence available. Thus, the court concluded that any material that serves a discovery function can also be considered in an application for particulars. The court went on to examine the information it had available to it regarding the disclosure provided to the defendant. Exact and reasonable information is the standard recently applied by Saskatchewan courts (*R v Liebrecht*, 2004 SKQB 91). The court also noted that particulars form part of the Information once provided and thus could constrain the Crown’s conduct of its case, as it would have to prove specific particulars to obtain a conviction. The final consideration the court considered was whether particulars were necessary in a general sense to facilitate the administration of justice, meaning that the trial judge would have sufficient information to rule on admissibility of evidence.

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