



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

Volume 27, No. 2

January 15, 2025

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***Fiesta Barbeques Limited v Vomar Industries Inc.*, [2024 SKCA 108](#)**

Caldwell Drennan Kilback, 2024-11-21 (CA24108)

Civil Procedure - Parties - Third Party

The respondent was a third party in an action concerning a fire in an apartment building. The respondent applied to dismiss the third-party claim against it on the basis that the limitation period for commencing the claim had expired. A judge of the court of King's Bench sitting in chambers (chambers judge) granted the application and summarily dismissed the third party claim pursuant to Rule 7-2 of *The King's Bench Rules*. The appellants argued that the chambers judge erred in interpreting s. 6(1)(d) of *The Limitations Act* and when considering evidence relevant to whether the limitation period had expired before the third party claim was commenced. HELD: The appeal was dismissed. (1) The chambers judge did not err in interpreting s. 6(1)(d) of *The Limitations Act*. Two circumstances are most often recognized as legally

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appropriate reasons to delay bringing a claim: (i) where the plaintiff relies on ameliorative efforts by a defendant with superior knowledge or expertise; and (ii) where the plaintiff is pursuing an alternative dispute resolution process that offers an adequate remedy and that process has not yet concluded. In this case, the appellant's application to add the respondent as a defendant was not analogous to an alternative dispute resolution process that could constitute a legally appropriate reason to delay bringing a third-party claim because the outcome of that application could not provide the appellants with any remedy for their loss. (2) The chambers judge did not overlook or disregard material evidence.

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***Buchanan (Rural Municipality) v Veldman*, [2024 SKCA 111](#)**

Caldwell Kalmakoff Kilback, 2024-12-09 (CA24111)

Administrative Law - Judicial Review - Labour Relations Board - Procedural Fairness

Administrative Law - Procedural Fairness - Breach of Duty

Civil Procedure - Appeal

In 2021, the respondent's employment with the appellant was terminated, after which the respondent brought an action against the appellant for discrimination. An occupational health officer found that the appellant had unlawfully terminated the respondent and issued a "notice of contravention" requiring the appellant to cease its discriminatory action, to reinstate the respondent's employment, to pay the respondent any wages that he would have earned but for the discriminatory action (backpay), and to remove any reprimand from the respondent's file. The appellant appealed to an adjudicator with respect to the calculation of the backpay and the appeal was allowed. The respondent appealed the adjudicator's decision to the Saskatchewan Labour Relations Board (LRB). The LRB amended the adjudicator's decision to state that the appellant owed backpay to the respondent and affirmed the occupational health officer's decision. The appellants appealed the decision of the LRB.

HELD: The appeal was allowed. (1) The LRB erred in law by concluding that the adjudicator had breached the duty of procedural fairness. The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the

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decision. In this case, the LRB misapprehended the scale and complexity of the hearing before the adjudicator and the consequences that would flow to the parties from the decision to be made in that hearing. Furthermore, the narrowness of the issue identified by the appellant and addressed by the adjudicator, as well as the parts of the record relevant to that issue, undermined the LRB's finding that the respondent lacked the ability to respond to the appellant's appeal on its merits or that his ability to do so was compromised by the denial of the adjournment. In addition, the failure to consider the express power of adjudicators to proceed with hearings in the absence of interested parties when assessing the content of the duty of fairness owed to the respondent fatally undermined the legal soundness of the LRB decision on the issue. (2) The LRB erred in law by concluding that the adjudicator had exceeded her jurisdiction. A person who is directly affected by a decision of an occupational health officer may appeal the decision. The phrase "person who is directly affected by a decision" refers to persons to whom a decision of an occupational health officer is directed and who is directly affected by that decision, including an employer. In this case, there was a straight line between the appellant's appeal from the decision of the occupational health officer and the adjudicator's decision to hear it. It was also plain that the adjudicator had to determine the period during which the appellant was required to pay wages to the respondent and what his earnings from the R.M. of Keys were during that period. The adjudicator also had the jurisdiction to determine the respondent's last day of work because it had been put at issue by the appellant's notice of appeal. (3) The LRB erred in law when it concluded that the adjudicator had erred when she deemed the respondent's last day of work to have been August 17, 2021. The adjudicator properly considered the issue and concluded, on the basis of the testimony she heard and the documentary evidence before her, that the appellant had made several reasonable attempts to reinstate the respondent, and that he had ignored or thwarted reinstatement, thereby ending the appellant's obligation to reinstate him. (4) The LRB erred in finding that the adjudicator had made palpable and overriding errors of fact. Questions involving facts as found by an adjudicator are reviewable by the LRB only if they amount to questions of law. In this case, the LRB departed from its proper appellate role by substituting its own findings of fact, most notably about what had occurred between the parties regarding the appellant's efforts to reinstate the respondent. The adjudicator's conclusions in that regard were grounded in the evidence before her. The LRB gave no deference to her findings and simply reweighed the evidence, which was an error of law on its part.

Wills and Estates - *Henson Trust*

Wills and Estates - Will - Interpretation

Cases by Name

Achter Land & Cattle Ltd. v South West Terminal Ltd.

Buchanan (Rural Municipality) v Veldman

Denton v Korpan Tractor and Parts

Fiesta Barbeques Limited v Vomar Industries Inc.

Kapeluck v Kapeluck

McCrank v Reader

Moen v Mackay

Morin v Saskatchewan Government Insurance

R v C.F.

R v D.G.A.

R v MacGregor

Richardson Pioneer v Lamb

White City (Town) v Edenwold (Rural Municipality)

***White City (Town) v Edenwold (Rural Municipality)*, [2024 SKCA 113](#)**

Kalmakoff McCreary Drennan, 2024-12-09 (CA241113)

Administrative Law - *Municipal Board Act*

Municipal Board Act - Annexation

Municipal Law - Powers of Municipality

The Town of White City (town) appealed the decision of the Saskatchewan Municipal Board's Municipal Boundary Committee (committee) to dismiss its application to annex over 4,000 acres of land, including developed and undeveloped areas, from the Rural Municipality of Edenwold (RM). The town argued the annexation was necessary for its growth, citing financial needs and control over development along its borders. The committee dismissed the application. The town appealed that decision. The court had to decide whether the committee provided adequate reasons for its decision, misapprehended or failed to consider relevant evidence, and applied the correct legal principles from *The Municipal Board Act*, and whether the committee based its decision on irrelevant or improper considerations.

HELD: The court did not find any error in the committee's decision. The court relied on principles from *R v Vuradin*, 2013 SCC 38, and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and emphasized that reasons must provide justification, transparency, and intelligibility. The committee's reasons were sufficient and demonstrated why it concluded that the town had not established a need for annexation. The committee adequately addressed the meaning of "growth" by rejecting financial and governance needs as valid justifications. The committee reviewed over 3,500 pages of evidence, including expert reports from both parties. The court found no error in the committee's reliance on the town's Official Community Plan (OCP), which identified land to the east as suitable for future growth, contradicting the town's claims. The committee considered and rejected evidence of financial necessity and governance control, concluding these factors did not establish a need for the annexation. Section 18(4) of *The Municipal Board Act* outlines factors for evaluating annexation, including land use, municipal services, and economic impacts. The court noted that the committee addressed relevant factors and dismissed others as unnecessary given the town's failure to establish a threshold need for growth. The committee's decision to prioritize the town's OCP as a binding document was consistent with statutory and planning frameworks, such as *The Planning and Development Act, 2007*. The RM's willingness to consider annexation of lands to the east and the town's lack of experience in managing commercial and industrial development were deemed relevant under the committee's broad discretion in s. 18(4)(p).

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The appeal was dismissed. Costs were awarded to the RM.

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***R v D.G.A.*, [2024 SKCA 114](#)**

Tholl Kalmakoff McCreary, 2024-12-10 (CA24114)

Criminal Law - Appeal - Conviction - Assessment of Credibility
Criminal Law - Evidence - Identification
Criminal Law - Evidence - Prior Inconsistent Statements
Criminal Law - Evidence - Witness - Credibility

The appellant was convicted of sexual interference under s. 151 of the *Criminal Code* for sexually assaulting a five-year-old child in 2013. The child identified the appellant as her great-uncle and the perpetrator. The trial judge relied heavily on the child's prior consistent statements to assess the reliability of her testimony. The appellant appealed the conviction and sentence, arguing errors in the trial judge's use of prior consistent statements and assessment of inconsistencies in testimony. The court had to decide whether the trial judge erred by relying on prior consistent statements of the victim; whether the trial judge properly addressed any inconsistencies in those testimonies and their impact on the issue of identification; and whether the trial judge improperly reviewed the issues of credibility and reliability that could undermine the standard of proof beyond a reasonable doubt.

HELD: The Saskatchewan Court of Appeal (court) allowed the appeal, quashed the conviction for sexual interference, and ordered a new trial due to improper reliance on prior consistent statements in assessing witness reliability. The court cited *R v Dinardo*, 2008 SCC 24, emphasizing that prior consistent statements are generally inadmissible for bolstering a witness's credibility or reliability due to their self-serving nature. Repetition does not inherently reflect the truthfulness of testimony. The court reviewed exceptions, such as prior identification (used to corroborate in-court identifications of unknown perpetrators) and pure narrative (for explaining disclosure timelines). These exceptions were inapplicable here since the child had a longstanding familiarity with the appellant, and her prior consistent statements did not involve identifying a stranger. The trial judge improperly relied on the child's repeated statements over several years as evidence bolstering the reliability of her in-court identification of the appellant as the perpetrator. This misapplication of the law distorted the reliability analysis and improperly influenced the finding of guilt. The trial judge addressed inconsistencies in the child's testimony, such as when she first saw the perpetrator's face, concluding they were immaterial to the overall reliability of her testimony. The court found that while the judge properly evaluated the materiality of inconsistencies, his reliance on prior consistent statements to resolve doubts constituted an error of law. The distinction between credibility (honesty) and reliability (accuracy) was central to the case. The court highlighted that a witness may be credible but still provide unreliable evidence. The trial judge blended these concepts, causing the error by relying on inadmissible evidence. The court allowed the appeal, quashed the conviction, and ordered a new trial. The sentence appeal was deemed moot due to the quashed conviction.

***Achter Land & Cattle Ltd. v South West Terminal Ltd.*, [2024 SKCA 115](#)**

Leurer Caldwell Barrington-Foote, 2024-12-16 (CA24115)

Contract - Agreement for Sale

Contract - *Consensus ad Idem* - Meeting of the Minds

Contract Law - Formation

Contracts - Offer and Acceptance

Contracts - Formation - Uncertainty

South West Terminal Ltd. (SWT) alleged it formed a contract with Achter Land & Cattle Ltd. (ALC) for the sale of 87 metric tonnes of flax at \$669.26 per tonne for November 2021 delivery. The agreement stemmed from a text exchange wherein SWT sent a picture of a contract's front page and requested confirmation, to which ALC's representative replied with a thumbs-up emoji. ALC later denied the contract, citing uncertainty of terms and lack of compliance with statutory signature requirements under The Sale of Goods Act. The Court of King's Bench (chambers judge) found in SWT's favour (see: 2023 SKKB 116), and ALC appealed that decision. The Court of Appeal (court) had to decide whether the text message exchange constituted a valid and enforceable contract, and whether the thumbs-up emoji satisfied the signature requirement under The Sale of Goods Act.

HELD: The majority of the court upheld that a thumbs-up emoji in a text exchange constituted acceptance of a grain sale contract under Saskatchewan law. The court affirmed that contract formation requires offer, acceptance, intent to create legal relations, and certainty of terms. Using an objective standard, the court agreed with the chambers judge that ALC's use of the thumbs-up emoji signified acceptance of the contract, based on the parties' prior dealings. Previous contracts were similarly formed through brief text messages containing phrases like "Looks good" or "Yup." The court relied on *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v Aga*, 2021 SCC 22, emphasizing that contract formation is assessed from the perspective of a reasonable bystander, not the parties' subjective intentions. ALC argued the contract was invalid due to the absence of an "Act of God" clause to protect against crop failure. The court rejected this argument, noting that such a clause was not standard in their prior agreements. Essential terms—parties, price, and product—were sufficiently clear, making the contract enforceable. The court upheld the finding that the thumbs-up emoji met the signature requirement under section 6(1) of The Sale of Goods Act. The emoji, combined with the accompanying metadata identifying ALC's representative, served as an electronic signature under *The Electronic Information and Documents Act*, 2000. The court referenced *I.D.H. Diamonds NV v Embee Diamond Technologies Inc.*, 2017 SKCA 79, which held that electronic communications could satisfy statutory writing and signature requirements. The court upheld the chambers judge's award of \$82,200.21 in damages to SWT, calculated as the difference between the contracted price and the market price of flax at the time of delivery. The court dismissed ALC's appeal, confirming that the thumbs-up emoji and the context of the parties' prior dealings created a valid and enforceable contract.

DISSENT: Justice Barrington-Foote provided his own reasons in dissent. He would have come to a similar conclusion but had a different opinion regarding the merits of the grounds of appeal. In his view, the thumbs-up emoji signaled agreement, but did not constitute a signature pursuant to s. 6(1) of *The Sale of Goods Act*, and the chambers judge committed a reviewable error in finding

that it did. He would have allowed the appeal with costs to ALC.

***Moen v Mackay*, [2024 SKKB 206](#)**

Sinclair, 2024-11-26 (KB24202)

Civil Procedure - Injunction
Torts - Defamation - Damages

The plaintiffs were volunteers with the corporate defendant, an animal rescue non-profit corporation in Saskatoon. The defendant was a director and operator of the non-profit corporation. The relationship between the plaintiffs and defendants deteriorated, resulting in the plaintiffs ceasing to volunteer with the defendant in April 2023. Following the plaintiff's withdrawal, the defendant posted several comments about the plaintiffs on social media. The posts were subsequently removed. The plaintiffs' legal counsel wrote to the defendants seeking a public apology and retraction but there was no response. The defendants were served with the action and were subsequently noted for default. In November 2024, the plaintiffs served an application to determine damages on the defendant's husband and tried to serve the defendant but were unsuccessful. The plaintiffs thereafter applied to proceed with the action despite the lack of service on the defendant.

HELD: The plaintiffs were awarded general damages of \$5,000 each. The first plaintiff was awarded damages of \$7,500. All other damages applications were refused. The oral application for an injunction was also dismissed (1) The matter could proceed despite lack of personal service. First, the defendant's husband, with whom she appeared to reside, was served with the application. Second, the process server had multiple in person interactions with the defendant's husband. Third, the defendant's corporation was served with the application. Fourth, messages were left with the defendant's husband for the defendant to call the process server on October 27, October 30 and November 2, 2024. Finally, a text was sent, and a voicemail was left directly with the defendant to call the process server. (2) The plaintiffs established entitlement to judgment for defamation. A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (a) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (b) that the words in fact referred to the plaintiff; and (c) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. In this case, the defendants' Facebook post on April 20, 2023, would tend to lower the plaintiffs' reputation in the eyes of a reasonable person. The defendants' Facebook post of April 22, 2023, would also tend to lower the reputation of the plaintiffs in the mind of right-thinking individuals. (3) The amount of damages awarded was appropriate in the circumstances. In determining the appropriate amount of general damages, the following factors are relevant: the conduct of the plaintiff; the plaintiff's position and standing; the nature of the defamation; the mode and extent of publication; the absence or refusal of any retraction or apology; the conduct of the defendant from the time the libel was published until the conclusion of the case; and evidence led in aggravation or mitigation of damages. In this case, there was evidence that the plaintiffs' reputations in the animal welfare community could have been harmed. The allegations made against the plaintiff, particularly the allegations of criminal conduct, were reasonably serious. It was also fair to assume that the defamatory comments were seen by more than a small number of people. The defendants did not retract their comments or

apologize, either publicly or privately, to the plaintiffs. (4) The plaintiffs did not meet the test to obtain an injunction. Injunctive relief is typically available where: (a) it is likely that the defendant will continue to publish defamatory material; and (b) there is a reasonable possibility that the plaintiff will not receive any compensation from the defendants. In this case, there was no evidence that the defendants published anything about the plaintiffs after April 27, 2023. There was also no evidence about the likelihood of the plaintiffs' collecting damages from the defendants under the second ground. The statement of claim and the notice of application did not indicate that the plaintiffs were seeking injunctive relief.

***R v C.F.*, [2024 SKKB 210](#)**

Mitchell, 2024-11-29 (KB24205)

Criminal Law - Evidence - Admissibility
Criminal Law - Evidence - Circumstantial Evidence
Criminal Law - Evidence - Corroboration - Credibility
Criminal Law - Sexual Offences - Luring
Criminal Law - Sexual Touching of a Minor

The accused was convicted on multiple counts of child luring and one count of invitation to sexual touching based on text message evidence. He pled not guilty to all charges. During the trial, the Crown stayed the charge of child sexual exploitation. The primary evidence involved explicit text messages exchanged between the accused and the complainant, a minor and the accused's stepdaughter. The admissibility of the text messages was contested in a blended voir dire and trial. The court had to decide whether the text messages were admissible under the Canada Evidence Act (CEA), and whether the Crown proved beyond a reasonable doubt that the accused committed the alleged offences.

HELD: The accused was convicted. The Crown established authenticity of the evidence under section 31.1 of the CEA through the complainant's testimony identifying the messages, corroborated by screen captures (screenshots). The court found the electronic document system reliable under section 31.3(b) of the CEA, relying on circumstantial evidence and the presumption of integrity. The defence's claims of tampering or the use of a "ghost phone" were dismissed as speculative, failing to meet the threshold to challenge authenticity. Furthermore, the complainant testified honestly and consistently about the messages, establishing her reliability. The complainant's mother corroborated the evidence by confirming the messages and her shock upon discovering them. Police witnesses testified credibly about the extraction and preservation of the text messages. The court applied the *R v W.(D.)*, [1991] 1 SCR 742 framework to assess exculpatory evidence and found no credible evidence supporting the defence's theory of tampering or a third party sending the messages. The evidence left no reasonable doubt about the accused's guilt on the relevant charges.

***Kapeluck v Kapeluck*, [2024 SKKB 211](#)**

Crooks, 2024-12-02 (KB24208)

Family Law - Access and Custody

Family Law - Custody and Access - Police Assist Clause

Family Law - Violation of Court Order

Statutes - Interpretation - *Children's Law Act*, 2020, Section 39

The petitioner (father) sought enforcement of a parenting order which required the respondent (mother) to return their children to him. The mother failed to comply with the order, prompting the court to issue a subsequent police-assisted enforcement order under s. 39 of *The Children's Law Act*, 2020 (CLA, 2020). Despite this directive, the children were not returned, and the RCMP officer involved failed to enforce the court order, citing personal views and the children's preferences. The father applied to the court for accountability regarding the RCMP's failure to execute the order. The court had to decide whether the RCMP officer acted appropriately in refusing to enforce the police-assisted order, and how the court should address the officer's actions undermining the court's authority.

HELD: The court criticized the RCMP officer's failure to enforce the parenting order, reinforcing the rule of law and court authority.

Section 39 of the CLA, 2020 grants the court the authority to direct police to locate, apprehend, and deliver children to enforce parenting orders. This power is rarely exercised and reserved for exceptional cases involving serious non-compliance. The court emphasized that the RCMP's role is to enforce legal orders, not substitute personal discretion for judicial decisions. The RCMP officer expressed personal disagreement with the court's order and advised the mother to keep the children, contrary to the explicit directive. The officer also privately discussed the children's preferences and dismissed the court's assessment of their best interests. The court found that the officer's actions undermined the rule of law and the authority of the judiciary. The officer had no authority to disregard or reinterpret the court's findings. The court referenced *Bond v Jackson*, 2021 SKQB 301, highlighting the fundamental importance of enforcing judicial orders to maintain societal respect for the rule of law. Judges, not peace officers, are entrusted with determining children's best interests after considering evidence and legal principles. Police officers must act within their professional obligations, irrespective of personal views or values. The officer's refusal to enforce the order reinforced a message to the children and parents that court orders could be disregarded. This undermined judicial authority and risked fostering a culture of lawlessness in family disputes. The court reiterated the importance of strict adherence to judicial orders by law enforcement and expressed disappointment in the officer's conduct. While no formal sanctions were imposed, the court noted that these actions had eroded its dignity and respect.

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***McCrack v Reader*, [2024 SKKB 212](#)**

Robertson, 2024-12-06 (KB24209)

Statutes - Interpretation - *Intestate Succession Act*, 2019

Wills and Estates - Beneficiaries

The applicants were the executrices of the deceased's estate and they sought directions on the distribution of the estate's residue following the death of the deceased's son. The deceased's will included a life estate for the son in the form of a *Henson* trust but did not specify residual beneficiaries for the remainder of the estate upon his death. The deceased's estranged husband challenged the interpretation of the will. The court had to decide whether the will provided for the distribution of the estate after the son's death, whether the absence of a named residual beneficiary resulted in an intestacy, and whether the court could rewrite the will to reflect the deceased's intentions.

HELD: The court corrected a drafting error in the will to reflect the testator's intent, naming two sisters as residual beneficiaries. The court reviewed the provisions of the will and determined it did not explicitly name residual beneficiaries for the estate after the son's death. The will provided a *Henson* trust for the son's support during his lifetime but failed to address the distribution of the remaining estate after his passing. The court considered *The Intestate Succession Act, 2019*, which would apply in the absence of a named beneficiary. However, the deceased's intentions were clear based on extrinsic evidence: she intended her sisters to inherit the residue of the estate. Allowing intestacy would conflict with the presumption against intestacy as noted in *Ellingson v Ellingson Estate*, 2017 SKQB 14. The drafting lawyer admitted he inadvertently omitted provisions naming the sisters as residual beneficiaries. Affidavits from reputable lawyers confirmed that the deceased intended her sisters to inherit any remaining estate after the son's death. On principles in *Malo v Markowsky*, 2014 SKQB 261, and *Armstrong v Bank of Nova Scotia*, 2012 SKQB 342, the court concluded that it could correct the error to honour the deceased's intent. The court replaced paragraph 3(c) of the will with a provision explicitly naming the sisters as the residual beneficiaries of the deceased's estate following the son's death. The court ordered the reasonable costs incurred by the deceased's executrices to be paid from the estate, following the general rule in estate litigation that costs for will interpretation disputes are borne by the estate.

***Morin v Saskatchewan Government Insurance*, [2024 SKKB 213](#)**

Tomka, 2024-12-09 (KB24210)

Civil Procedure - *King's Bench Rules* - Summary Judgment
Insurance - *Automobile Accident Insurance Act* - Benefits - Permanent Impairment
Statutes - Interpretation - *Traffic Safety Act*

The applicant sought summary judgment to challenge Saskatchewan Government Insurance's (SGI) denial of his permanent impairment benefits (PIB) under section 175 of The Automobile Accident Insurance Act (the Act). The dispute arose from a single-vehicle accident in 2011 in which the applicant suffered severe injuries, including traumatic brain injury. SGI denied benefits, saying that the applicant was impaired by alcohol and more than 50% at fault for the accident. The court had to decide whether summary judgment was appropriate and whether SGI met its burden under s. 175 of the Act.

HELD: The court dismissed the applicant's motion for summary judgment regarding permanent impairment benefits, finding that SGI had met its burden of proving impairment and majority fault under The Automobile Accident Insurance Act. The court ruled that summary judgment is appropriate when the evidence enables necessary factual findings and the application of law to facts (*Schnell v Stene (Heidinger Estate)*, 2022 SKQB 146 at para 27). The court acknowledged conflicting evidence but determined it could use enhanced fact-finding powers under Rule 7-5(2) of *The King's Bench Rules* to fairly resolve the dispute without a trial. The court then analyzed s. 175 of the Act. The parties agreed that the applicant was the operator at the time of the accident. SGI relied on s. 256(1) of *The Traffic Safety Act*, which shifts the burden to the driver to prove the accident was not due to their negligence. This presumption, combined with evidence from the accident scene, led the court to conclude the applicant was more than 50% at fault. The court rejected the applicant's arguments about road conditions and wildlife interference, finding no credible evidence to support these claims. SGI presented evidence from a toxicologist indicating that the applicant's blood alcohol concentration at the time of the accident was between 0.156% and 0.254%, consistent with severe impairment. The applicant's expert challenged these conclusions, arguing potential contamination and the lack of a proper chain of custody for the blood sample. However, the court preferred SGI's expert evidence, finding it more credible and scientifically grounded. The court noted inconsistencies in the testimony of the applicant and his witnesses regarding his alcohol consumption. The court also found the testimony of the applicant's expert to be less reliable due to questions about her qualifications and the assumptions underlying her opinions. The court dismissed the applicant's application for summary judgment and upheld SGI's decision to deny PIB. It found SGI had met its burden of proving that the applicant was more than 50% at fault for the accident and was impaired to the extent that he could not properly operate a motor vehicle.

***Richardson Pioneer v Lamb*, [2024 SKKB 214](#)**

Robertson, 2024-12-11 (KB24211)

Civil Procedure - *King's Bench Rules* - Summary Judgment

Civil Procedure - *King's Bench Rules*, Rule 7-5

The plaintiff filed lawsuits against the defendants, alleging breaches of three grain purchase contracts entered into in 2021. The plaintiff sought damages totaling \$655,053.40 for undelivered grain and filed applications under Rule 7-2 of *The King's Bench Rules* to proceed by summary judgment. The defendants disputed the claims, asserting genuine issues requiring trial, and contested the admissibility and sufficiency of the plaintiff's affidavit evidence. The court had to decide whether the summary judgment application was suitable under Rule 7-2 of *The King's Bench Rules*, and whether the court should order the claims to proceed to trial if summary judgment was not appropriate.

HELD: The court dismissed the application to determine suitability for summary judgment, finding the application premature and incomplete. The court referred to the principles in *Hryniak v Mauldin*, 2014 SCC 7, which emphasize that summary judgment is suitable when it provides a fair and just adjudication without requiring a trial. Rule 7-5(1) permits summary judgment when there is no genuine issue requiring trial or by agreement of the parties. The court applied General Application Practice Directive #9, which establishes a two-stage process for summary judgment. In the first stage, a review ensures the application is ready for hearing. In the

second stage, a hearing is held to determine whether the matter is suitable for summary judgment. The court found that the applicant had not yet filed all required materials, including key affidavit evidence. The defendants intended to cross-examine on affidavits and file supplementary evidence. The incomplete record made it impossible to determine suitability for summary judgment. The court highlighted that the disputes included issues of fact and credibility, which are typically unsuitable for resolution by summary judgment. For example, the defendants disputed whether they failed to deliver grain under the contracts. The admissibility and credibility of affidavit evidence from the plaintiff were contested. The plaintiff requested that the court set the claims for trial if summary judgment was deemed unsuitable. The court refused, noting that this would bypass procedural requirements, including pre-trial conferences under rule 4-11. The court dismissed the plaintiff's application as premature, directing that all materials required for the summary judgment application be properly filed before reconsidering suitability. No costs were awarded.

***R v MacGregor*, [2024 SKKB 215](#)**

Tochor, 2024-12-12 (KB24212)

Constitutional Law - Jurisdiction

Criminal Law - Jurisdiction

Statutes - Interpretation - *King's Bench Act*

Statutes - Interpretation - *Criminal Code*, Section 468, Section 470

The accused faced five charges, including possession of fentanyl for the purpose of trafficking (*Controlled Drugs and Substances Act*, section 5(2)), possession of proceeds of crime over \$5,000 (*Criminal Code*, section 354(1)(a)), and multiple firearms offences. The accused filed extensive documentation asserting that the court lacked jurisdiction over him, claiming to be a “sovereign individual” exempt from legal authority. The court had to decide whether King’s Bench had jurisdiction over the charges against the accused, and whether the accused’s claims regarding sovereignty and jurisdiction were valid under Canadian law.

HELD: The court dismissed the accused’s jurisdictional challenge, affirming its authority over indictable offences under federal and provincial law. Under section 91(27) of the *Constitution Act, 1867* (UK), the Parliament of Canada has exclusive jurisdiction over criminal law. Parliament exercised this power through the enactment of the *Criminal Code* and the *Controlled Drugs and Substances Act*. The Legislature of Saskatchewan, under section 92(14) of the *Constitution Act, 1867*, has the authority to establish courts within the province. This authority is reflected in The King’s Bench Act, which establishes the Court of King’s Bench as the superior court for civil and criminal jurisdiction in Saskatchewan. Section 2 of the *Criminal Code* and s. 2-1 of *The King’s Bench Act* confirm the court’s status as a superior court of criminal jurisdiction. All charges against the accused are indictable. Under s. 468 of the *Criminal Code*, superior courts have jurisdiction to try such offences. Section 470 of the *Criminal Code* grants jurisdiction to try individuals charged with indictable offences found within the court’s territorial jurisdiction. The accused’s arrest and alleged offences occurred within Saskatchewan, satisfying this requirement. The court rejected the accused’s arguments that he could “opt out” of legal proceedings or that the court required his consent to exercise jurisdiction. Such claims have no legal basis in Canadian law. The court dismissed the

accused's jurisdictional challenge. It affirmed its authority to hear the case and ordered the trial to proceed as scheduled. The court also advised the accused to provide notice of any Charter challenges before trial.

***Denton v Korpan Tractor and Parts*, [2024 SKKB 216](#)**

Smith, 2024-12-12 (KB24213)

Employment Law - Breach of Contract - Termination - Notice Requirement

Employment Law - Contract - Constructive Dismissal

Employment Law - Wrongful Dismissal - Damages

The plaintiff was a 24-year employee of the defendant, holding various positions, including service manager. In July 2020, during a heated workplace meeting, the plaintiff stated, "I'm done," and walked out. After subsequent discussions with the defendant management, the parties agreed that he would take time off for his mental health. In November 2020, the defendant employer issued a letter accepting what it characterized as the plaintiff's resignation. The plaintiff disputed this and claimed he was terminated without cause, seeking damages for reasonable notice. The court had to decide whether the plaintiff resigned or was constructively dismissed; if he was terminated without cause, what was the appropriate reasonable notice period; and was the plaintiff entitled to moral or aggravated damages for the employer's conduct?

HELD: The court awarded the plaintiff \$348,450.44 in damages for wrongful termination, finding that the employer failed to provide reasonable notice of dismissal. The court found that the plaintiff's statement at the July meeting did not constitute a resignation. Shortly after the incident, the employer's representatives expressed their intent to support the plaintiff and allowed him to take time off. The court rejected the employer's argument that the plaintiff abandoned his employment, emphasizing that the November 2020 letter signaled the defendant's decision to terminate the employment relationship. Drawing on case law, including *Ketch v Meadow Lake Mechanical Pulp Ltd.*, 2023 SKKB 241, the court considered factors such as the plaintiff's 24 years of service, senior management role, and age (48). The court determined a reasonable notice period of 24 months. The plaintiff sought additional damages for the employer's alleged intentional infliction of mental suffering, citing verbal abuse during the July meeting and the defendant's handling of his termination. The court declined to award moral damages, finding that while the employer's actions were clumsy, they were not malicious or intended to harm the plaintiff. The supportive actions of the defendant management following the July meeting mitigated any claim for moral damages. The employer argued that plaintiff failed to mitigate his damages by seeking alternative employment. The court accepted the plaintiff's evidence that his ongoing mental health and medical challenges, including hearing loss and back issues, made him incapable of working. He had been approved for Canada Pension Plan Disability benefits. The court awarded the plaintiff \$348,450.44 in damages for wrongful termination, reflecting 24 months' notice. Costs were awarded under column 1 of *The King's Bench Rules*.