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***JV&M Civil Constructors Inc. v Farnham, [2025 SKCA 72](#)***

Tholl Kalmakoff McCreary, 2025-08-06 (CA25072)

Builders' Lien - Procedure

Civil Procedure - Pleadings - Striking Out

Civil Procedure - Striking Statement of Claim - No Reasonable Cause of Action - Appeal

One of the respondents in this case had contracted with the appellants to complete work on the Ministikwan Lake Water Treatment Plant and the Mudie Lake Pumpstation. The appellants engaged another of the respondents, Black & McDonald Limited (B&M), as a subcontractor to perform mechanical and electrical aspects of the project. At some point, a disagreement arose between the appellants and B&M as to the quality and timeliness of the work completed under the subcontracts, with the appellants failing to pay B&M the full price of the subcontracts. In response, B&M filed a written notice of lien and claim of lien for the appellants' alleged indebtedness and also filed a statement of claim against the appellants. The appellants counterclaimed against B&M and its agent, but the appellants' counterclaim was struck out on

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| Civil Procedure - Class Action                                                                                          | the basis that it disclosed no reasonable cause of action. This decision formed the subject of the appeal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Civil Procedure - Class Action - Certification                                                                          | HELD: The appeal was dismissed. (1) The chambers judge did not err in law by striking the counterclaim on the basis that it disclosed no reasonable cause of action. Section 53 of <i>The Builders' Lien Act</i> (BLA) provides that liability for damages may attach to a person who registers a claim of lien, or gives written notice of a lien, the amount of which is knowingly exaggerated. A non-party who can acquire no benefit from the processes outlined in the BLA should not be included in litigation based upon it. In this case, even if it were true that the lien claim was exaggerated, the liability was to attach to B&M, not the agent. The chambers judge correctly held that there was no reasonable cause of action against a person in their individual capacity when it was a corporate entity that registered the claim of lien and the corporate entity was the legal party to the contract. (2) The chambers judge did not err in law by failing to consider the appellant's application to amend the counterclaim, including failing to consider whether the appellant had a cause of action against the respondent's agent for negligence. No provision of the BLA delineated a duty of care to be owed by an agent of a lien claimant. The fact that there was no contract between the agent for the lien claimant and the contractor or owner demonstrated a clear lack of proximity between the parties in the context of a statute that provided protections for those who enter into contractual relationships for goods and services on credit. The only section of the BLA that created liability in respect of a wrongful lien claim did not apply to the respondent's agent. (3) The chambers judge did not err in law by failing to consider whether the appellant had a cause of action against the respondent's agent for negligence. While the appellant may have been entitled to seek costs against the respondent's agent at the conclusion of the action, it had no stand-alone claim against the respondent's agent for costs. |
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| Criminal Law - Assault - Evidence - Credibility                                                                         | UR Pride challenged a Ministry of Education policy that required parental consent before                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

Criminal Law - Assault - Sexual Assault - Consent

Criminal Law - Dangerous Driving

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Criminal Law - Possession of Stolen Property over \$5,000

Criminal Law - Resisting Arrest

Criminal Law - Sentencing - Aboriginal Offender

Criminal Law - Sentencing - Attempted Murder

Criminal Law - Sentencing - Principles

Criminal Law - Sentencing - Sex Offender Information Registration Act Order - DNA Order

Criminal Law - Sentencing - Sexual Interference

Criminal Law - Sexual Assault - Credibility

Criminal Law - Sexual Assault - Sexual Offences - Person under 14

Damages - Damages in Tort - Defamation - Breach of Contract

educators could use a preferred name or gender identity for students under 16. Later, the government rescinded the policy because the legislature introduced new laws on the topic. The legislature enacted s. 197.4 of *The Education Act, 1995* (the EA), substantially reproducing the policy. The legislature also invoked s. 33 of the *Charter* to pass the new law notwithstanding ss. 2, 7 and 15 rights infringements. UR Pride applied to amend its claim to seek a declaration that s. 197.4 limited sections 7, 12 and 15 *Charter* rights; and a s. 52(1) declaration that s. 197.4 is of no force or effect for violating s. 12 (cruel or unusual punishment). A judge of the Court of King's Bench allowed the amendments. The government appealed the chambers judge's decision and asked the Court of Appeal to put an end to UR Pride's action. The government claimed that the Court of King's Bench did not have jurisdiction to issue a declaration in light of the notwithstanding clause, and that since the government had repealed the public policy, the issue was moot. The court had to decide whether the Court of King's Bench had jurisdiction to issue a declaration if it found s. 197.4 limited the rights of any person, whether leave to amend to add a s. 12 claim should have been granted, and whether the challenge to the policy was moot. HELD: The appeal was allowed in part. The Court of Appeal stated that s. 33 (the notwithstanding clause) does not prevent courts from declaring whether the EA limits *Charter* rights. The court also held that allowing UR Pride to amend its claim to include s. 12 *Charter* claims would not cause prejudice to the government. The court agreed with the government that all challenges related to public policy were moot, but the court allowed the action to proceed, focusing on the EA instead. The court emphasized that although a legislature does not need to provide substantive justification for invoking s. 33, and a formal declaration is enough to override certain *Charter* rights, judicial review to examine the law's consistency with the *Charter* remains possible even after a s. 33 declaration, as the court's role is to assess whether legislation limits rights or not. The court contested the government's argument that a s. 33 declaration immunized legislation from judicial review for *Charter* consistency. A s. 33 declaration does not eliminate the *Charter* rights themselves: it allows the legislation to operate notwithstanding the infringements on selected *Charter* rights. The court also relied on the historical context of s. 33 in arriving at its decision. Section 33 was introduced to address the concerns about judicial supremacy during the patriation of the Canadian Constitution. This section aimed to preserve parliamentary sovereignty while ensuring democratic accountability through periodic renewal of declarations (the five-year expiry and renewal mode of s. 33 declarations). The court also emphasized that the relationship between courts and legislatures in Canada is characterized as a dialogue allowing for mutual respect and accountability, which is essential for maintaining a balanced constitutional framework between these powers. Therefore, the interpretation of s. 33 must align with the overall purpose of the *Charter* and the principles of constitutional democracy, which in this case meant that the courts have the jurisdiction to judicially review the *Charter* consistency of the laws passed by legislatures despite a s. 33 declaration. Judicial reviews by the courts do not undermine the legislature's authority to declare laws under s. 33. Courts can assess whether legislation limits *Charter*

Evidence - Witness - Credibility

Insurance - *Automobile Accident Insurance Act* - Income Replacement Benefits

Judges and Courts - Jurisdiction - Inherent Jurisdiction

Judicial Review - Legislation

Practice and Procedure - Default Judgment - Setting Aside

Statutes - Interpretation - *Criminal Code*, Section 320.14(1)(c)

Tort Law - Defamation - Defences - Responsible Communication

Tort Law - Defamation - Libel and Slander - Requirements

Tort Law - Economic Torts - Direct Inducement of Breach of Contract - Intentional Interference with Economic Relations

rights. The government can defend legislation by demonstrating that it reasonably limits the rights during the judicial review process because the courts have a role to ensure that rights are respected and that any limitations are justified. The court's determination about *Charter* rights infringement did not conflict with the notwithstanding clause override. Regarding the s.12 *Charter* claims, the Court of Appeal permitted those claims to proceed and stated that the Court of King's Bench had jurisdiction to hear and determine them.

DISSENT: Caldwell J.A. dissented, finding that the court's jurisdiction was ousted by the legislature's s. 33 declaration. The court would overstep its constitutional role if it were to rule on the fairness and reasonableness of a legislative provision in this context, and the ultimate "political or policy merits of the Act or provision [were] to be determined by the electorate" (para 209). Caldwell J.A. found that the chambers judge erred (1) by ruling that the courts retained jurisdiction to determine whether s. 197.4 of the EA unreasonably limited legal and equality rights after the government invoked s. 33; (2) by granting UR Pride leave to amend its application pursuant to s. 12 of the *Charter*, thereby circumventing s. 33; and (3) by failing to strike UR Pride's originating application as moot. He would have stricken all claims for relief in UR Pride's application; granted the government's application for an order declaring the courts lacked jurisdiction to determine the pertinent question; and denied UR Pride leave to amend its application.

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### ***Wuttunee v Saskatchewan Government Insurance*, [2025 SKKB 63](#)**

Morrall, 2025-05-14 (KB25058)

Insurance - *Automobile Accident Insurance Act* - Income Replacement Benefits

In 2005, the plaintiff pedestrian was injured after being struck by a motor vehicle. The accident was not his fault. There was no dispute that the plaintiff suffered significant injuries because of the accident, and there was no dispute that the plaintiff was not employed on the date of the accident. The plaintiff's employment before and after the accident was sporadic. SGI paid the plaintiff some income replacement benefits for some periods since the accident but denied the plaintiff the same benefits for other time periods and on an ongoing basis. When SGI determined the plaintiff was able to work again, benefits were terminated. The plaintiff issued a claim appealing some of SGI's determinations, with the main issue of whether SGI should pay any income replacement benefits under *The Automobile Accident Insurance Act* (AAIA) beyond what had already been paid. The plaintiff asserted he should be entitled to income replacement benefits during all periods since the accident.

## Cases by Name

*Above Food Ingredients Inc. v Anmoho LLC*

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

*JV&M Civil Constructors Inc. v Farnham*

*McLean v Stewart*

*Popp v Canada (Attorney General)*

*R v Bear*

*R v Chartrand*

*R v Ermine*

*R v Gullickson*

*R v Jackson*

*R v Redman*

*Saskatchewan (Minister of Education) v UR Pride Centre for Sexuality and Gender Diversity*

*Wuttunee v Saskatchewan Government Insurance*

HELD: The court found that the plaintiff was entitled to income benefits for many of the time periods set out by the plaintiff. The plaintiff did not fill in anything regarding his employment in his initial claim for benefits to SGI, and did not provide evidence of potential interviews, job applications, or any other evidence to show some intention to work after the accident. The court noted that SGI did not contest the fact that had the plaintiff properly demonstrated employability, he would have been entitled to benefits given the severity of his injuries. The court considered s. 113 of the AAIA and s. 14 of *The Personal Injury Benefits Regulations* (PIBR) and cited *Fraser v Saskatchewan Government Insurance*, 2013 SKCA 109 to note that an insured need not have been employed nor have had a valid employment contract in hand at the time of his accident to collect benefits. The insured need only establish that he “would have held” employment during the 180-day period following the accident. The court reviewed the plaintiff’s T4 slips to determine whether the plaintiff would have been employed in the six months after the accident had there been no accident. The court found the plaintiff had modest employment during the six months before the accident and the year before the accident and was generally employed. There was good evidence that he would have held employment but for the accident. The plaintiff met his onus of demonstrating that he would have held employment under s. 113(2)(b) of the AAIA and s. 14 of the PIBR in the 180 days following the accident. The court held he was entitled to income replacement benefits during this period of time and should have received benefits.

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***Affinity Credit Union v United Food and Commercial Workers, Local 1400*, [2025 SKKB 80](#)**

Danyliuk, 2025-06-12 (KB25080)

Administrative Law - Common Law - Deliberative Secrecy

Administrative Law - Arbitration - Judicial Review

Civil Procedure - Application to Strike Affidavits

The main application was an originating application for judicial review of the decision of an arbitration panel. The background dispute involved the termination of an employee, allegedly for just cause. The employee was a member of the respondent union, whose position was that the employee's termination was unjust and breached the collective bargaining agreement. An arbitration panel included the chair, the union nominee, and the employer nominee. The decisions of the panel were not unanimous, and the employer nominee dissented on both decisions. The majority of the arbitration panel found that just cause to dismiss the employee did not exist, even though her conduct did contribute to a toxic workplace. The employee was

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not reinstated, but damages were awarded. The employer filed the main application for judicial review of the majority arbitration decisions, seeking to quash both decisions and have the grievance dismissed. The employer filed the employer board nominee's affidavit in support of its application. It alleged that the employer nominee was excluded from the decision-making process. The chair of the arbitration panel filed a folder of correspondence which the court noted overlapped the other affidavit material. The respondent sought to have that material struck, along with the employer nominee's affidavit. Here, the court determined a subsidiary application by the respondent to entirely strike out an affidavit filed by the applicant. The court determined: 1) whether the material should be struck; 2) whether the employer nominee should be cross-examined; and 3) costs.

HELD: The court dismissed the respondent's application to strike out the affidavit. Costs were reserved to the hearing of the main application. 1) The court held that the recognized exception to the common law doctrine of deliberative secrecy applied, because there was no other way to factually raise the concerns about lack of fairness and natural justice. The court cited *Commission scolaire de Laval v Syndicat de l'enseignement de la region de Laval*, 2016 SCC 8 for the nature and scope of this duty. Deliberative secrecy protects the process by which judges reach their decisions and is a core component of the constitutional principle of judicial independence. This doctrine does apply to the deliberations of administrative tribunals, but it could be lifted in this context when the litigant could present valid reasons for believing that the process did not comply with the rules of natural justice. The court found that the affidavit filed was justified on the facts. 2) The court deferred its decision on cross-examination of the affiant until after the respondent had decided whether to file any additional evidence on the fairness/natural justice ground of judicial review advanced by the applicant. This was to ensure that both parties could put their best foot forward on the main application. The court set out the law for when a court ought to exercise its discretion in favour of a request to permit cross-examination on a deponent's affidavit (*Ter Keurs Bros. Inc. v Last Mountain Valley (Rural Municipality)*, 2019 SKCA 10). There is no inherent right to cross-examine an affiant on his affidavit; granting leave to cross-examine on an affidavit is a discretionary remedy. 3) The issue of costs was deferred until the determination of the main application for judicial review.

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### **McLean v Stewart, [2025 SKKB 81](#)**

Robertson, 2025-06-13 (KB25081)

Damages - Damages in Tort - Defamation - Breach of Contract

Tort Law - Defamation - Libel and Slander - Requirements

Tort Law - Economic Torts - Direct Inducement of Breach of Contract - Intentional Interference with Economic Relations

Tort Law - Defamation - Defences - Responsible Communication

The plaintiff published a book in 2015. The premise was that the police officers who were dismissed following the death of Neil Stonechild were innocent. The plaintiff had scheduled book signings across the prairies to promote sales of the book. The defendant

was a tenured professor. She posted on Facebook that the book was “racist garbage” and did not publish a retraction or make an apology. She participated in a campaign opposing the plaintiff’s efforts to promote her book, which included calling book signing venues and asking them to cancel the events, and picketing. She encouraged others to make similar phone calls. The events were cancelled as a result. The court determined whether: 1) the plaintiff established liability on the basis of the tort of defamation; 2) the plaintiff established liability on the tort of direct inducement of breach of contract; 3) the plaintiff established liability on the basis of intentional interference with economic relations; and 3) a costs award should be made.

HELD: The court found the defendant liable under the tort of defamation and for inducing breach of contract, but not for intentional interference with economic relations. The court awarded damages in the amount of \$6,450.02. 1) The court found the defendant liable under the tort of defamation. The defendant failed to establish any defence to defamation. The purpose of the law of defamation is to protect reputation without unduly inhibiting freedom of expression, and proving defamation requires more than mere insult. The tort of defamation requires proof of: i) words about the plaintiff; ii) which are communicated verbally (slander) or in writing (libel) to a third party; and iii) that would lower the plaintiff’s reputation in the eyes of a reasonable person. Defamation is a tort of strict liability, with proof of intent required only for the publication element. Where a plaintiff proves the three elements on a balance of probabilities, a *prima facie* case of defamation is established, with falsity, malice and damages presumed. Then the onus shifts to the defendant to establish a defence. Common defences are truth (justification), fair comment, responsible communication, and qualified privilege. The court noted that disparaging comments might not be defamatory if a reasonable person would not be influenced in their opinion of the plaintiff by the disparaging words. Disparagement also might not be defamatory if the plaintiff does not have a good reputation to begin with. Here, the court found it more likely than not that the publication of the statement harmed the plaintiff’s reputation due to the highly charged nature of the word “racist” today. Having found that a *prima facie* case of defamation was established, the court determined whether the defendant had proven any defences. The court noted the balance between an individual’s right to free expression and an individual’s right to protect his or her reputation. The defendant did not claim justification by truth, and there was no evidence that the plaintiff was in fact racist. The court also found that fair comment was not established. The defendant argued a form of responsible communication in that her life work was opposition to racism. The defence of responsible communication has two elements: public interest and responsibility. The defendant must establish: i) the publication was on a matter of public interest; and ii) the defendant was diligent in trying to verify the allegation, having regard to all relevant circumstances. The court noted that the communication failed in that there was no diligence in verification. The defendant made the post without reading the book in full and provided no evidence that either the book or the plaintiff were racist. 2) The plaintiff proved the elements of the tort of direct inducement of breach of contract. The elements are: i) the existence of a contract; ii) that the defendant had knowledge of the contract; iii) that the defendant intended to procure breach of the contract; iv) that the defendant directly induced a third party to break the contract; and v) that the plaintiff suffered actual damages from the breaking of the contract. The court found that the bookings with the book signing venues constituted a contract. The defendant knew about the contracts, because she contacted and encouraged others to call the venues asking them to cancel the scheduled book signings. There was clear evidence that the defendant personally called at least one venue and encouraged others to do the same with the intention of cancelling the bookings, and that she was successful in cancelling the bookings. The plaintiff also provided proof of damages, both actual and estimated. The defendant failed to establish any legal justification defence. 3) The plaintiff did not establish liability for intentional interference with economic relations. The elements of this tort are: i) the defendant committed an unlawful act; ii) against a third party; and iii) that intentionally caused economic harm to the plaintiff. The plaintiff failed to establish an unlawful act against a third party. The court noted that section 2 of the *Charter* protected both the plaintiff’s right to publish and promote the book and the defendant’s right to lawfully protest against the book. 4) Total damages awarded were \$6,450.02. The court awarded general

damages of \$1,000, and no award for special, aggravated or punitive damages for defamation. For damages for inducing breach of contract, the court awarded general damages of \$3,000 and \$2,450.61 in pecuniary damages for out-of-pocket expenses incurred as a result of the cancelled book signings. The plaintiff was entitled to pre-judgment interest on the damage award from the date of issuance of the statement of claim to the date of judgment. The court stated that the overall purpose of a general damages award in defamation was to compensate the plaintiff for loss of reputation and injury to the plaintiff's feelings, and to vindicate the plaintiff to re-establish his or her reputation. In assessing damages for defamation, the term "special damages" covers all calculable damages from the publication of the offending words, including past pecuniary losses and any out-of-pocket expenses caused by the defamatory words. The court stated that a prompt retraction and apology could justify an award of nominal damages only, since any harm done was mitigated. Here, however, there was no retraction or apology, and the defendant was unapologetic years after the events. The court referred extensively to Saskatchewan case law where damages were awarded for defamation.

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***R v Jackson*, [2025 SKKB 86](#)**

Morris, 2025-06-20 (KB25088)

Criminal Law - Appeal - Blood Drug Concentration  
Statutes - Interpretation - *Criminal Code*, Section 320.14(1)(c)

After a trial in Provincial Court, the appellant was convicted of driving with a blood drug concentration over the legal limit. She was sentenced to a fine and a driving prohibition. She represented herself to appeal both her conviction and sentence. The offence charged was based on the appellant's blood drug concentration for methamphetamine. The trial judge rejected the appellant's argument that she had been arbitrarily stopped and detained, and that the test of her oral fluid conducted via approved drug screening equipment was unreasonably delayed.

HELD: The court dismissed the appellant's appeal against her conviction and sentence. The court did not agree with the appellant's argument that because the trial judge presided over both her case management conference and at her trial, he was biased. There was also no evidence of wrongful non-disclosure as alleged by the appellant. The court referred to *R v Koma*, 2015 SKCA 92 for police powers to stop vehicles at common law and under *The Traffic Safety Act*. The trial judge accepted the constable's evidence that he stopped the appellant's vehicle to check her driver's licence, registration and sobriety, and the mechanical fitness of her vehicle. The court found no error with the trial judge's conclusion that the traffic stop did not breach the appellant's *Charter* rights. The court found that the trial judge was correct in concluding that the drug test was administered within the temporal requirement of s. 320.27(1)(c); it started within five minutes of the demand. The court noted that proof of impairment was not required for a conviction under s. 320.14(1)(c) of the *Criminal Code*. There was no basis to interfere with the sentence imposed.

***Popp v Canada (Attorney General)*, [2025 SKKB 89](#)**

Currie, 2025-06-24 (KB25084)

Civil Procedure - Class Action

Civil Procedure - Class Action - Certification

Civil Procedure - Class Action - Certification Application

Civil Procedure - Class Actions - Applications for Certification - Causes of Action - Proposed Class - Litigation Plans

The plaintiffs sought to certify a class action against the Saskatchewan Health Authority (SHA) on behalf of Aboriginal women. The plaintiffs alleged that Aboriginal women in Saskatchewan were sterilized without proper informed consent, citing systemic racism, human rights violations, and discriminatory practices in healthcare. The plaintiffs advanced negligence, breach of fiduciary duty, vicarious liability (battery, trespass to the person, false imprisonment), negligent misrepresentation, and *Charter* claims under ss. 7, 12 and 15. The court had to decide whether the action met the certification requirements.

HELD: The application for certification was dismissed. The court had to review the criteria for certification of a class action under section 6(1) of the SHA. The court held that the requirements for s. 6(1)(a) were satisfied because the plaintiffs pled the facts that would establish the alleged claims. The proposed class definition under s. 6(1)(b) was deficient and required a proper way of identifying the Aboriginal women who were the intended class members. The plaintiffs proposed a list of 30 common issues for the determination of a common issues trial. Under s. 6(1)(c), none of the proposed common issues qualified as proper common issues. The court found that the proposed common issues were overly broad. The fundamental question of whether sterilization occurred without consent would require detailed individual trials, making the class action unmanageable. For s. 6(1)(d), the court determined that a class action was not the preferable procedure due to the complexity of individual consent issues. The court found that a regular court action would be more appropriate.

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***R v Redman*, [2025 SKKB 91](#)**

Dawson, 2025-06-25 (KB25085)

Criminal Law - Sentencing - Aboriginal Offender

Criminal Law - Sentencing - *Sex Offender Information Registration Act* Order - DNA Order

Criminal Law - Sentencing - Sexual Interference

Criminal Law - Sexual Assault - Sexual Offences - Person under 14

The accused pleaded guilty to sexual interference, under s. 151 of the *Criminal Code*, with a 14-year-old at the victim's home when the accused was 21. The accused provided alcohol, confirmed the victim's age, and later admitted the offence. A pre-sentence report documented extensive *Gladue* factors, trauma, addictions, unstable housing, and very low overall cognitive ability. Possible

fetal alcohol spectrum disorder (FASD) was noted, though not formally diagnosed. The accused had no prior record, expressed willingness to pursue treatment, and ultimately accepted responsibility when questioned by the court. The court had to decide an appropriate sentence.

HELD: The court imposed a three-year sentence in custody (1,095 days), with 209 days' credit for time served on remand. The court emphasized denunciation and deterrence for offences against children, and related proportionality and parity principles (see: *R v Friesen*, 2020 SCC 9; *R v L.A.*, 2023 SKCA 136). Aggravating factors included the victim's age, provision of alcohol, the offence occurring in the victim's home, the accused's knowledge of age, and the absence of condom use; while not in a formal position of trust, the accused's connection as a friend of the victim's aunt made the offence graver. Mitigating factors included the guilty plea, lack of prior record, significant trauma, *Gladue* factors, and very low cognitive functioning. The court also imposed the following ancillary orders: DNA order; SOIRA registration for 10 years; a 10-year weapons prohibition with certain lifetime prohibitions; an order restraining the offender from being within 50 metres of the victim's home, school or workplace; a five-year order restricting proximity to places children are present; limiting employment/volunteering with children; and a \$200 victim fine surcharge.

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***Above Food Ingredients Inc. v Anmoho LLC*, [2025 SKKB 110](#)**

Klatt, 2025-07-24 (KB25106)

Civil Procedure - Application to Set Aside Default Judgment  
Civil Procedure - Noting for Default - Application to Set Aside  
Judges and Courts - Jurisdiction - Inherent Jurisdiction  
Practice and Procedure - Default Judgment - Setting Aside

The respondents obtained chambers judgments against the applicant after the applicant failed to respond to originating applications that had been properly served. Senior management of the applicant first learned of the judgments when copies were emailed to the Chief Financial Officer, who promptly retained counsel and applied to set them aside. The court had to decide whether to exercise its inherent jurisdiction to set aside the orders.

HELD: The application was granted as to the order obtained by one of the respondents. Rule 10-13 of *The King's Bench Rules* does not govern orders granted on notice; instead, the court relied on the inherent jurisdiction of the court to deal with the matter of setting aside the judgment (see *Montgomery v Jahnke*, 2017 SKQB 374; *Desbiens v Warken*, 2020 SKQB 145). Setting aside such orders is discretionary and the applicants need to make an application as soon as possible, provide a satisfactory explanation for their failure to respond to the claim that resulted in the default judgment, disclose defences that raise arguable issues, and satisfy the court that the setting aside of the judgment will not seriously prejudice the party who obtained the judgement (see paragraph 35 of the decision). The applicant moved promptly after learning of the judgments and provided a satisfactory, non-wilful explanation (the reason was a mail handling failure at the Saskatchewan address). On the merits, a triable issue existed, and the question was whether the agreement between the parties guaranteed a sum of money or merely set a maximum cap. The other important issue was whether summary judgment was appropriate in this case. The court set aside one of the default judgments as the applicant met

the required criteria for the court to exercise its inherent jurisdiction.

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***R v Bear*, [2025 SKPC 18](#)**

Claxton-Viczko, 2025-04-04 (PC25016)

Criminal Law - Assault - Sexual Assault - Consent

Criminal Law - Sexual Assault - Credibility

Evidence - Witness - Credibility

The court found the accused guilty of sexual assault, concluding that intercourse occurred without the complainant's consent. The case arose from an incident on July 3, 2020, at a hotel in Aylsham, Saskatchewan, where both the complainant and the accused were residents. The complainant alleged a violent, non-consensual sexual assault involving both vaginal and anal intercourse while being physically restrained, which was promptly reported to police. DNA evidence linked the accused to the complainant's underwear, and both parties provided conflicting accounts at trial: the complainant described a forceful attack, while the accused claimed the encounter was consensual and both were intoxicated. The court had to decide whether the Crown had proven beyond a reasonable doubt that the accused committed sexual assault by engaging in vaginal and anal intercourse with the complainant without her consent, and whether the accused knew or was reckless as to her lack of consent.

HELD: The court found the accused guilty of sexual assault. The central legal issue was consent. Applying the test from *R v Ewanchuk*, [1999] 1 SCR 330, the court considered whether the sexual touching occurred, whether the complainant consented, and whether the accused was aware of, or reckless or wilfully blind to, the lack of consent. The court found the complainant's evidence detailed, candid, and corroborated by physical evidence, such as the accused's DNA on her underwear and her description of the events. The accused's evidence was found to be internally inconsistent, vague, and not supported by physical evidence. The court assessed credibility and reliability using the *W.(D.)* framework (see *R v W.(D.)*, [1991] 1 SCR 742), which requires acquittal if the accused is believed or if their evidence raises a reasonable doubt, but conviction if the Crown's case proves guilt beyond a reasonable doubt. The court rejected the accused's account. The court was not left in doubt and accepted the complainant's version as credible. The court concluded that the accused engaged in intercourse without the complainant's consent and was at least reckless as to her lack of consent. The Crown proved all elements of the offence beyond a reasonable doubt, and the accused was found guilty as charged.

## ***R v Ermine*, [2025 SKPC 9](#)**

Schiefner, 2025-04-16 (PC25009)

Criminal Law - Possession of Stolen Property over \$5,000

Criminal Law - Resisting Arrest

Criminal Law - Motor Vehicle Offences - Failing to Stop

Criminal Law - Dangerous Driving

The accused was charged with possession of stolen property with a value over \$5,000 (an SUV), resisting arrest, operating a conveyance in a dangerous manner, failing to stop for police while operating a motor vehicle, and mischief for damaging a police vehicle. The accused was wanted on an outstanding warrant after he violated the terms of his parole. He was located by an RCMP unit tasked with finding high-risk offenders on outstanding warrants. When police located the accused and tried to arrest him, he fled in a stolen SUV. Police arrived during the day in marked police vehicles with lights activated. The two officers who approached the accused's vehicle were both in full police uniform. The accused testified that he fled because he thought the police were rival gang members and asserted that he thought the stolen SUV belonged to his friend. The Crown called six police officers to testify and tendered an affidavit from the owner of the yellow SUV to confirm that the vehicle had been stolen. The police vehicles had forward-facing cameras and the video from the incident was presented as evidence. The video evidence showed the accused driving the SUV into two police vehicles while boxed in. The accused changed gears between forward and reverse more than once with the engine fully revved and tires spinning in the gravel.

HELD: The accused was found guilty of the above charges after trial. The court found no merit to the accused's testimony that he believed he was being swarmed by gang members. There was no air of reality to the accused's suggestion that he acted out of necessity. The court was satisfied by the totality of the evidence that the accused knew the vehicle was stolen or was wilfully blind to the obvious potential that it was stolen. The court found that the accused knew the people approaching his vehicle were police officers engaged in the lawful execution of their duties. He did not get out of the vehicle after being repeatedly told to do so by police and continued to attempt to drive the SUV forward and backward. Multiple officers tried to restrain the accused and remove him from the vehicle. Finally, the accused was forcefully removed from the vehicle by his feet by three officers. The court was satisfied beyond any doubt that the accused operated the SUV in an objectively dangerous manner. The accused's conduct represented a marked departure from the standard of care of a reasonably prudent driver in the same circumstances. The court also found the accused guilty of operating a motor vehicle while being pursued by a police officer and failing to stop. The officers who went to arrest the accused were engaged in a pursuit that started when the accused put the SUV in motion. The court conceded that the accused did not travel far as he was quickly boxed in, but that speed and distance travelled were not elements of the offence. Officers commanded the accused to stop, and he did not stop.

***R v Chartrand*, [2025 SKPC 20](#)**

Schiefner, 2025-07-11 (PC25018)

Criminal Law - Assault - Evidence - Credibility

The accused was charged with assaulting the complainant, who was his girlfriend at the time. The complainant testified that she suffered fractures to three of her fingers, her right arm, and her left foot when the accused struck her with a broomstick. The complainant testified that she had been drinking heavily at this time on a daily basis. The accused denied injuring the complainant. HELD: The accused was found not guilty. There was no doubt the complainant was injured, but it was possible that her injuries were caused by means other than assault, and the nature of the injuries did not provide any evidence as to who caused them. The court had concerns with the complainant's ability to accurately recall events, due to prolonged and excessive consumption of alcohol. The accused was not present during the entire period during which the injuries must have occurred. The accused denied that he assaulted the victim, and the court found his testimony cogent and compelling.

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***R v Gullickson*, [2025 SKPC 14](#)**

Agnew, 2025-08-14 (PC25020)

Criminal Law - Sentencing - Aboriginal Offender

Criminal Law - Sentencing - Attempted Murder

Criminal Law - Sentencing - Principles

The accused pleaded guilty to attempted murder for a sustained, unprovoked sidewalk attack on the victim outside a Saskatoon shelter. High-quality video and an agreed statement of facts showed the accused targeting the victim, delivering repeated kicks, head-stomps, and cutting the victim's throat with a knife; the accused later admitted intending to kill. The victim suffered catastrophic, permanent brain injuries, spent over 400 days in hospital or awaiting placement, and now required 24-hour care, constant supervision, and use of a wheelchair. The accused had an extensive record for violence and weapons and committed the offence four days after release from custody. A pre-sentence report recorded heavy methamphetamine use, indifference to harming others, limited insight, and multiple diagnoses (including fetal alcohol spectrum disorder (FASD), schizophrenia, autism), along with significant *Gladue* factors. The court had to decide on an appropriate sentence.

HELD: The court imposed a 13-year sentence, less 1,088 days for remand credit. The court identified a usual range of four to 16 years for attempted murder (*R v Rutt*, 2021 SKCA 143; affirmed in *R v Herman*, 2025 SKCA 67). Aggravating factors included: an unprovoked attack on a sleeping/unsuspecting victim, prolonged and vicious violence, pursuit when the victim tried to flee, cutting the throat after rendering the victim unconscious, minimization of responsibility, expressed indifference to harming others, recent release from custody, and some planning (obtaining and using a knife). Mitigating factors included: the guilty plea, documented

mental-health conditions and cognitive deficits, substance use at the time, and significant *Gladue* factors. Ancillary orders included: a DNA order, a lifetime weapons prohibition, and waiver of the victim-fine surcharge due to undue hardship.