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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The appellant was convicted of second degree murder. The conviction depended on the admission of a video statement given by a 13-year-old who was present during the incident and stated that the appellant was the person who stabbed the victim. The youth initially appeared in court but refused to identify himself on the video, fled the courtroom, and did not return for cross-examination. The trial judge admitted the statement under the principled exception to the hearsay rule, finding it procedurally reliable because the youth was questioned rigorously as a suspect, the interview was videorecorded, and he was cautioned about misrepresentation. The appellant was convicted primarily based

on this evidence, along with supporting forensic evidence linking him to the scene of the crime. The court had to decide whether the trial judge erred in admitting the youth's statement for its truth under the principled exception to the hearsay rule when there was no in-court cross-examination, and whether the appropriate remedy was an acquittal or a new trial.
HELD: The court allowed the appeal, quashed the conviction, and ordered a new trial. The court held that the trial judge erred in law by treating rigorous police interrogation, even though videorecorded and accompanied by a caution, as an adequate substitute for in-court cross-examination. The court emphasized that some form of cross-examination is usually required to establish procedural reliability (on procedural reliability and cross-examination on videorecording evidence, see: *R v Khelawon*, 2006 SCC 57; *R v Bradshaw*, 2017 SCC 35; *R v Couture*, 2007 SCC 28; and *R v Charles*, 2024 SCC 29). Police questioning alone cannot replace the courtroom process. Given the youth's potential involvement in the offence and motive to shift blame, the hearsay dangers could not be overcome by interrogation alone. The court concluded that it would be premature to direct an acquittal because another trier of fact might find a lawful pathway to admissibility. Therefore, the appropriate remedy was to quash the conviction and order a new trial under s. 686(2)(b) of the *Criminal Code*.

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Schwann Bardai Kilback, 2025-07-30 (CA25070)

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The respondent had pleaded guilty to four *Criminal Code* offences including assault causing bodily harm. Following a ten-day hearing, the sentencing judge designated the respondent a dangerous offender pursuant to s. 753 of the Code but concluded that a global determinate sentence of eight years of imprisonment, followed by a ten-year long-term supervision order, would adequately protect the public from the risk of the

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respondent violently reoffending. The Crown appealed the imposition of a determinate sentence, arguing that the sentencing judge failed to apply the correct legal test in his assessment of whether there was a reasonable expectation that a lesser sentence would adequately protect the public.
HELD: The appeal was allowed. The sentencing judge failed to apply the correct legal test. Section 753(4.1) of the Code directs the imposition of an indeterminate sentence unless the court is satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that a lesser measure under ss. 753(4)(b) or (c) of the Code will adequately protect the public against the commission by the offender of murder or a serious personal injury offence. Determining whether the risk posed by an offender's behavior can be adequately managed requires sentencing judges to undertake an assessment of all relevant factors and circumstances, and a thorough inquiry into the prospect of control in the community. In this case, while the sentencing judge correctly described the legal standard, he did not conduct the necessary analysis at the penalty stage regarding prospective treatment options and community control mechanisms to determine if the respondent could be controlled in the community in a manner that adequately protected the public from his violently reoffending.

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***M.J.H. v K.T.H.*, 2025 SKCA 71**

Jackson McCreary Kilback, 2025-07-30 (CA25071)

Appeal - Family Law - Child Support - Undue Hardship
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The parties separated late in 2009. The parties subsequently settled all issues between them by means of a pretrial settlement agreement, which was executed in January of 2011. Under that document, the appellant had parenting time for one week each month and the second weekend following his parenting time, plus two non-consecutive weeks in July and August. When the older child started school in 2013, the parenting schedule changed to every second weekend for the appellant and shared holidays. In 2016, the parties agreed to reduce the father's support obligation by $200 conditional upon his continuing to transport the children and contributing to their extraordinary expenses under s. 7 of the *Federal Child Support Guidelines*. The appellant continued driving and

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paying the costs for the travel, but he did not contribute to the s. 7 expenses, and he unilaterally decreased his monthly child support from $1,283 to $800 per month. This state of affairs continued until May 2021, when the appellant brought an application at the Court of Queen's Bench asking for changes to parenting time and a reduction in child support because of his transportation of the children to and from southeast Saskatchewan. The application was dismissed. The appellant took no issue with the judge's decisions regarding parenting but focused his appeal to the judge's refusal to find that the appellant's travel costs amounted to undue hardship meriting a reduction in child support.
HELD: The appeal was dismissed. (1) The trial judge did not err by not considering s. 17 of *The Children's Law Act, 2020*. Under s. 17, if the court authorizes the relocation of a child, the court may provide for the apportionment of costs relating to the exercise of parenting time by a person who is not relocating between that person and the person who is relocating the child. In this case, the respondent and the children had been living in Saskatoon for at least 13 years at the time of trial. Relocation was no longer a live issue. The appellant did not refer the court to any authorities where a court applied s. 17 or its equivalent to reduce a child support obligation after the relocation had long since occurred. In addition, the appellant did not put forward any evidence to demonstrate how or why a court would entertain a claim to apportion travel expenses outside of an undue hardship claim in a case such as this. (2) The judge did not err when she concluded that the circumstances did not cause the father to suffer undue hardship. Determining undue hardship contemplates a two-step analysis. First, the court must be satisfied that circumstances exist which would cause the applicant or a child to suffer undue hardship. Second, should a determination of undue hardship be made, the court must still deny the application unless it is satisfied that the applicant's household standard of living is lower than that of the other spouse. In this case, the appellant's challenges to the trial decision were not considerations required of the judge in evaluating undue hardship. The judge's ultimate finding of no undue hardship was built on a series of findings of fact about what each of the parties earned and what the appellant was claiming. There was no basis upon which to contest these facts and, therefore, no basis for appellate intervention. (3) The judge did not err with respect to her treatment of the respondent's new partner, A.F.'s, evidence and income. The appellant's allegations of error on this point were derived from a misapprehension of the law pertaining to undue hardship. As such, there was no basis upon which the court could give effect to any of the arguments with respect to A.F.

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***Synergy Credit Union Ltd. v Macas*, [2025 SKKB 97]**

Elson, 2025-06-09 (KB25097)

Condominiums - Condominium Fees
Debtor and Creditor - Mortgage - Foreclosure
Mortgage - Foreclosure - Leave to Commence Action

The applicant mortgagee (the credit union) sought leave to commence foreclosure on a condominium unit. The mortgagors (condo unit owners) were in arrears arising from a dispute with the condominium corporation over fee increases. A prior mortgagee (another credit union which was acquired by the new credit union) allegedly agreed orally not to exercise the statutory right to collect or pay arrears under *The Condominium Property Act*, but the applicant later exercised that right after a lien was registered, demanded payment, and continued paying fees that were added to the mortgage debt. The court had to decide whether leave should be granted under s. 8 of *The Land Contracts (Actions) Act* in light of the ongoing condominium fee dispute, whether the applicant was bound by the former mortgagee's earlier position, whether the court should defer to a pending Provincial Court proceeding about the fee increase, and whether pre-leave costs should be ordered.
HELD: Leave to issue a statement of claim in foreclosure was granted. The court held that at the leave stage the mortgagee need only show an arguable case; a full merits assessment is not required. The application proceeded under s. 8 of *The Land Contracts (Actions) Act*, which gives the court a discretionary, gatekeeping role at the leave stage. The court reviewed ss. 63, 63.1, and 63.2 of *The Condominium Property Act*, noting s. 63.2 deems terms into condominium mortgages that permit a mortgagee to collect or pay expenses such as condo fees, treat non-payment as default, and add payments to the mortgage debt. The applicant was not bound to the former mortgagee's alleged oral decision and was entitled to rely on the statutory rights deemed by s. 63.2 of *The Condominium Property Act*. The court allowed the applicant to proceed with foreclosure and emphasized that the applicant had a statutory right to collect the unpaid condo fees.

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***Kushniruk v O'Reilly Insurance*, [2025 SKKB 83]**

Wempe, 2025-06-18 (KB25082)

Contract Law - Breach of Contract
Contracts - Insurance Contracts
Torts - Negligence - Duty of Care

The plaintiff/applicant obtained Co-operators insurance for his bees through the defendant in 2017. In the same year, he obtained a farm guard policy of insurance for the bees he put out in the field and the larvae/bees he expected to produce over the season against loss due to fire, wind, theft, transportation accidents and ravaging animals. In 2021, the plaintiff/applicant made an insurance claim for bees lost in a windstorm but was denied by the Co-operators based on a loss adjustment clause in the farm guard policy. The plaintiff/applicant claimed for breach of contract and negligence on the basis that the defendants sold him a policy that did not cover what he specified. HELD: The application was granted in part and costs of $4,400 were awarded to the plaintiff. However, the court ordered damages of $963 to be paid to the defendant. (1) Summary judgment was appropriate. To find that summary judgment is appropriate, the court must be satisfied that: (i) it can make the necessary findings of fact; (ii) it can apply the law to those facts; (iii) summary judgment is a proportionate, expeditious and economical means to achieve a just result between the parties; and (iv) there is no genuine issue requiring a trial. In this case, the court was able to come to a fair and just determination of the issues despite the conflicts in evidence. It was unnecessary to have a trial to resolve the conflicts in the evidence. (2) There was no contract between the parties. In determining whether there is an insurance contract, it is not the name that determines whether there is a contract but the specifics of the business relationships between the agent, the insurer and the insured. In this case, the defendant acted as the exclusive agent for the Co-operators. They did not have any decision-making authority with respect to the insurance contract. There was also no meeting of the minds between the parties to support the finding that there was a contract. (3) The defendant was liable for negligence. In order to prove negligence, a plaintiff must demonstrate that the defendant owed the plaintiff a duty of care, that the defendant breached the standard of care required, that the plaintiff sustained damage, and that the damage was caused, in fact and in law, by the defendant’s breach. In this case, there was a duty owed by the defendant to the plaintiff to convey accurate information, counsel and advice. The defendant breached the standard of care by failing to inform the plaintiff that the coverage he wanted was not available. The plaintiff/applicant, however, failed to prove on a balance of probabilities that the plaintiff's negligence caused his damages and failed to prove the quantum of damages on a balance of probabilities.

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***I.N.A. v A.Y.A.*, [2025 SKKB 84]**

Goebel, 2025-06-18 (KB25083)

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Family Law - Decision-Making Authority
Family Law - Division of Family Property
Family Law - Spousal Support - Awards of Spousal Support
Statutes - Interpretation - *Family Property Act* - Definition of "Spouse"

The parties were married in Saudi Arabia in August 2002 and were the parents of five children ranging in age from nine to 21. The family lived in the United States for several years before relocating to Saskatchewan in 2022. At that time, they purchased a house and set up a joint account to cover their household expenses. Despite the relocation of the family, the father remained residing and working in Colorado with the intention of joining the family in Saskatchewan once he completed his PhD. Instead, in November 2022, the father unexpectedly advised the mother that he had quit his job and was moving back to Saudi Arabia. In July 2023, the petitioner commenced divorce proceedings and divorce was granted in Saudi Arabia in August 2023. In October 2023, the respondent changed his mind and informed the petitioner he was no longer interested in selling the family home. Counsel for the petitioner thereafter discontinued the divorce proceedings and in December 2023 filed a new petition seeking relief under *The Family Property Act* (FPA), *The Children's Law Act, 2020* and *The Family Maintenance Act*.

HELD: The petitioner was granted sole decision-making authority and primary care of the minor children. Child support was ordered retroactively and prospectively, with the respondent's income imputed at $80,000 annually. Spousal support and final property division were adjourned sine die with costs fixed at $1,000. (1) The petitioner was a "spouse" for the purposes of seeking relief under the FPA. Under s. 2 of the FPA, a spouse means either of two persons who: "(a) at the time an application is made pursuant to [the FPA], is legally married to the other or is married to the other by a marriage that is voidable and has not been voided by a judgment of nullity; (b) has, in good faith, gone through a form of statutory marriage with the other that is void, where they are cohabiting or have cohabited within the two years preceding the making of an application pursuant to [the FPA]; or (c) is cohabiting or has cohabited with the other person as spouses continuously for a period of not less than two years." The court found, having considered the definition of “spouse” in the FPA in its entire context, grammatical and ordinary sense, and in a manner that harmonized with its purpose and legislative intent, a person who was legally married but has since divorced can retain standing as a “spouse” under ss. 2(1)(c) if they have cohabited with the other person as a spouse continuously for a period of not less than two years and commenced their claim within 24 months of the end of that cohabitation. Given the uncontroverted evidence before the court with respect to the date of separation, the petitioner had standing to pursue relief as a spouse. (2) There was sufficient evidence before the court to grant the petitioner sole decision making authority and primary care of the minor children. In this case, taking into account the uncontroverted evidence, it was in the best interests of the minor children to be placed in the mother’s primary care and for her to have sole decision making authority to ensure that their needs were met in a timely manner. (3) The evidence before the court did not support the uncontested child support judgment. Nowhere in the petitioner’s written argument did she outline the legal basis for seeking a lump sum future child support award or the principles in play. Based on the materials filed, lump sum child support was not appropriate or legally available. (4) The evidence before the court supported the uncontested spousal support judgment. Spousal support is a remedy that serves two purposes in Canadian law. Firstly, it provides compensation when a relationship has increased the earning power of one spouse at the expense of the other spouse. Secondly, it serves to relieve the financial need which a spouse experiences after a relationship. In this case, it was uncontroverted that the petitioner sacrificed her own career aspirations to assume a traditional parenting role and advance the respondent’s education and career. Based on the uncontested evidence, the petitioner was entitled to spousal support on compensatory and non-compensatory grounds. (5) The evidence before the court supported the division of the family home and the transfer of the motor vehicles and household goods in the jurisdiction. If a petitioner applies for a judgment in an uncontested family law proceeding, the petitioner must file a property schedule identifying; (i) each item of family property available for division between the parties; (ii) the value of each item of family property and the date of that value, if not the date of application; (iii) the value of any exemption being claimed with respect to any item of family property; (iv) the debts and liabilities of the parties and the value of each debt or liability to be taken into consideration in the division of family property; (v) the distribution proposed for each item of family property, including exemptions and liabilities of each party and their allocation in the division of family property; (vi) if applicable, any income tax consequences or other anticipated disposition costs associated with the proposed distribution of family property; and (vii) the source from which the indicated value is derived if the value of an item of family property, an exemption claimed or a debt or liability to be allocated is not agreed to, and including copies of any statements and any appraisal reports that support the indicated value. In this case, while the petitioner referred to a joint account in her affidavit, no statements from a joint account were provided. The petitioner did not provide clear evidence of property holdings outside of Canada aside from deposing that the respondent once told her that he had an interest in a large piece of farmland owned by his family in Saudi Arabia, that her family in Saudi Arabia was wealthy and that a family trust was being used to fund the start-up of her business.

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***R v Andrews*, 2025 SKKB 90**

Klatt, 2025-06-25 (KB25089)

Criminal Law - Breach of Recognizance
Criminal Law - Failure to Attend Court

Criminal Law - Fraud - Conspiracy to Defraud

The accused was involved in two separate incidents in 2012 wherein he and an accomplice demonstrated a “white money scam” to potential victims. Both incidents involved fraudulent demonstrations of turning white paper into currency with the intent to deceive the victims into parting with money or property. The accused was charged with two counts of attempted fraud over $5,000, failing to attend court and breach of recognizance. The trial commenced with a blended voir dire to determine the voluntariness and admissibility of the accused’s warned statement. During the voir dire, the defence admitted that the accused’s statement was voluntary. The Crown tendered the statement as part of their case and sought to tender evidence of the two attempted fraud charges as similar fact evidence. At the conclusion of the voir dire, defence counsel did not oppose the admissibility of the similar fact evidence. The evidence from the voir dire was admitted to the trial proper.
HELD: The defendant was found guilty of attempted fraud over $5,000. (1) The Crown established that the accused was one of the suspects. Where an accused denies committing an offence and the court believes him, the court must acquit him. If not believed, the court must find an accused not guilty if left with a reasonable doubt about his guilt or about an essential element of the offences charged. Even if the evidence does not leave the court with a reasonable doubt of the accused’s guilt, the accused may only be convicted if the rest of the evidence believed by the court proves the accused’s guilt of the offence beyond reasonable doubt. In this case, the accused’s denials did not leave the court in reasonable doubt. The vehicle rented by the accused was the same as the one the police had under surveillance and the same vehicle information was given by the accused when he checked into Home Suites Regina East. In addition, items in the name of the accused were seized from the same hotel room that the accused checked into. Considering the entire evidence, the Crown proved beyond reasonable doubt that the accused was the person described as one of the suspects in the attempted fraud allegations. (2) The accused’s actions amounted to an attempt to defraud. To establish fraud, the Crown must prove the prohibited act (the *actus reus*) and the requisite state of mind (the *mens rea*) of the offence beyond a reasonable doubt. The *actus reus* requires a dishonest act, established by proof of deceit, falsehood or some other fraudulent means, and deprivation, established by proof of detriment, prejudice, or risk of prejudice to the economic interest of the victim, caused by the dishonest act. The *mens rea* of fraud is established by proof of the subjective knowledge of the prohibited act and subjective knowledge that the prohibited act could have, as a consequence, the deprivation of another (which deprivation may consist in knowledge that the victim’s pecuniary interests are put at risk). An attempt to commit a crime is made out where the person, having the intent to commit the complete offence, does some act that is more than merely preparatory in furtherance of the attempt. In this case, the actions taken by the defendant in both cases were well beyond mere preparatory acts. The accused had subjective knowledge of the prohibited act because either he or his accomplice told the complainants that the white money needed to be washed in order to purchase the carwash and the combine. The accused also had subjective knowledge that it was illegal to buy property with fake money. In the circumstances, the accused had the subjective knowledge that the property of the complainants would be put at risk. Indeed, this was the defendant’s hope and intention behind the lies he told them. (3) The accused failed to attend court without lawful excuse. A specific term of the accused’s recognizance was that he was to appear in court when required to do so. The accused could not escape his obligations by failing to keep in touch with his counsel to make himself aware of the progress of the charges as they moved through the court system. (4) The accused failed to comply with the condition of his recognizance prohibiting him from communicating, directly or indirectly, with his accomplice. Once the Crown has proven that an accused was bound by the specific condition of a recognizance, the onus shifts to the accused to provide a lawful excuse. In this case, after the accused was released from custody and after signing the recognizance, he went to the hotel where he and his accomplice were staying, and they entered the hotel and came out together. There was no evidence that there was a lawful excuse

for breaching the condition.

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***Prosofsky v Prosofsky*, 2025 SKKB 92**

Turcotte, 2025-06-26 (KB25090)

Civil Procedure - Filing Deadlines
Family Law - Distribution of Family Property - *Family Property Act* - Interim
Family Law - Judicial Case Conference - Adjournment of Hearing Dates

The parties to this family law proceeding appeared before the court on May 15, 2025, in a judicial case conference (JCC) pursuant to Family Practice Directive #7. In the JCC the parties sought leave to bring competing chambers applications. The respondent sought to vary an interim order from 2024 granting the petitioner interim exclusive possession of the family home and interim child support. The petitioner sought to compel further disclosure, an order permitting her to sell certain items of personal property and equipment, clarity around the implementation of the interim child support order or tweaking that order respecting recalculation, the payment of s. 7 expenses under the *Federal Child Support Guidelines*, and enforcement of arrears. The court gave leave to both parties to bring separate court applications with filing directions made in consultation with the parties' lawyers. The respondent did not file and serve his application materials as directed.
HELD: The chambers hearing date was rescheduled to July 25, 2025, with new filing deadlines set for the parties. When parties seek a different date for the hearing of an application in a family law proceeding where the hearing date has been set by the court following a JCC and they have not served and filed the application as directed by the court, the parties should direct written correspondence to the family law screening officer proposing a new hearing date and filing deadlines. The family law screening officer will place the request before a presiding judge. The presiding judge may determine whether a new chambers hearing date should be set in consultation with counsel or the parties with such further directions as the presiding judge may deem appropriate. In this case, the parties indicated their availability to attend chambers on July 25, 2025, and the court was prepared to set their applications to be returnable on that date and time.

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***J.E. v B.S.*, 2025 SKKB 93** *(Note: the parties to this matter were originally named, but requested and were granted redaction)*

Richmond, 2025-06-26 (KB25086)

Family Law - Child Custody and Access - Primary Residence
Family Law - Child Custody and Access - Shared Parenting

Family Law - Distribution of Family Property - *Family Property Act* - Interim
Family Law - Interim Order - Child Custody and Access

The parties began living together in 2012 and separated on September 15, 2024. A petition was issued April 14, 2025. The petition and supporting documents were served on the respondent, along with a judicial case conference request (JCC request), on April 15, 2025. The JCC request included a claim for an exemption from the mandatory dispute resolution process on the basis that mediation had been requested but the request had been refused/ignored and on the grounds that there had been family violence. In addition, the JCC request outlined the petitioner’s request for primary care of the children with a specified parenting schedule for the respondent, ongoing and retroactive child support as well as exclusive possession of the family home and costs.
HELD: The court granted the petitioner’s application for exemption from mandatory dispute resolution. The court also ordered that the children remain in the petitioner’s primary care with the respondent having parenting time every second weekend. The petitioner was granted interim possession of the family home. The respondent was ordered to pay child support in the in the amount of $1,369 commencing April 1, 2025, and continuing on the first day of each month thereafter. The respondent was also ordered to pay s. 7 expenses within 30 days of being provided with a copy of the receipt. (1) The petitioner established extraordinary circumstances warranting exemption from mandatory dispute resolution. On an application made with or without notice, the court may exempt a party from the requirement to participate in family dispute resolution if: (a) there is a restraining order between the parties; (b) a child of the parties has been kidnapped or abducted by one of the parties; (c) there is a history of interpersonal violence between the parties; (d) the party provides proof of attempts to engage the other party in family dispute resolution; or (e) in the opinion of the person hearing the application, there are extraordinary circumstances. In this case, the petitioner was subjected to verbal abuse and escalating family violence and subsequently told she was exaggerating or lying. She was not allowed to return home unless it was to reconcile and was deprived of financial support for months, followed by a monthly sum that the respondent deemed to be reasonable. When the petitioner finally insisted on returning to the family home with the children and insisted that child support be paid, she was stonewalled with a demand that she attend mediation with the respondent. The family violence and the insistence on mediation given a previous refusal, when considered alongside the deprivation the petitioner and the children faced by being out of the family home for nine months and the denial of an appropriate level of support, constituted a situation out of the ordinary. (2) A shared parenting order was inappropriate in the circumstances. In making a parenting order, the child’s best interests are the paramount consideration. In determining the best interests of a child, the court shall consider all factors related to the circumstances of the child, including: (a) the child’s needs, given the child’s age and stage of development, such as the child’s need for stability; (b) the nature and strength of the child’s relationship with each parent, each of the child’s siblings and grandparents and any other person who plays an important role in the child’s life; (c) each parent’s willingness to support the development and maintenance of the child’s relationship with the other parent; (d) the history of care of the child; (e) the child’s views and preferences, by giving due weight to the child’s age and maturity, unless they cannot be ascertained; and (f) the ability and willingness of each person with respect to whom the parenting order would apply to care for and meet the needs of the child; (g) the ability and willingness of each person with respect to whom the parenting order would apply to communicate and cooperate, in particular with one another, on matters affecting the child; (h) any family violence and its impact on, among other things, the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child; and the appropriateness of making a parenting order that would require persons with respect to whom the parenting order would apply to cooperate on issues affecting the child. In this case, the children enjoyed a close relationship with the petitioner who was very involved in their lives but also enjoyed time with the respondent, who had been less involved but, when available, had, for the most part, been caring and loving with them. There was

sufficient evidence on file to indicate that the petitioner had supported the respondent's relationship with the children though she had been cautious given past alcohol abuse and family violence. The petitioner had also historically been the primary caregiver. There was no doubt that the petitioner could meet the children's needs but the ability of the respondent to do so was less certain. There appeared to be a willingness by the parties to communicate and cooperate on matters respecting the children despite their past conflicts. The children had been witnesses to the respondent's anger and verbal abuse of the petitioner. While the respondent had taken steps to address his extreme workload and claimed to address his drinking by addressing his anxiety, drastically changing parenting arrangements at an interim stage such that the parties shared parenting in alternate weeks would be a radical shift from the status quo, and given the respondent's past problems with alcohol and family violence, inappropriate. (3) An interim order for exclusive possession was appropriate. In exercising its discretion to grant an interim order for exclusive possession of a family home, the court must have regard to the factors set out in s. 7 of *The Family Property Act*, that is: the needs of the children; the conduct of the spouses towards each other or the children; the availability of other accommodation within the financial means of either spouse; the financial position of each spouse; any written agreement between the spouses and any relevant court order. In this case, the needs of the children dictated they should reside in the family home and insofar it had been determined that primary care of the children should be with the petitioner, it followed that she should have interim possession of the family home.

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***Cuddington v Cuddington*, [2025 SKKB 96]**

Bergbusch, 2025-07-02 (KB25091)

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Family Law - Division of Matrimonial Property - Exclusive Possession of Family Home
Family Law - Exclusive Possession of Family Home - Interim

The parties in this case were married in 1977 and ceased cohabiting in 2015. The respondent died in 2022. The petitioner issued a petition in November 2015 seeking divorce, equal division of the family home and family property, and costs. In September 2020, the respondent made a last will and testament in which he named his new partner his executor and trustee and gave to her the rest and residue of his estate. The respondent filed an answer and counter-petition in February 2022 opposing the relief of costs. In February 2022, the petitioner filed an application without notice and an application for interim relief. The application without notice was granted, enjoining the respondent from dissipating livestock, farm assets and machinery in his possession. In July 2022, the petitioner's counsel raised concerns regarding the adequacy of document disclosure provided by the estate and questioned the continued occupation of the family home by the respondent's surviving partner. The petitioner thereafter filed an application in 2023 for an order granting her interim exclusive possession of the family home, outbuildings, and acreage. She also requested an order for possession and use of the farmland for the 2023 growing season.
HELD: The petitioner was granted interim exclusive possession of the family home and was awarded costs of her application for exclusive possession of the family home. The petitioner's application for the respondent to serve and file a financial statement was dismissed. (1) The court may grant an order directing that a spouse be given exclusive possession of the family home having regard

to the following non-exhaustive factors: (a) the needs of any children; (b) the conduct of the spouses towards each other and towards any children; (c) the availability of other accommodation within the financial means of either spouse; (d) the financial position of each spouse; (e) any interspousal contract or, where the court thinks fit, any other written agreement between the spouses; (f) any order made by a court of competent jurisdiction with respect to the distribution or possession of family property or the maintenance of one or both of the spouses or with respect to the custody or maintenance of any children; and (g) any other relevant fact or circumstance. In this case, the petitioner had an equal right to possession of the family home when the family law proceeding commenced. The respondent's right to possession of the family home did not survive his death. Notwithstanding the significant length of time that had passed since the petitioner left the property, her right to the possession of the home persisted. The respondent's personal representative did not claim a right to possession of the family home as the respondent's common law spouse or assert a right to occupy the home on the footing that the respondent and she cohabited in it while he was alive. In the circumstances, only the petitioner had the right to possess the family home. Furthermore, the equities of the situation favoured granting exclusive possession of the family home to the petitioner. The petitioner had limited financial means while the respondent's surviving partner owned a second home. The petitioner also paid the property taxes for the homestead and the farmland even though she was not living in the family home. (2) The petitioner did not make out a basis for an order compelling further disclosure. From the materials before the court, it was not clear whether any gaps remained in the disclosure. The respondent's personal representative indicated that she was prepared to sign authorizations that the petitioner could use to request additional records from third parties, such as bank records. The respondent's personal representative had made substantial efforts to disclose whatever financial records were available to her.

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***Royal Bank of Canada v Trudel Estate*, 2025 SKKB 98**

Danyliuk, 2025-07-07 (KB25098)

Civil Procedure - Dispensing with Service
Estates and Trusts - Unrepresented Estate
Evidence - Sufficiency

The plaintiff mortgagor applied without notice to dispense with service on anyone regarding the defendant estate for this entire proposed action for foreclosure and related relief.
HELD: The application was refused. (1) The plaintiff cited no Saskatchewan authority for the relief sought. (2) The circumstances in the case did not support dispensing with service. Dispensing with service of originating processes requires proof that no mode of service will likely bring notice of the proceeding to the defendant, that the person to be served knows or has reason to expect the legal action, and that the action is unlikely to be disputed. In this case, such circumstances did not exist. (3) The evidence in this case was deficient. The evidence provided by the plaintiff did not explain the plaintiff's assertion that no personal representative of the proposed defendant existed. Also, the plaintiff did not explain the decision made not to speak to the proposed defendant's next of kin or explain why an order for substitutional service was not being sought. (4) The plaintiff ignored that other provisions of *The King's Bench Rules* supported alternate remedies. Rule 2-23 of The King's Bench Rules specifically dealt with a situation where an

action is contemplated against an estate and there is no personal representative. Rule 2-26 dealt with appointments of an administrator ad litem for an estate. Further, ss. 4 and 9 of The Survival of Actions Act provide that where a cause of action exists against a person who subsequently dies, the cause of action survives against that person's estate and the court may appoint an administrator ad litem on application of a putative plaintiff. All of this was ignored by the plaintiff. (5) The case being relied upon by the plaintiff did not support the request being made. (6) The authorities being relied upon by the plaintiff were deficient with respect to the relief being sought.

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Lemstra, Re (Bankrupt), **2025 SKKB 99**

Shalashniy, 2025-07-08 (KB25092)

Bankruptcy - Conditional Discharge - Factors
Bankruptcy - Discharge - Absolute Discharge
Bankruptcy and Insolvency - Conditional Discharge

The bankrupt applied for a discharge from bankruptcy. The trustee and two objecting creditors opposed a discharge, alleging financial dishonesty. Key facts included an undisclosed sale of clinic assets to an enterprise for $1.00, misrepresentations and questionable use of corporate borrowings, unreported or unclear transfers benefiting family members, extensive personal spending through a corporate bank account during bankruptcy and plans to launch new ventures timed around an anticipated automatic discharge. The court had to decide whether the bankrupt was an honest but unfortunate debtor in light of s. 173(1) of the *Bankruptcy and Insolvency Act* (BIA), and, if not, what terms should govern the discharge.
HELD: The court found the bankrupt was not an honest but unfortunate debtor; facts under ss. 173(1)(a), (b), (d), and (o) of the BIA were established. An absolute discharge was denied. The court granted a conditional discharge requiring a five-year reporting period and payment of 50% of any surplus income above $36,000 to the trustee. In exercising its discretion under s. 172(1) of the BIA, the court emphasized the bankruptcy system's twin aims: equitable distribution and debtor rehabilitation while guarding commercial morality. On the evidentiary record, the undisclosed asset sale, misrepresentations to lenders, unexplained benefits to family, and use of a corporate account for personal expenses demonstrated dishonesty sufficient to justify a conditional discharge on the stated terms.

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***Sukhadia v Saskatchewan (Ministry of the Economy)*, 2025 SKKB 100**

Davis, 2025-07-10 (KB25093)

Administrative Law - Judicial Review - Procedural Fairness
Administrative Law - Judicial Review - Standard of Review - Reasonableness
Administrative Law - Standard of Review - Reasonableness

The applicant applied for a nomination certificate under the Saskatchewan Immigrant Nominee Program (SINP). The SINP issued her a certificate but withdrew it when the applicant failed to satisfy the decision-maker that her application contained no material misrepresentation. The withdrawal led to the rejection of the applicant's permanent residency (PR) application. The applicant sought an order that a new nomination certificate be issued, allowing her to reapply for PR status under the provincial nominee stream. HELD: The application was dismissed. (1) A low level of procedural fairness was required. In determining what constitutes procedural fairness in any given context, the following non-exhaustive factors are considered: (i) the nature of the decision and the process followed; (ii) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (iii) the importance of the decision to those affected; (iv) the legitimate expectations of the person challenging the decision and (v) deference to the agency's choice of procedure. In this case, on a balance of all the factors, the respondent and its decision-makers were required to afford applicants only a low level of procedural fairness. The applicant was adequately informed of the case to meet. The applicant knew the SINP was concerned about the undeclared use of Travel Jockey as an unauthorized representative, and that the SINP officer reached this conclusion in a manner that was generally accessible to the public. The applicant knew that she was required to supply independently verifiable evidence disproving her use of an unauthorized representative but provided no evidence apart from her denials and expressions of concern. The applicant also knew from the procedural fairness letter (a letter the SINP sent routinely to address concerns about an application) that, should she be unable to provide such evidence, she was required to explain why that was. She did not do so. The fact the applicant submitted no queries but responded well before her deadline with a denial suggested that she understood the SINP's concerns. The applicant was not denied procedural fairness. (2) The decision was reasonable. In conducting a review for reasonableness, the court is not to take a different view of the evidence, but to consider whether there is justification, transparency and intelligibility within the decision-making process and whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. If the decision is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law, it is reasonable. Contrary to the applicant's arguments, the misrepresentation about the use of a representative was material. The misrepresentation did not depend on Travel Jockey being a fraudulent outfit or depend on any allegation regarding the applicant's credentials. It depended on the decision-maker's belief that the applicant failed to disclose the use of Travel Jockey's services. Given that the applicant neither disclosed a professional relationship with Travel Jockey nor responded to the procedural fairness letter in a manner that put to rest the decision-maker's belief she had used Travel Jockey's services, it was reasonably open to the decision-maker to conclude a misrepresentation occurred.

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***T.P. v Bytedance Ltd.*, 2025 SKKB 101**

Wildeman, 2025-07-11 (KB25094)

Civil Procedure - Affidavit Evidence - Class Action Certification
Civil Procedure - Class Action - Application to Strike Affidavit
Evidence - Admissibility - Civil Matter
Evidence - Admissibility - Hearsay Evidence
Evidence - Affidavits - Admissibility

In a proposed class action by a minor plaintiff against corporate defendants operating TikTok, two pre-certification applications were heard about the admissibility of evidence. The defendants moved to strike six exhibits from the plaintiff's certification record (U.S. complaints, two European regulatory press releases, a U.S. Congressional committee letter to the CEO, and the U.S. Surgeon General's advisory). The plaintiff also sought leave to file an additional affidavit with exhibits said to be in the defendants' possession. The court noted that certification requires "some basis in fact" established by admissible evidence, and that affidavits on information and belief must satisfy Rule 13-30 of *The King's Bench Rules* with adequate disclosure of sources and reliability. The court had to decide whether the impugned exhibits were admissible.
HELD: The court struck five of the six challenged exhibits and the related affidavit paragraphs, finding that the materials were inadmissible hearsay and/or opinion, they lacked sufficient indicia of reliability for internet-sourced documents, they did not meet the requirements under Rule 13-30, and they did not satisfy the public document exception. The court stated that the "some basis in fact" standard must be met with admissible evidence. The court has a gate-keeping role regarding the admissibility of evidence to ensure that the evidence meets the standard criteria. The U.S. Complaints evidence was found inadmissible due to insufficient evidence and hearsay issues because it lacked sufficient information to confirm the allegations or provide reliable evidence for the certification application. The press releases from regulatory agencies in the U.K. and Ireland were found inadmissible due to a lack of reliability, and they did not meet the public document exception criteria. The committee letter from the U.S. Congress was not admissible for the truth of its content. The report from the U.S. Surgeon General was based on a review of secondary sources, which raised hearsay concerns, and the plaintiff failed to provide evidence of the reliability of the secondary sources cited in the report. Furthermore, that report contained opinion evidence which, without proper expert testimony procedures, would not be admissible. The court emphasized the dangers of hearsay and the importance of witness credibility in legal proceedings. Hearsay is presumptively inadmissible due to difficulties of verifying out-of-court statements. In class action certification matters, the plaintiff has the burden of proof and must provide admissible evidence to meet the certification criteria in class action lawsuits.

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R v Banff Constructors Ltd.**,** **[2025 SKKB 102]**

Zerr, 2025-07-14 (KB25099)

Appeal - Grounds - Misapprehension of Evidence
Criminal Law - Occupational Health and Safety - Appeal
Occupational Health and Safety - Offences

The appellant was convicted in Provincial Court of two strict liability offences under ss. 12(b) and (c) of *The Occupational Health and Safety Regulations, 1996*, after a table cart toppled at a construction site, causing the death of a worker. The general contractor had rented the carts from a supplier; the appellant supplied labour. The trial judge found the appellant failed to arrange safe use, handling, and transport of the carts and failed to provide necessary information, instruction, training, and supervision. The court had to decide whether the verdicts and convictions were unreasonable, whether the trial judge erred in applying strict liability principles and the due diligence defence, and whether the trial judge erred in admitting hearsay statements of an employee for their truth.
HELD: The appeal was allowed, the convictions were set aside, and a new trial was ordered. The court found material misapprehensions of the evidence regarding the issues of due diligence and causation. In particular, the trial judge mistakenly treated the existence of available training and options at a different working site (Grande Prairie) for the appellant's control and alternative measures in the Saskatoon site. The trial judge also concluded that providing the same training as at the other site would have "significantly eliminated" the accident without engaging with evidence that was material to the causation findings on both counts. Furthermore, the trial judge did not adequately deal with the evidence related to the allegations of who had modified the cart, which created ambiguity about responsibility. Given the material misapprehensions, the court found that the verdicts were unreasonable. The court stated that the appropriate remedy was a new trial.

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R v Pilosio Canada Inc.**,** **[2025 SKKB 103]**

Zerr, 2025-07-14 (KB25100)

Occupational Health and Safety - Offences
Regulatory Offence - *Occupational Health and Safety Act* - Strict Liability - Defence of Due Diligence
Statutes - Interpretation - *Saskatchewan Employment Act*, Section 3-1

This appeal was against an acquittal of the respondent who had been charged with failing to ensure that the equipment it supplied to a construction company which led to the death of a construction worker was safe under *The Saskatchewan Employment Act* (the Act).
HELD: The appeal was allowed, and a new trial was ordered. (1) The trial judge erred when he concluded that the respondent was

not a supplier within the meaning of s. 3-1(1)(ee) of the Act. When interpreting legislation, the words in an enactment are to be read in their grammatical and ordinary sense, in context, and harmoniously with the scheme of the Act, its object, and the intention of the legislative body that enacted it. When read in their grammatical and ordinary sense, the definitions of “supplier”, “plant”, and “place of employment” supported a conclusion that the respondent was a supplier within the meaning of the Act. The legislative context did not support an interpretation of “supplier” that was dependent on the supplier’s knowledge of the users’ identities. A narrow or technical interpretation of “supplier” also had the potential to frustrate the legislature’s intent. (2) The trial judge erred when he concluded that “reasonably practicable” does not mean “reasonably possible”. In this case, “reasonably practicable” meant “possible given current knowledge, technology and invention”. (3) The trial judge misapprehended evidence in such a way as to render the verdict unreasonable. An appellate court may also find a verdict unreasonable if the trial judge has drawn an inference or made a finding of fact essential to the verdict that is: (a) plainly contradicted by the evidence relied upon in support of that inference or finding or (b) incompatible with evidence not otherwise contradicted or rejected by the trial judge. In this case, the vice president of sales for the respondent had met with those who worked with the general contractor. The respondent had also executed a rental agreement in 2016 in which the respondent agreed to rent three transition trolley carts to the respondent. The trial judge’s finding that the table carts were shipped to the Saskatoon Children’s Hospital construction site without the respondent’s knowledge or permission was contradicted by the evidence relied upon to make it. (4) Ordering a new trial was appropriate. To substitute a conviction for an acquittal, an appellate court must be satisfied that all the findings necessary to support a verdict of guilty must have been made, either explicitly or implicitly, or not be in issue. In this case, within the evidentiary context, the court was not persuaded that there was no air of reality to a due diligence defence, or that a conviction was inevitable.

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***CIBC Mortgages v Franson*, 2025 SKKB 104**

Danyliuk, 2025-07-15 (KB25101)

Mortgages - Foreclosure - Application to Confirm Judicial Sale
Mortgages - Foreclosure - Order *Nisi* - Judicial Sale

The defendant granted a mortgage to the plaintiff in 2008. The defendant fell into arrears in spring 2024 and the plaintiff commenced realization proceedings. The plaintiff applied for an order *nisi* for sale by real estate listing, which was granted with a 90-day period of redemption. The property was not redeemed and the judicial sale proceeded by way of real estate listing. The plaintiff had now applied to confirm the sale. The court had to address its jurisdiction to deal with acceptance or rejection of a sale obtained (on conditions) under an order *nisi* for sale by real estate listing where, after the sale order and sale process, the mortgagor provides evidence as to value.
HELD: The application to confirm the sale was dismissed. (1) The circumstances in this case warranted the refusal of a judicial sale.

Generally speaking, unless there is some irregularity, confirmation orders pertaining to judicial sales (however structured) should be granted. In determining whether to grant a sale, the court must balance the competing interests of mortgagor and mortgagee. While judicial discretion to refuse to confirm a sale exists, that discretion is employed sparingly. It should only be used when there is a good or compelling reason to do so. A balance must be struck between preserving the integrity of the process of court-ordered sales and fairness to the parties involved. In this case, the valuation evidence of the plaintiff was poor at the order *nisi* stage, which resulted in the floor price of the property being deflated to approximately 64% of what appeared to have been its fair market value. The appraiser made no adjustments to any of the comparables. There was no explanation as to the lack of any difference in drive-by estimates of value conducted by the same appraiser between valuation dates of March 17, 2024 (the first valuation for the purposes of obtaining leave) and the October 18, 2024 appraisal for the order *nisi*. There was also no explanation as to why the appraisal was only a drive-by appraisal. A previous appraisal from 2008 and a listing from January 2006 were also used as sources of information with no explanation as to how they influenced the drive-by appraisal. In the circumstances, justice demanded that the court refuse to confirm the judicial sale.

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***R v Obey*, [2025 SKKB 106]**

Tochor, 2025-07-16 (KB25095)

Criminal Law - Dangerous Offender Application
Criminal Law - Sentencing - Dangerous Offender
Criminal Law - Sentencing - Dangerous Offender - Predicate Offence - Assault

The respondent was convicted of seven personal injury offences arising out of a series of three events: on December 5-6, 2018, in Regina and the surrounding area; on March 10, 2021, in Regina; and on June 30, 2021, in Saskatoon. The Crown sought a dangerous offender designation and an indeterminate sentence for the respondent pursuant to Part XXIV of the *Criminal Code*. HELD: The respondent was designated a dangerous offender and sentenced to an indeterminate term of imprisonment in a federal penitentiary. Other ancillary orders were also made. (1) The respondent was a dangerous offender. For a dangerous offender designation, there are four required criteria: (a) The offender has been convicted of a “serious personal injury offence” as defined in s. 752 of the *Criminal Code*; (b) The predicate offence(s) are part of a broader pattern of violence; (c) There is a high likelihood of harmful recidivism; and (d) The violent conduct is intractable. In this case, the seven predicate offences relied upon by the Crown fell within the category of serious personal injury offences. The respondent’s prior criminal record contained numerous entries for violent offences, including assault, robbery and disarming a peace officer. His predicate offences also involved vehicle pursuits by police; several different vehicle pursuits in Regina and area on December 5-6, 2018, and a separate police pursuit and standoff on March 10, 2021. His institutional record, in both federal and provincial facilities, illustrated a continuing and escalating pattern of violent offences, including assaults on fellow inmates and challenges to staff. The respondent presented a high likelihood of violent recidivism. Furthermore, given the serious nature of the respondent’s predicate offences; the nature, number, and timing of his other criminal convictions; his pattern of institutional infractions and charges; his inability to comply with community supervision; his inability to complete treatment programming; and his inability to address his diagnosed disorders, the accused's violent behaviour was intractable. All requirements for the designation of the accused as a dangerous offender were met. (2) An indeterminate term of imprisonment was warranted in the circumstances. Under s. 753(4.11) of the *Criminal Code*, the court shall impose a sentence of detention in a penitentiary for an indeterminate period unless it is satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that a lesser measure will adequately protect the public against the commission by the offender of murder or a serious personal injury offence. In this case, the evidence suggested a continuing inability of the respondent to moderate his behaviour. The respondent had not participated in treatment programming since 2009, and that treatment did not reduce or control his risk to the public. Any prospects for meaningful change in the behaviour of the respondent was also speculative at best. The respondent had limited insight into his behaviour, and very limited insight into the impact of his behaviour on others. There was also little evidence that the risk of violence posed by the respondent could be reduced by a further period of custody. In the circumstances, the accused's moral culpability for his violent behaviour could not be significantly diminished by *Gladue* factors to the extent that a determinate sentence, or a determinate sentence with a long-term supervision order, should be imposed. In summary, upon consideration of a totality of the evidence, a less onerous sentence was not a fit sentence and only an indeterminate sentence will adequately protect the public.

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***Pikor v Lemsford Ferry Regional Park Authority*, [2025 SKKB 109]**

Clackson, 2025-07-23 (KB25105)

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

In October 2023, the defendants applied for a writ of possession to recover possession of the lots in Lemsford Ferry Regional Park from overholding leaseholders, which included all but one of the plaintiffs. The writ of possession was granted in January 2024 and was not appealed. In early February of 2024, counsel for the plaintiffs asked the Lemsford Ferry Regional Park Authority (Authority) to delay enforcement of the writ of possession to allow the affected leaseholders an opportunity to remove their property from the leased lots. This request was refused, and the plaintiffs commenced an action applying for an interim injunction restraining the Authority and the government of Saskatchewan (Saskatchewan) from enforcing the writ of possession. The defendants applied to strike the claim on the basis that it disclosed no reasonable cause of action, was frivolous and vexatious, and was an abuse of court process.
HELD: The application for an interim injunction was dismissed and the claim was struck out. (1) The claim disclosed no reasonable cause of action for equitable fraud. In determining whether to strike out a plaintiff's claim, the following principles apply: (a) the claim should be struck where, assuming the plaintiff proves everything alleged in the claim there is no reasonable chance of success; (b) the jurisdiction to strike a claim should only be exercised in plain and obvious cases where the matter is beyond doubt; (c) the court may consider only the claim, particulars furnished pursuant to a demand and any document referred to in the claim upon which the

plaintiff must rely to establish its case; (d) the court can strike all, or a portion of, the claim and (e) the plaintiff must state sufficient facts to establish the requisite legal elements for a cause of action. To disclose a reasonable claim of equitable fraud, a statement of claim must set out sufficient facts, which if true, demonstrate that: (a) one or both defendants committed an unconscionable act or omission; (b) as a result of that act or omission, one or both of the defendants secured a benefit for themselves; and (c) the plaintiffs were disadvantaged or lost a benefit that would otherwise have accrued to them had the unconscionable act or omission not occurred. In this case, none of the facts alleged demonstrated an unconscionable act or omission by either defendant, much less an act or omission that resulted in a benefit to the defendants that otherwise would not have accrued to them. (2) The claim disclosed no reasonable cause of action for negligence. The allegation of negligence was also unsupported by any factual allegations demonstrating: (a) that a special relationship existed between the plaintiffs and Saskatchewan such as would give rise to a common law duty of care on the part of Saskatchewan; (b) the nature of the duty of care; (c) Saskatchewan's failure to meet the standard of care arising from that duty; nor (d) the damages suffered by the plaintiffs as a consequence of Saskatchewan's failure to meet that standard. Each of these elements was to be proved to establish liability in negligence and the statement of claim was silent on them. (3) The claim was an abuse of process. The plaintiffs did not appeal the January 2024 order granting a writ of possession to the defendants. Instead, the plaintiffs attempted to stave off execution of the writ of possession by requesting a moratorium on its enforcement to permit the plaintiffs more time to remove their belongings from the occupied lands. The current action was instituted when that request did not yield the desired result. The current action was a collateral attack on the order granting the writ of possession and thus an abuse of process.

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***Muzyka v Tilk*, 2025 SKPC 19**

Agnew, 2025-06-26 (PC25017)

Civil Procedure - Limitation Period
Small Claims - Practice and Procedure

The plaintiff, a self-represented litigant, brought an action relating to his exclusion from Saskatchewan Health Authority property in Saskatoon, which arose from events at St. Paul's Hospital in February 2021 and a subsequent letter banning him from attending the property. The plaintiff argued that various legal rights had been violated, sought damages, and raised multiple preliminary applications. The defendants applied to dismiss the action, arguing it was statute-barred under *The Limitations Act*. The court had to decide whether it had jurisdiction to dismiss the claim at a preliminary stage on the basis that it was statute-barred, and whether the plaintiff's claim was commenced within the limitation period set by *The Limitations Act*.
HELD: The court found it had jurisdiction under section 12(6)(l) of *The Small Claims Act, 2016* to decide the defendants' application for summary dismissal based on the limitation period. The court determined that only a claim that results in an issued summons can stop the limitation clock, and repeated rejections of earlier claims for technical reasons did not interrupt the running of time. The plaintiff's attempts to file within the limitation period were unsuccessful; the accepted claim was not filed until March 28, 2024, more than two years after the alleged acts and the ban letter of February 2021. The court rejected arguments that ongoing harm from the

ban or the plaintiff’s self-represented status could extend or reset the limitation period. The court dismissed the action as statute-barred and awarded costs.

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