Law Society of Saskatchewan

Case Mail

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

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***Shukin v Loeffler Estate*, 2025 SKCA 73**

Leurer McCreary Kilback, 2025-08-07 (CA25073)

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The appellant had been in a long-term relationship with the respondent at the time of his death in November 2014 at the age of 60. The respondent proposed to the appellant, but they never got married even though she accepted his proposal. In his will, he referred to the appellant as his girlfriend and bequeathed a quarter share of the residue of his estate to her and to each of his three sisters. The issue in this appeal was whether a Court of King's Bench judge erred when he held, after a trial, that the appellant was not the respondent's spouse within the meaning of *The Family Property Act*, or his dependant within the meaning of *The Dependants' Relief Act, 1996* (DRA).
HELD: The appeal was dismissed. (1) The trial judge did not err in finding that the parties were not economically interdependent. In determining whether two people are economically dependent, the following non-exhaustive considerations apply: the arrangements regarding the provision of or contribution towards the necessaries of life, such as food, clothing, shelter and recreation as well as concerning the acquisition and ownership of property; and economic interdependence. In this case, the judge clearly observed that the appellant and respondent paid their own debts, mortgages, property taxes and utilities, they kept their finances separate, they had no joint bank accounts or

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credit cards, they had separate investments and pensions, they owned no property in common, their individual tax returns showed each of them as single, and they were not named on the other's insurance plans or government plans. It was appropriate for the judge to consider these factors in his assessment of whether the appellant and the respondent were economically interdependent. (2) The trial judge did not proceed on the basis that two persons cannot be in a spousal relationship if they did not share a common principal residence. The judge was alert to the attributes of the relationship between the parties that might point to the possibility that, while maintaining separate residences, they were nevertheless cohabiting. The judge's statement that the parties never lived together was an expression of his conclusion that they never shared a common principal residence, which was how he described the factor he was weighing against finding a spousal relationship. (3) The judge did not err in finding as fact that the appellant and respondent did not maintain a common principal residence. The trial judge's determination that the parties never maintained a common residence was in itself a product of a series of more discrete set of facts. If there were any errors in those findings, they would have been minor in nature. (4) The trial judge did not make an error in the finding that the parties had not manifested a common desire to make a home together. (5) The trial judge did not err in his overall conclusion that the appellant and respondent were not in a spousal relationship. Whether a spousal relationship does or does not exist is a determination of mixed facts and law. The judge's determination cannot be overturned absent palpable and overriding error. In this case, the judge concluded that three elements weighed against finding that the parties had displayed, at least for the requisite minimum period of two years, the degree of interdependency to justify the imposition of the spousal status that they did not deliberately enter into by marrying. This finding was not palpably wrong. (6) The judge did not make any error by not applying the principles of estoppel to find that the appellant was in a spousal relationship with the respondent. (7) There was no error by the judge in deciding whether the appellant was the respondent's dependant under the DRA. There was nothing in the trial record that suggested the appellant was caught unaware that the DRA issue might be addressed by the judge in the decision. There was also no prejudice suffered by the appellant if there was any imperfection in the notice given to the appellant that the issue might be decided.

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***Tarasoff v Saskatoon (City)*, 2025 SKCA 77**

Tholl Kalmakoff McCreary, 2025-08-20 (CA25077)

Pleadings - Statement of Claim - Striking Out
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Statutes - Interpretation - *Cities Act*, Section 313, Section 320

The appellant owned a home in the city of Saskatoon. In 2024, the city held public consultations to amend its zoning bylaw to allow for the construction of multi-unit dwellings in neighbourhoods that had previously permitted only single-family dwellings, which affected the appellant's neighbourhood. The appellant opposed the proposed amendments and commenced an action against the city in June 2024, alleging that the city was not acting in good faith or with due diligence in pursuing the proposed amendments to the zoning bylaw. The appellant also filed an application without notice seeking a temporary injunction. The application was dismissed. Upon application by the respondent, the appellant's statement of claim was also struck out in its entirety on the basis that it was both frivolous and an abuse of process. This decision formed the subject of the appeal.
HELD: The appeal was allowed. (1) The chambers judge erred by erred by concluding that s. 313 of *The Cities Act* (the Act) precluded the appellant from seeking injunctive relief against the respondent without having first obtained an order declaring the zoning bylaw to be invalid or illegal. Under s. 313 of the Act, no action is to be brought for anything done pursuant to a bylaw or resolution that is illegal in whole or in part until (a) one month after the bylaw or resolution or the illegal part of the bylaw or resolution is quashed or repealed; and (b) one month's notice in writing of the intention to bring the action has been given to the city. There is, however, considerable support to establish s.313 does not form a statutory bar to actions for other types of relief, such as injunctive relief to restrain the operation of an allegedly invalid bylaw, or relief that is declaratory in nature. By holding otherwise, the chambers judge erred. (2) The chambers judge erred by concluding that s. 320 of the Act precluded the appellant from seeking injunctive relief against the respondent without having first obtained an order declaring the zoning bylaw to be invalid or illegal. Under s. 320 of the Act, any owner or occupant of property may

Statutes - Interpretation - *Cities Act*, Section 313, Section 320

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apply to quash a bylaw or resolution on the basis that the bylaw or resolution is illegal or substance in form. However, just as there are cases in which courts have declined to grant an injunction restraining the passing of a bylaw due to there being an alternative remedy to quash the bylaw, there are also decisions that hold that a plaintiff is not required to follow the statutory process to quash an already-passed bylaw in order to then challenge its legality and seek injunctive relief from its operation. Section 320 of the Act is not the only method by which it is possible to challenge the legality of a bylaw and failure to avail oneself of that procedure does not necessarily form a statutory bar to seeking a declaration of invalidity or injunctive relief. By holding otherwise, the chambers judge erred in law. (3) The errors of law made by the chambers judge affected the outcome. The chambers judge's finding that the appellant's claim was both frivolous and an abuse of process because he had not used the procedure set out in s. 320 of the Act to have the zoning bylaw quashed meant that the appellant's claim for injunctive relief was statute-barred under s. 313. The legal errors also infected the chambers judge's determination of whether the appellant should be permitted to amend his pleadings. The court ordered that the decision be set aside and the matter remitted to the chambers judge to determine whether the appellant should be allowed to amend his claim or whether it should be struck under Rule 7-9(2)(a).

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R v D.L., [2025 SKCA 78]

Kalmakoff Drennan Kilback, 2025-08-21 (CA25078)

Criminal Law - Offences Against Person - Assault - Sexual Assault
Criminal Procedure - Trial - Trial Fairness

The appellant was convicted by a Provincial Court judge of one summary conviction count of sexual assault and sentenced to a term of imprisonment of 12 months, followed by 12 months' probation. He appealed both his conviction and sentence to the Court of King's Bench, alleging that the trial judge compromised trial fairness in questioning him, and that the trial judge erred by drawing speculative inferences not grounded in the evidence. The appeal was dismissed by the Court of King's Bench. The appellant

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sought leave to appeal the summary conviction appeal decision, arguing that the summary conviction appeal judge erred in dismissing the conviction and sentence appeal.
HELD: Leave to appeal was granted and the appeal was allowed. The trial judge's questioning of the appellant compromised trial fairness. Trial judges must exercise their trial management powers with care and should only question witnesses where necessary for the purposes of clarification, resolution of misunderstandings, and correction of the conduct of counsel. In doing so, a trial judge should avoid embarking on an independent investigation into the facts, exploring inconsistencies in witness testimony, or otherwise entering the fray. The ultimate question for an appeal court is not whether the judge at trial was, in fact, not impartial or whether the accused was, in fact, prejudiced by the trial judge's interventions; rather, it is whether a reasonably minded person who had been present for the trial throughout would consider that the accused had not had a fair trial. In this case, the trial judge asked the appellant 59 questions, spanning 11 pages of the trial transcript. The volume, nature, and persistence of the trial judge's inquiries, including the focus on a new line of inquiry not previously explored by counsel, went beyond clarification. These inquiries sought to elicit inconsistencies and adverse admissions from the appellant. The evidence elicited from the trial judge's questioning and the subsequent cross-examination by the Crown became key pillars in the trial judge's reasoning in rejecting the appellant's evidence and finding him guilty of the offence. Given the quantity, timing and nature of the trial judge's questioning, the fact that the questioning led to further cross-examination by the Crown on a new line of inquiry, and the subsequent use of evidence elicited from both the trial judge's questions and those that followed from the Crown, it could not be said that a reasonably minded person who had been present for the trial throughout would consider the appellant to have had a fair trial.

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***R v Moccasin*, [2025 SKCA 79]**

Caldwell Kalmakoff Bardai, 2025-08-22 (CA25079)

Criminal Law - Dangerous Driving - Failure to Stop
Criminal Law - Sentencing - *Gladue* Factors
Ineffective Representation - Miscarriage of Justice - Appeal

The appellant had been convicted of dangerous driving and failing to stop when required to do so by the police. The identity of the driver was the principal issue at trial, and the trial judge accepted the evidence of police officers who had had face-to-face interaction with the driver, identifying the appellant as being in control of the vehicle at various times during the pursuit of it. The appellant appealed against his conviction and submitted that his sentence was unreasonable. In his conviction appeal, the appellant argued that his trial counsel made an admission of fact about his ownership of a cellular telephone without his knowledge or consent. He argued that the trial judge relied heavily upon that allegedly unauthorized admission when convicting him, thereby giving rise to a miscarriage of justice.
HELD: The appeal was dismissed. The sentence was not unreasonable. First, the appellant's argument that the trial judge wrongly compared his circumstances to those of the offender in *R v Dillon*, 2021 SKQB 78 was untenable, as the seriousness of the dangerous driving in both cases and levels of moral culpability were equivalent. The appellant did not benefit from some of the mitigating factors present in *R v Dillon* including a guilty plea and an openness to rehabilitation. Furthermore, the sentence imposed on the appellant was also on par with the sentences imposed in other cases of dangerous driving. Moreover, there was no indication that the trial judge failed to give proper effect to the appellant's personal circumstances, including the *Gladue* factors present in his life, when crafting the sentence. In addition, the appellant had been previously convicted of flight from police.

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***Wolfe v Saskatchewan Polytechnic*, [2025 SKKB 113]**

Currie, 2025-07-28 (KB25109)

Civil Procedure - Summary Judgment
Employment Law - Mitigation - Notice - Damages
Employment Law - Unjust Dismissal - Damages

The plaintiff sued the defendant for damages arising from the defendant having dismissed her without notice. The defendant denied that the plaintiff was entitled to any payment arising from the dismissal, in part because of the defendant's legal obligation to attempt to mitigate any loss by seeking other employment during the appropriate notice period. The plaintiff applied for summary judgment for an award of damages, which was opposed by the defendant on the basis that there had been no discovery in the action.
HELD: The application for summary judgment was dismissed. The parties were not ready to proceed with summary judgment. In a summary judgment application, the judge hearing the application must determine first whether there is a genuine issue requiring a trial, or whether instead the matter can be decided fairly and justly without one. In exercising its discretion to grant summary judgment, the court should give due consideration to the purposes of the summary judgment provisions, and keep in mind the need for proportionality, the need to facilitate resolution of the issues, and the need to discourage conduct that unnecessarily or improperly delays proceedings or unnecessarily increases their cost. In this case, the application for summary judgment was premature. The parties were not ready to proceed to a summary judgment hearing and could not become truly ready without engaging in the normal discovery process.

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***Braun v Braun*, 2025 SKKB 115**

Goebel, 2025-07-29 (KB25110)

Civil Procedure - Costs
Family Law - Settlement Agreement - Minutes of Settlement
Family Law - Distribution of Family Property - Enforcement of Settlement Agreement

The parties married in 2003, separated in 2016 and were the parents of two adult children. In 2016, the petitioner commenced a legal proceeding seeking relief pursuant to the *Divorce Act*, *The Children's Law Act, 1997*, *The Family Maintenance Act, 1997* and *The Family Property Act*. In 2019, the parties signed comprehensive minutes of settlement (MOS) at a pre-trial conference and obtained a divorce judgment shortly thereafter. The respondent subsequently applied for a judgment reflecting the property-related provisions of the MOS.
HELD: The property-related provisions of the MOS were enforced, and the petitioner was ordered to pay costs of $2000. (1) Granting judgment in the terms of the MOS concluded at the pre-trial conference was appropriate. Under s. 6-4 of *The King's Bench Act*, "the court shall grant to the parties to an action or matter all remedies to which the parties appear to be entitled with respect to any legal or equitable claims that they have properly brought forward so that: (a) all issues in controversy between the parties are determined as completely and finally as possible; and (b) a multiplicity of legal proceedings concerning the issues is avoided."

Minutes of settlement created in the context of a court proceeding are to be interpreted in the same way as contracts. In its analysis, the court must apply common law principles to assess any allegations advanced by the opposing party that might impact the validity of the contract, including allegations relating to mistake, frustration, fraud, misrepresentation and delay. In addition, when the court is asked to grant a judgment in the family law context, it must have regard to the legislative scheme grounding the initial claim and the relief being sought. To show that a family property agreement should not be considered, a party need not meet the stringent test of a common law defence to a contract's enforceability. Nonetheless, the challenging party must point to evidence that the agreement was tainted by undue pressure, circumstances of oppression, or exploitation of a power imbalance or other vulnerability, or that a defect in the bargaining process prevented the parties from understanding some essential part of the bargain. If the judge is satisfied that no such concerns are established, the agreement may be taken to represent the autonomous choice of the parties. In this case, the arguments advanced by the petitioner in opposition to the property-related provisions of the MOS were not supported by the evidence, nor did they impact upon the enforceability of the settled agreement. The parties had independent legal advice at the time that the MOS was negotiated and signed, and the petitioner had failed to demonstrate that the contract was otherwise unconscionable, grossly unfair or incompatible with the governing principles of *The Family Property Act*.

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***Hong v Moose Jaw Publications Limited Partnership*, 2025 SKKB 119**

Davis, 2025-07-30 (KB25111)

Civil Procedure - Settlement Agreement - Multiple Defendants - Pierringer Agreement
Torts - Defamation
Torts - Proportionate Liability - Non-settling Defendants

The plaintiff was the manager of the Super 8 Hotel in Moose Jaw, Saskatchewan. One of the defendants' presidents made several strong statements regarding the plaintiff to local journalists that the plaintiff viewed as defamatory. Certain defendants (the settling defendants) negotiated a Pierringer Agreement with the plaintiff, which would see them removed as defendants and indemnify them from any third-party claim. The agreement would also limit the future liability of the non-settling defendants to their several liability. The non-settling defendants opposed the agreement, contending that it would prejudice them and they will be left on the hook for 100% of the damages assessed at trial with no ability to claim contribution from the settling defendants.
HELD: The court approved the Pierringer Agreement (1) The Pierringer Agreement was properly drafted. A valid Pierringer Agreement must: (a) limit the plaintiff's claim against any non-settling defendant to their several liability; (b) require the settling defendant to seek no contribution or indemnity from the non-settling defendant; and (c) provide that the plaintiff indemnify any

settling defendant against any claim by a non-settling defendant. In this case, the Pierringer Agreement fulfilled the three essential requirements. (2) The Pierringer Agreement did not unfairly expose the non-settling defendants to liability for all the alleged harm. In this case, the plaintiff no longer claimed the non-settling defendants were jointly and severally liable for the settling defendants' actions, but that they were severally liable for their own actions, and they were jointly liable for each other's actions. (3) The alleged prejudice did not outweigh the public interest in settlement. The prejudice the non-settling defendants alleged was no more than what was inherent in the form of a Pierringer agreement. Even if they had identified actual prejudice, it did not outweigh the public interest in promoting settlement.

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***Students' Union of the University of Regina Inc. v University of Regina*, 2025 SKKB 120**

Bergbusch, 2025-07-30 (KB25112)

Civil Procedure - Prohibitory Injunction
Contracts - Fee Agreements
Injunction - Interlocutory Injunction - Contractual Obligations

The defendant/respondent, the University of Regina (U of R), had ceased transferring funds to the plaintiff/applicant, the Students' Union of the University of Regina Inc. (students' union), effective January 1, 2025, raising wide-ranging concerns about the students' union's stewardship of the funds, alleged financial mismanagement, lack of transparency and poor governance. U of R subsequently gave the students' union written notice of termination of a long-standing fee collection agreement between the parties. The students' union applied for a prohibitory injunction to restrain U of R from breaching the existing fee agreement between the parties. The plaintiff/applicant also sought a mandatory injunction to compel U of R to release fees collected from students and to direct U of R to continue collecting and transferring such fees to the students' union until the issues in this action were resolved.
HELD: The application was dismissed. (1) The students' union did not demonstrate that its case was *prima facie* meritorious. A three-part test applies to applications for interlocutory injunctions: the applicant must satisfy a preliminary assessment of the merits of the case; the applicant must show that it will suffer irreparable harm if the injunction is refused; and the balance of convenience must weigh in favour of the injunction. In this case, the students' union established a serious question to be tried that U of R unlawfully withheld the collected student fees, breaching its contractual obligation to pay the fees to the students' union during the term of the fee agreement. However, the students' union did not make out a strong *prima facie* case that U of R was obliged to continue to collect fees from students and remit them to the plaintiffs after the fee agreement was no longer in force. The students'

union did not advance a legal theory that the respondent owed a continuing obligation to the plaintiffs to collect and remit student fees in the absence of a subsisting contract and provided no authority for the proposition that the obligation could arise from a past arrangement or custom. In a nutshell, the students' union did not establish a strong likelihood on the law and the evidence that it would succeed at trial in establishing that the respondent had a duty, arising from contract, custom, or some other legal footing, to collect fees from students on the students' union's behalf. (2) The applicant did not show a risk of irreparable harm if the prohibitory injunction were not granted. In this case, the payment protocol by U of R allowed the applicants to continue operations, to provide student services and to fund student groups. The students' union could avoid the apprehended harm by submitting to the payment protocol (3) The balance of convenience did not support granting a mandatory or prohibitory injunction to the plaintiff. Considering the larger public interest, ordering the transfer of student fees in a lump sum amount to the students' union without any accountability or controls offered no guarantee that third parties would receive amounts owed to them. Students also had no assurance that the applicant would use the funds levied from them appropriately and to promote their interests. However, if the injunction were denied, the students' union would be able to request funds through the payment protocol, a measured and practical method to ensure that the applicant applied fees collected from students to legitimate expenses. (4) The overall equities and justice of the situation did not favour the students' union. For more than a year and a half, U of R had attempted to engage constructively with the students' union on a range of topics, but the students' union had often refused to schedule meetings with U of R, cancelled meetings and arrived late to meetings. Further, the students' union had admitted to recent mismanagement and misappropriation of funds but resisted transparency or accountability about its use of student fees. When U of R pressed the students' union to explain how it would achieve financial solvency, the students' union complained about improper interference in its internal affairs. Given the students' union's recent track record, it would be irresponsible for the court to order the respondents to pay a large lump sum amount to the students' unions without any meaningful oversight. It would also be extraordinary for the court to require U of R to continue to follow the fee agreement after it was lawfully terminated.

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Yellow Quill Property Management Corp. v Saskatoon Dawah And Community Centre Inc., **2025 SKKB 122**

Elson, 2025-07-31 (KB25116)

Civil Procedure - Pleadings - Striking Out
Professional Responsibility - Solicitor's Duty of Care
Torts - Injurious Falsehood

The corporate plaintiff sought remedies from the alleged unauthorized sale and transfer of nine parcels of land it previously owned in west central Saskatoon. In its amended claim, the plaintiff identified seven defendants, claiming that the purchaser, the real estate sales agents, and all the lawyers who participated in the transaction were responsible for the unauthorized sale and transfer. Three defendants, the purchaser, its solicitor, and that solicitor's law firm, applied to strike the amended claim insofar as it asserted liability against them. They contended that both the amended claim and the further amended claim failed to disclose reasonable causes of action.
HELD: The application to strike was granted. The court also refused to grant leave for the amended claim to be served and filed in the form presented. (1) Under Rule 7-9(2)(a) of *The King's Bench Rules*, the court may order that all or any part of a pleading be struck out if the pleading discloses no reasonable claim. In applying to strike a plaintiff's claim, the following principles apply: (i) the claim should be struck where, assuming the plaintiff proves everything alleged in the claim, there is no reasonable chance of success; (ii) the jurisdiction to strike a claim should only be exercised in plain and obvious cases where the matter is beyond doubt; (iii) 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; (iv) the court can strike all, or a portion of the claim; and (v) the plaintiff must state sufficient facts to establish the requisite legal elements for a cause of action. In this case, it was plain and obvious that the plaintiff's pleadings, to the extent that they asserted claims against the purchaser's solicitor, failed to disclose material facts upon which a *prima facie* duty of care could be said to exist. It was also plain and obvious that the pleaded material facts in the plaintiff's further amended claim were not capable of asserting a cause of action under s. 95 of *The Land Titles Act, 2000*. The further amended claim did not plead material facts to show that the transfer or transfer authorization lacked essential validity. There were no pleaded material facts to suggest that the transfer authorization contained any commentary or observations that could objectively be expected to induce others not to deal with the plaintiffs.

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***Honeybadger Enterprises Ltd. v Bue*, [2025 SKKB 123]**

Richmond, 2025-08-08 (KB25117)

Civil Procedure - Preservation Order
Criminal Law - Fraud - Fraudulent Transactions
Torts - Duty of Care

The first defendant had contacted the plaintiff in April 2023 to make inquiries about an over-the-counter (OTC) purchase of cryptocurrency. Following discussions with an employee of the plaintiff, a pre-authorized debit (PAD) agreement was signed by the first defendant authorizing withdrawals by the plaintiff from his Innovation Credit Union (credit union) account. Cryptocurrency was

then purchased using the PAD agreement over the course of several days in the amount of $240,000. The second defendant, on the first defendant's request, cancelled the transactions and had the money returned. As a result, the plaintiff commenced an action against both defendants. The plaintiff then obtained an order preserving the funds and discontinued its claim against the second defendant. The plaintiff demanded the funds previously withdrawn pursuant to the PAD agreement as it had not received payment for the cryptocurrency. The first defendant, on the other hand, asserted that he did not make the purchase of some of the cryptocurrency in question and did not receive the benefit of any cryptocurrency as it was deposited to a wallet operated by fraudsters.
HELD: The court determined that the plaintiff was entitled to $140,000 of the monies subject to the preservation order and the defendant was entitled to $100,000. Both parties shared responsibility for the harm suffered. In this case, the first defendant's naivete and ignorance were at the heart of the fraud. The first defendant had been duped several times but nonetheless cooperated fully with fraudsters purporting to be the FBI. The first defendant not only made purchases and deposited those purchases to a wallet willingly; he opened his computer and allowed the fraudsters free access. The plaintiffs on their own part also could have prevented the loss of $200,000 had they complied with the terms of the PAD agreement. It followed that they should share the responsibility accordingly.

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***Donnelly v Luman*, [2025 SKKB 125]**

Tochor, 2025-08-13 (KB25119)

Barristers and Solicitors - Conflict of Interest - Application for Removal of Counsel
Professional Responsibility - Conflict of Interest - Prejudice - Solicitor/Client Relationship

The petitioner alleged she had previously met with the respondent's lawyer at a free legal services clinic held at the courthouse in Moose Jaw, Saskatchewan. The petitioner attended this clinic to obtain information about family law issues arising from her separation from the respondent. The petitioner applied for the removal of the lawyer as counsel for the respondent, submitting that the lawyer received confidential information from her that could be used to her disadvantage. The petitioner also submitted that the legal assistant may have had information about her which could be used against her.
HELD: The application was dismissed. There was no basis for the court to remove the respondent's lawyer as counsel to the respondent. The court was unable to conclude that the petitioner met with the respondent's counsel on March 2, 2023, or that the petitioner imparted to the respondent confidential or privileged information that could have been used against her. The court was also unable to conclude that the petitioner imparted confidential or privileged information at any time before or after that date.

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R v Loewen-Kirouac, **2025 SKKB 126**

Bergbusch, 2025-08-14 (KB25120)

Criminal Law - Sentencing - Conditional Sentence Order
Criminal Law - Conditional Sentence Order - Travel Restrictions

The offender had pled guilty to the offence of child abduction in September 2022. Following his guilty plea, the sentencing judge accepted a joint submission and imposed a conditional sentence order (CSO) followed by 36 months' probation. Under the CSO, the sentencing judge ordered that the offender be imprisoned for a term of two years less a day. However, as the sentencing judge was satisfied that service of the sentence in the community would not endanger the safety of the community, he further ordered that the offender serve the sentence of imprisonment in the community, subject to compliance with 19 conditions. The offender applied to vary the CSO to allow him travel outside Saskatchewan.
HELD: The court granted the offender's request to travel outside the province for work events. However, the appellant's request to travel for personal reasons was dismissed. The offender's employment was an important part of the restorative objectives of the CSO. Conditional sentences are intended to serve restorative and punitive objectives. Accordingly, conditional sentences should generally include punitive conditions that are restrictive of the offender's liberty. Conditions such as house arrest or strict curfews should be the norm, not the exception. However, conditional sentences are not as restrictive as incarceration and only partially deprive offenders of their freedom. Where a change in circumstances makes a change to the optional conditions of a CSO desirable, the offender's supervisor, the prosecutor, or the offender may propose changes to the optional conditions of the CSO. In this case, the offender's continued employment was an important component of the restorative objectives of the CSO. Permitting the offender to travel for vacation, however, was not necessary for the offender's rehabilitation and would undermine the punitive, denunciative, and deterrent purposes of the CSO.

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B2B Bank v Short, **2025 SKKB 128**

Robertson, 2025-08-15 (KB25128)

Service - Irregularities
Civil Procedure - Substitutional Service

This decision addresses an application by the defendant challenging foreclosure proceedings of which he did not receive actual notice. Substitutional service was authorized at the outset of the proceedings for leave to commence the action and all future process was required to be served upon the defendants. The defendant became aware of the proceedings after the order *nisi* for foreclosure was issued. The defendant sought, along with other relief, an order setting aside the order nisi and an order granting the defendant leave to defend the foreclosure proceedings.
HELD: The application was dismissed. However, the order nisi was deemed to not yet be effective. (1) The court had jurisdiction to set aside the order. (2) There was proper service of the foreclosure proceedings on the applicants. Rule 12-10 of *The King's Bench Rules* authorizes substitutional service where the court is satisfied by evidence that: (a) There have been prior attempts at service by an authorized mode; (b) The required method of service (usually personal service) is impractical; and (c) The proposed alternate mode of service is likely to bring notice to the person to be served. In this case, there was a court order authorizing substitutional service of the foreclosure proceeding and there was no evidence that there was anything improper in the application for substitutional service. (3) There was no proper service of the order *nisi*. The court had informed the respondent's counsel that the draft order must be changed to require personal service of the order nisi on the defendants. The respondent made the amendment in the issued order *nisi* but then proceeded to serve it by posting. This was an error. (4) The lack of proper service of the order *nisi* did not warrant staying the foreclosure proceeding, setting aside the order *nisi* or setting aside the default judgment. In this case, the respondent had in good faith followed the procedures mandated by the legislation and while the applicant did not receive actual notice of the foreclosure proceedings, he should have known that foreclosure proceedings were at least a possibility.

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***Kasprick v Saskatchewan Power Corporation*, 2025 SKKB 139**

Davis, 2025-08-15 (KB25134)

Civil Procedure - Disclosure of Documents
Evidence - Redacted Records
Statutes - Interpretation - *Freedom of Information and Protection of Privacy Act*

The applicant submitted an access to information request to the respondent, seeking records related to plans to build nuclear reactors in Estevan, Saskatchewan and compensation to be paid to Estevan coal miners and coal plant workers when coal mining/electricity ceased. The respondent initially withheld all records and the respondent applied to Office of the Saskatchewan

Information and Privacy Commissioner (OIPC), who recommended that the respondent release most of the withheld documents. The respondent released over 200 pages of previously withheld material with some of the documents redacted. The applicant appealed to the Court of King's Bench pursuant to s. 57 of *The Freedom of Information and Protection of Privacy Act* (FIPPA) seeking release of the withheld documents.
HELD: The court ordered the release of some additional documents and ordered that some redacted documents be released in an unredacted or less redacted form. However, the court upheld the decision of the respondents not to release the remaining documents. (1) Some of the documents contained cabinet confidences. Subsection 16(1)(a) of the FIPPA prohibits giving access to a record that discloses a confidence of the Executive Council. In this case, several documents were labeled "For Ministers Use Only" (sic). (2) Some of the documents formed consultations or deliberations that involved public servants or institutions. Subsection 17(1)(b) of the FIPPA gives the record-holder discretion to withhold records containing "consultations or deliberations" that involve public servants or institutions. Subsection 17(1)(c) relates to "positions, plans, procedures, criteria or instructions" developed for the purpose of contractual or other negotiations by or for a government institution. In this case, there were documents that contained information showing that the respondent was weighing various options, and establishing criteria, plans or procedures for different phases of the small nuclear reactor project. Such work may be subject to the s. 17 exemptions in its own right, while some would also form part of the advice ultimately given to the Executive Council. (2) Some of the documents contained confidential information regarding impending policy or budgetary decisions. Subsection 17(1)(g) of the FIPPA protects from mandatory disclosure of "information, including the proposed plans, policies or projects of a government institution, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision." In this case, some of the documents contained details of pending policies or projects and many documents contained preliminary budgetary information to assist the government of Saskatchewan in assessing the likely cost of the early phase of small nuclear reactor development. (3) Some of the documents contained sensitive commercial information. Under ss. 18(1)(b), (d) and (f) of the FIPPA, a record-holder may deny access to records that may reasonably be expected to disclose "financial, commercial, scientific, technical or other" information which the government owns or has a right to use and which has monetary value. It may also deny access to information that could be expected to interfere with negotiations in which the government has an interest, or that could be expected to prejudice the economic interests of the government or one of its institutions. In this case, the disclosure of the proprietary information the respondent received from a third party could be expected to have a negative impact on Saskatchewan's economic interests, could be expected to negatively affect the province's interests in ongoing negotiations, or could be expected to disclose valuable information which Saskatchewan had paid for and had a right to use on its own terms and without interference. (4) The respondent redacted evidence in a few cases which should have been properly released to the applicant. (5) Some records were not responsive to the applicant's request and would not assist the applicant in addressing his concerns. (6) Some records were duplicates and there was little value in ordering that it be reproduced and disclosed.

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***Hagen v Olsen*, 2025 SKKB 132**

Sinclair, 2025-08-19 (KB25123)

Civil Procedure - Injunction
Wills and Estates - Constructive Trust
Wills and Estates - Executor
Wills and Estates - Trusts - Resulting Trusts

The applications in this case arose in the context of a dispute regarding the estate of G.O., who passed away on November 7, 2023. Prior to his death, the deceased transferred land into the joint names of himself and each of his daughters, including the respondents. Shortly after the transfer of land, one of the respondents executed a trust agreement with the deceased's spouse indicating that the lands would be held in trust by the joint tenants. After the deceased's passing, the respondents each transferred the jointly held lands into their sole names by way of survivorship. The applicant continued to farm those lands without paying any compensation, relying on the terms of the purported last will and testament of the deceased dated March 26, 2021. The applicant was also the executor of the will. The respondents sought, among other things, an order requiring the applicant to provide an accounting for the estate and requiring production of certain disclosure. The applicant sought an order determining whether the properties in question were subject to an express trust or, in the alternative, a constructive trust. The applicant also raised the issue of a resulting trust in his arguments.
HELD: The court directed the applicant to provide accounting to the court and to the beneficiaries of the estate by no later than November 30, 2025. The request for document disclosure was dismissed but leave was granted to revisit the request for financial disclosure after the applicant had provided the accounting. The application for an order determining that the lands were subject to an express trust, a constructive trust or a resulting trust was dismissed. The applications for injunctive relief and damages were also dismissed. (1) The applicant was obligated to provide an accounting for the estate. Section 55 of *The Trustee Act, 2009* compels an executor to provide an accounting to a beneficiary on request. In this case, the executor had not provided any reasonable justification for not providing an accounting for the estate as provided. (2) The respondents were not entitled to the disclosure sought. In this case, there was no challenge to the testamentary instrument and as a result, no basis to order production of the lawyer's file. Also, for the sake of efficiency and cost effectiveness, the court would not make an order beyond the direction that an accounting be supplied. (3) The express trust to which the lands in question were subject did not allow the applicant to farm the land. There was no evidence that a trust was agreed upon with respect to the lands held by the first and second respondents. While there was a trust agreement that was to take effect immediately with respect to the land held by the remaining respondent, the trust agreement did not reserve the deceased's ability to dictate use of the land post death. (4) The lands were not held pursuant to a resulting or constructive trust. The applicant failed to lead any evidence that the deceased did not intend a gift of joint ownership of lands to the first and second respondents in 2003 and 2008, respectively. There was no discussion of anything other than a gift with the first and second respondents. The fact that a trust agreement may have been prepared by the deceased's lawyer did not

establish that a trust was intended by the deceased, particularly given that there was no follow-up regarding the trust instrument at or after the transfer of the lands. While the gift of joint ownership of land to the third respondent was conditional, the conditions did not prevent her from obtaining ownership of the land following the deceased's passing. (5) Granting injunctive relief and/or damages on this application would not be appropriate. Under s. 3-49(2) of *The King's Bench Rules*, an action may be started by originating application if the remedy claimed is: (a) the opinion or direction of the court on a question affecting the rights of a person with respect to the administration of the estate of a deceased person or the execution of a trust; (b) an order directing executors, administrators or trustees to do or abstain from doing any particular act with respect to an estate or trust for which they are responsible; (c) with respect to any matter where it is unlikely that there will be any material facts in dispute. An action may also be started by originating application if an enactment provides for a remedy, certificate, direction, opinion or order to be obtained from the court without describing the procedure to obtain it. In this case, there may have been factual issues that needed to be determined that would be properly addressed through an action commenced by claim. There may also have been factual issues, including facts that related to the propriety of certain remedies, that would require document disclosure and other processes attendant with an action commenced by statement of claim. Furthermore, the default position for an action seeking a remedy under *The Trespass to Property Act* was by statement of claim. It was not appropriate for the court in this instance to bypass the usual procedure of litigating these issues through an action commenced by statement of claim. (6) Solicitor-client costs were not appropriate.

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***Procyk v Young's Equipment Inc.*, [2025 SKKB 136]**

Robertson, 2025-08-27 (KB25132)

Civil Procedure - Commencement of Proceedings - Notice of Action
Civil Procedure - Originating Application
Statutes - Interpretation - *Saskatchewan Farm Security Act*

The applicants' tractor was damaged in a fire and the applicants made an insurance claim for the damage, after which the tractor was taken to the respondents for repair. Following payment by Saskatchewan Government Insurance (SGI), there was still a balance of $8,791.24 owing, which the applicants were unable to pay. The respondents took possession of the tractor in May 2021 and began using the tractor for their business. The applicants filed an originating application in April 2023 challenging the seizure of the tractor. They sought an order declaring the possession and seizure of the tractor null and void. They also sought an order directing the respondent to pay one and one half times the estimated sale amount of the tractor to the applicants.
HELD: The court declined to make the orders sought by the applicants but did not dismiss the application. (1) A part of the matter

could be resolved by originating application. Under Rule 3-49 of *The King's Bench Rules*, an action may be started by originating application if an enactment provides for a remedy, certificate, direction, opinion or order to be obtained from the court without describing the procedure to obtain it. An action could also be started by originating application if the determination of rights depended solely on the interpretation of a deed, will, contract or other instrument and in cases where it was unlikely that there would be any material facts in dispute. In this case, while most of the necessary facts were ascertainable, some material facts were uncertain or disputed. However, the applicants sought an order declaring the seizure of the tractor null and void pursuant to s. 22 of the *Farm Debt Mediation Act* (FDMA) and s. 20 of *The Commercial Liens Act* (CLA). This part of the application could fall within Rule 3-49(3) of *The King's Bench Rules*. (2) The action was not barred by *The Limitations Act*. *The Limitations Act* applies to claims to remedy injury, loss or damage. In this case, it was inapplicable to the remedy sought by the applicants for a declaratory order. Furthermore, the first notice that was received by the applicants that the respondent intended to retain possession of the tractor in satisfaction of the debt for repair of the tractor was received on May 6, 2021. The application was filed April 19, 2023, which was within the two-year limitation period. (3) The notice was served in compliance with the CLA. Section 61 of the CLA allows the secured party to give notice of its proposal to retain the collateral in satisfaction of the debt obligation. In this case, the respondent, as the secured party, served notice under s. 19 of the CLA and s. 61 of *The Personal Property Security Act, 1993* (PPSA). The applicants acknowledged receipt of that notice on May 6, 2021. Since there was no notice of objection, the respondent became entitled to retain or dispose of the tractor after May 21, 2021. (4) In this case, the respondent attempted to serve notice under s. 21 of the FDMA. The notice was mailed by registered mail on April 5, 2021, but was returned undelivered on April 28, 2021. There was also some dispute about what happened with the delivery of the notice. Given the limited evidence, the court would not make a finding on whether service was effective. (5) The respondent was required to serve notice on the applicants under *The Saskatchewan Farm Security Act* (SFSA). Under s. 48 of the SFSA, a secured party intending to take possession of an implement shall serve the notice prescribed in the regulations on the farmer. Under s. 57 of the SFSA, where a secured party takes possession of an implement, he or she shall serve on the farmer a notice of possession. In this case, the respondent was a secured party as the commercial interest that arose constituted a security interest under s. 2(1)(aa) of the SFSA. The lien was also an interest in personal property that secured payment or performance of an obligation. The respondent was therefore obliged to serve notice under the SFSA before seizing the tractor, but no notice was served. (6) The applicant failed to provide sufficient evidence to make a reliable calculation of an award under s. 55(c) of the SFSA. Under s. 55 of the SFSA, if a secured party takes possession of an implement in contravention of the SFSA, the farmer is entitled to recover from the secured party in an action for money had and received in an amount equal to one and a half times the fair market value of the implement at the time of the seizure. In this case, while the applicants were entitled to relief under s.55 of the SFSA, the court was unable on the evidence to determine the fair market value of the tractor at the time of its seizure in May 2021.

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***Venn v Davies*, [2025 SKKB 140]**

Tomka, 2025-09-02 (KB25135)

Civil Procedure - Pleadings - Application to Strike Statement of Claim - Abuse of Process
Civil Procedure - Pleadings - Striking Out
Practice - Application to Strike - Frivolous and Vexatious/Abuse of Process

Please note that the wording of this digest has been changed from that of the original version

The plaintiff and the defendants had a history dating back to 2004 when the plaintiff went on one date with one of the defendants, who was the daughter of the other two defendants. The trouble between the plaintiff and the defendants culminated in criminal charges against the plaintiff. In 2007, the plaintiff pled guilty to criminal harassment involving the defendants which led to a sentence of probation, including a 10-year no-contact order with the defendants. In 2020, the defendants made a complaint to the Moose Jaw Police that the plaintiff was behind the cyber harassment of the defendants. In 2023, one of the defendants obtained a 'stalking order of protection' from a court in Wyoming against the plaintiff in relation to the defendants that would expire at the end of February 2026. In 2024, charges laid against the plaintiff by the Moose Jaw Police were stayed by the Crown. In January 2025, the plaintiff filed a motion to vacate the stalking order on the basis that there had been a stay of the Moose Jaw charges, tampered evidence, perjury by one of the defendants, and the protection order had been based upon false premises and manipulated records. The motion was denied in July 2025, after a full hearing where the plaintiff appeared in person and provided materials and oral submissions. In February 2025, the plaintiff filed a judicial complaint with the Wyoming Commission on Judicial Conduct and a motion to compel full disclosure under Rules 2 and 37 of the Wyoming Rules of Civil Procedure. In June 2025, the judicial complaint was responded to, but no further action was taken. Also in June 2025, the plaintiff escalated the Wyoming matter to the U.S. Department of Justice and filed the present claim alleging defamation, conspiracy, malicious prosecution and violation of *Charter* rights. The claim alleged that the defendants fabricated a narrative of harassment, manipulated evidence, colluded with police and falsely portrayed the plaintiff as dangerous. The defendants applied to strike the claim on the grounds that it did not disclose a reasonable cause of action and that the claim was vexatious or an abuse of process.
HELD: The defendants' application was granted, and the plaintiff's claim was struck in its entirety. (1) The plaintiff's claim disclosed a reasonable cause of action for defamation. A claim will only be struck if it has no reasonable prospect of success. The question is not whether the claim might fail or even whether it is likely to fail. Judges should exercise their discretion to strike a claim on the grounds of no reasonable cause of action only where it is plain and obvious and they are satisfied that the case is beyond reasonable doubt. In this case, on a generous reading of the claim of defamation, it was not plain and obvious that no reasonable cause of action had been pled for a claim of defamation. (2) The plaintiff's claim disclosed no reasonable cause of action for malicious prosecution. To succeed in an action for malicious prosecution, a plaintiff must prove that the prosecution was: (a) initiated

by the defendant; (b) terminated in favour of the plaintiff; (c) undertaken without reasonable and probable cause; and (d) motivated by malice or a primary purpose other than that of carrying the law into effect. In this case, there was nothing in the pleading identifying that a prosecution ended in favour of the plaintiff and the defendants did not initiate the charges against the plaintiff. It was also plain and obvious that even if the facts pled were taken as true, there was no reasonable cause of action for malicious prosecution. (3) It was plain and obvious that the pleadings did not disclose a reasonable cause of action by way of the tort of intentional infliction of mental distress. To prove intentional infliction of mental distress, there must be flagrant conduct that is calculated to produce harm and results in visible and provable harm. In this case, the claim did not provide a sufficient basis to conclude that the defendants' conduct was flagrant or outrageous, nor did the plaintiff plead any conduct on the part of the defendants that demonstrated they desired to produce the consequences that would follow from such acts or that the consequences were known to be substantially certain to follow. (4) There was no reasonable cause of action for *Charter* violations as *Charter* damages could not be brought against private citizens. (5) The plaintiff's claim was vexatious and an abuse of process. A pleading will qualify as scandalous if it levels degrading charges or baseless allegations of misconduct or bad faith against an opposite party. A pleading will qualify as vexatious if it was commenced for an ulterior motive (other than to enforce a true legal claim) or maliciously for the purposes of delay or simply to annoy the defendants. A pleading will qualify as frivolous if it is plain or obvious or beyond reasonable doubt that the claim it advances is groundless and cannot succeed. In this case, the claim was brought for an improper purpose with the plaintiff filing several documents suggesting that the claim was not brought for a legitimate legal purpose. Although the claim was based on current events and alleged misconduct, the Court found it was also part of a history that included a multitude of legal proceedings that involved overlapping arguments or complaints made by the plaintiff. As such, the claim appeared to be in whole or in part an attempt to relitigate the same or similar complaints after having been largely unsuccessful in several legal forums. Allowing the plaintiff to continue would have unfairly taxed the resources of the defendants and unfairly and without justification prolonged a continued relationship between the parties, and it appeared the claim lacked any reasonable chance of success. As such, the administration of justice would have been put into disrepute if the claim were allowed to continue.

Editor's Note: This decision applied Rule 7-9 of the King's Bench Rules and addressed only whether the claim could proceed as a matter of law and procedure. The court made no findings of fact respecting the allegations of misconduct alleged against the defendants.

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