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.

Volume 27, No. 20 **October 15, 2025**

Subject Index

***R v Hoffman*, 2025 SKCA 75**

Jackson Bardai Kilback, 2025-08-13 (CA25075)

Criminal Law - Arrest - Common Law - Hot Pursuit Doctrine
Police - Powers - Arrest Without Warrant
Statutes - Interpretation - *Criminal Code*, Section 495(1)(a)

After a trial, the appellant was convicted of assaulting a police officer, resisting arrest, and mischief. The appellant argued that the arrest, the detention, and the officer’s entry into the residence were unlawful, and applied under ss. 8 and 9 of the *Charter* to have the officers’ observations of him excluded from evidence. An officer on patrol noticed a vehicle with an Alberta license plate parked in an unusual location. He checked the plate on his computer and found that the vehicle had been reported stolen. He discovered that the registered owner (the appellant) had an outstanding warrant in Alberta for robbery related to the vehicle. The occurrence report included a photo of the appellant and stated that the appellant had stolen the vehicle after assaulting someone who came to repossess it. The officer recognized the appellant from the photo and saw him standing in a nearby yard. The officer then opened a small gate, walked into the yard, and told the appellant he was under arrest. The appellant ran into his friend’s house and the officer followed. The appellant resisted arrest and resisted being placed in the police cruiser. He was agitated, continued to fight, and damaged the frame of the police cruiser. The trial judge held that the officer had reasonable grounds to arrest the appellant without a warrant under

s. 495(1)(a) of the *Criminal Code* based on information from the occurrence report and his observations of the appellant. The trial judge found that the officer had the legal authority to enter the residence to arrest the appellant under the common law doctrine of hot pursuit. The trial judge found that the officer acted within the scope of his duty to arrest the appellant, and the appellant refused to comply with the lawful demand made by the police to stop and be detained. On appeal, the appellant sought acquittals on the charges of resisting arrest, and a new trial for the other charges. The Court of Appeal (court) determined whether the trial judge erred in concluding that the police officer was engaged in the lawful execution of his duty when he came into the yard and entered the residence to arrest the appellant.

HELD: The court dismissed the appeal. The officer was lawfully on the property with reasonable grounds to arrest the appellant without a warrant, and there was no error in the trial judge's application of the common law doctrine of hot pursuit. The court noted that police officers acting in their official capacity only act lawfully if the exercise of their authority is conferred by statute or derived as a matter of common law from their duties (*R v Dedman*, [1985] 2 SCR 2). The appellant's convictions for resisting arrest and assaulting a peace officer depended on whether the officers were lawfully executing their duty when they entered the yard to arrest the appellant, and whether the common law doctrine of hot pursuit allowed them to lawfully enter the residence to arrest the appellant. Section 495(1)(a) does not grant a police officer authority to enter onto private property to effect a warrantless arrest; the authority is derived from common law. The court cited *R v Waterfield* (1963), [1964] 1 QB 164 (CA) for the accepted test for evaluating the common law powers and duties of the police. If police conduct prima facie interferes with a person's liberty or property, the court must consider: (i) whether the conduct falls within the general scope of any duty imposed by statute or recognized at common law; and (ii) if so, whether the conduct involves an unjustifiable use of powers associated with the duty. The court found that the officer's actions in opening the gate and entering the yard to arrest the appellant were within the officer's duty as a police officer or recognized at common law, and the officer's conduct did not involve an unjustifiable use of power associated with that duty. The court held that the officer was not required to obtain a Feeney warrant (*R v Feeney*, [1997] 2 SCR 13) before opening the gate and entering the yard to arrest the appellant. Police have a common law power to enter private premises to make an arrest when in hot pursuit of a suspect (*R v Macooh*, [1993] 2 SCR 802). Hot pursuit is an exception to the general rule that warrantless arrests in private dwellings are prohibited. The doctrine requires a continuous pursuit conducted with reasonable diligence, so that the pursuit and capture along with the commission of the offence may be considered as forming part of a single transaction. The trial judge found that this was a hot pursuit given the appellant's failure to comply with the officer's lawful demand for him to stop and be detained. The court found that the commission of the offence and the pursuit were continuous and formed part of a single transaction.

 Back to top

***R v Sandhu*, 2025 SKCA 76**

Schwann Kalmakoff Drennan, 2025-08-20 (CA25076)

Criminal Law - Motor Vehicle Offences - Dangerous Driving - Appeal
Evidence - Lay Opinion Exception
Statutes - Interpretation - *Criminal Code*, Section 320.13(2)

The appellant was convicted after a trial of dangerous operation of a conveyance causing bodily harm. He was sentenced to a conditional sentence of imprisonment for 12 months and a two-year driving prohibition. The appellant crossed the center line of the highway while driving a tractor-trailer, causing a collision with a vehicle travelling in the other direction. The driver and passenger of the other vehicle were injured. An expert in collision reconstruction provided opinion evidence that the collision was caused by the appellant's vehicle failing to stay in its own lane, with no evidence of hard braking from either driver. The point of collision had the appellant's vehicle straddling the centre line. The trial judge found as fact that appellant drove his vehicle on the wrong side of the centre line for 10 seconds while travelling directly towards the victim's oncoming vehicle. The trial judge found that none of mechanical failure, road conditions, weather conditions or the driving of the victim's vehicle played a role in the collision. The appellant's driving constituted criminal conduct, because it was a marked departure from the standard of care expected of a reasonably prudent driver. The appellant was acquitted of the charge of criminal negligence in the operation of a conveyance, finding that the driving was not a marked

and substantial departure from the standard of care of a reasonable and prudent driver. On appeal, the appellant argued: 1) that the trial judge admitted inadmissible evidence from a Saskatchewan Highway Patrol officer about logbooks and other documents seized from the appellant's vehicle; 2) that the trial judge erred in his application of the *mens rea* requirement for dangerous operation of a conveyance; and 3) that the verdict was unreasonable.
HELD: The Court of Appeal (court) dismissed the appeal. 1) The court found that the officer's evidence was mainly fact evidence, not opinion evidence. His evidence was limited to his factual observations of what was recorded in the logbooks and his understanding of the regulations for commercial truck drivers. Even if his evidence on whether the appellant complied with the regulatory requirements for record keeping and restrictions on driving time could be considered opinion evidence, it was properly admissible as lay opinion evidence given the nature of the officer's role in the investigation, and his training and experience. The rules of expert evidence do not apply to informed factual evidence related to experience and training. The general exclusionary rule does not apply when the witness does not offer an opinion. When considering police officer witnesses, expert qualification is not required for matters properly within the general realm of ordinary officer training and experience. The court added that the evidence that was admitted from the officer was given no weight in the overall assessment of whether the Crown had proven its case against the appellant. 2) The court found no error in the trial judge's application of the *mens rea* requirement for dangerous operation of a conveyance. The manner of the appellant's driving was the focus of the trial, and the trial judge considered all relevant circumstances in drawing the inference of fault to find the appellant guilty of dangerous driving. 3) The court found that the verdict was reasonable. The evidence at trial for the duration of time the appellant's vehicle was over the centre line came from the driver, the passenger, and the accident reconstructionist.

Back to top

Statutes - Interpretation - *Criminal Code*, Section 445.1(1)(a), Section 447.1

Statutes - Interpretation - *Criminal Code*, Section 495(1)(a)

Cases by Name

***R v Kachroo*, [2025 SKCA 80]**

Tholl Kalmakoff McCreary, 2025-08-27 (CA25080)

Appeal - Sentence Appeal - Totality Principle
Criminal Law - Appeal - Sentence
Criminal Law - *Controlled Drugs and Substances Act* - Possession for the Purpose of Trafficking - Sentence Appeal
Criminal Law - Firearms - Storing/Possession of Prohibited Weapon
Criminal Law - Sentencing Appeal - Global Term

The appellant pled guilty to three offences: possession for drug trafficking, possession of proceeds of crime, and possession of a prohibited firearm. The sentencing judge found the appellant was a mid-level trafficker and had the firearms to protect a trafficking enterprise. The appellant had 43 prior convictions, including drug and weapons offences, and was assessed as a high risk to reoffend. The judge imposed a global sentence of nine years' imprisonment (six years for trafficking, 18 months concurrent for proceeds of crime, and three years consecutive for the firearm). The judge then applied 593 days of pre-sentence custody credit, leaving approximately seven years and four months to serve, along with ancillary orders. The Court of Appeal (court) had to decide whether the sentencing judge misapplied the totality principle in s. 718.2(c) of the *Criminal Code* such that the combined sentence was unduly long or harsh, and whether that error required appellate intervention.
HELD: The appeal was dismissed. The court restated that appellate intervention is limited to where there is an error in principle affecting sentence or a demonstrably unfit sentence (see *R v Friesen*, 2020 SCC 9; *R v Lacasse*, 2015 SCC 64; *R v J.W.*, 2025 SCC 16). The totality principle ensures that consecutive sentences are not excessive in relation to overall culpability and are applied using the structured approach. *R v Smith*, 2019 SKCA 100 (*Smith*) provided the approach to applying the totality principle: 1) determining the appropriate sentence for each offence, 2) deciding if sentences should be consecutive, 3) calculating the combined sentence, 4) assessing whether the combined sentence would be unduly long or harsh, and 5) adjusting the combined sentence if necessary. The court examined the context within which the sentencing judge recognized the totality, which followed the approach from *Smith*. The individual sentences were fit and within ranges for mid-level fentanyl or methamphetamine trafficking and prohibited firearms offences. The

court concluded that the combined sentence was not excessive given the nature of the offences and the appellant's degree of responsibility in that matter.

Back to top

***Dawgs Canada Distribution Ltd. v Smith*, [2025 SKCA 81]**

Jackson McCreary Kilback, 2025-08-28 (CA25081)

Contract - Breach of Contract
Contract Law - Alternative Liability
Contract Law - Formation - Verbal
Contract Law - Valid Agreement - Breach of Contract

The respondent claimed that an oral agreement was reached in 2005 for participation in a start-up shoe venture. The respondent paid $23,000 (approximately one-third of the cost of the first shipment), expecting a proportional share of the ownership. Double Diamond was incorporated for the distribution part of the business. When the company was incorporated, the business did not issue shares to the respondent. After a bifurcated trial on liability, the court of King's Bench found there was an enforceable oral contract, that the individual appellant breached it by not causing shares to be issued, that Double Diamond was also liable on agency/undisclosed-principal bases, dismissed a counterclaim, and awarded costs to the respondent against the individual appellant and Double Diamond, with no costs among the remaining parties. The business and business owners appealed the trial decision. The Court of Appeal (court) had to decide whether the trial judge erred by finding a binding oral contract existed, holding the individual appellant personally liable for breach, and also holding the corporate appellant liable based on agency (alternative liability).
HELD: The appeal was dismissed. The court found that the trial judge correctly applied the objective test for contract formation by asking whether a reasonable person would see an offer and acceptance on essential terms. Furthermore, the evidence supported an initial one-third interest tied to the first shipment, which was later amended to 8% as additional investors were added. The individual appellant's personal liability flowed from the oral contract made in his own name; the corporate appellant was also liable because the individual appellant acted as its agent, establishing the common law doctrine of alternative liability. The doctrine of alternative liability allows either the agent or the principal to be held responsible for a contract with a third party. The third party can choose which one to hold liable, but only one can ultimately be held accountable (see paragraphs 59-62 of the decision for a summary of this doctrine). The court did not find any error in the trial judge's application of contract law or credibility assessments.

Back to top

***R v Josan*, [2025 SKKB 108]**

Robertson, 2025-07-23 (KB25104)

Criminal Law - Appeal - Sentencing
Criminal Law - Animal Cruelty
Statutes - Interpretation - *Criminal Code*, Section 445.1(1)(a), Section 447.1

The offender was charged with wilfully causing unnecessary pain to a dog by hitting it, contrary to section 445.1(1)(a) of the *Criminal Code* (*Code*). The Crown entered video recordings of the offences as evidence, which showed the offender repeatedly hitting his dog. The offender was aware he was being filmed and spoke directly to the camera afterward. He referred to the beating of the dog as showing what he was capable of. The offender was in his early 20s at the time of the offence, with no criminal record. The sentencing judge in Provincial Court did not ask the offender if he had anything to say as required by s. 726 of the *Code*. Crown and defence counsel appeared for the scheduled trial, but the offender pled guilty on the trial date. After hearing submissions, the judge imposed a suspended sentence of 12 months with the conditions of 30 hours of community service, restitution of $1,994 to the Regina Humane Society within 12 months, a victim surcharge payment of $100, and an order under s. 447.1(1) of the *Code* prohibiting the offender from possessing an animal for two years. The offender appealed the sentence. The court determined: 1) whether the sentence imposed was excessive or unfit; 2) whether the sentencing judge erred by failing to ask the offender whether he had anything to say prior to imposing the sentence, resulting in an unfit sentence; and 3) whether the sentencing judge erred in failing to consider all options available for sentencing.
HELD: The court dismissed the appeal against sentence. The court noted that an appellate court may only interfere with a sentence if there has been an error in principle that had an impact on sentence, or if the sentence was demonstrably unfit. The court referred to the history and public policy background of offences involving harm to animals. The *Code* was amended in 2008 with new offences involving harm to animals, including sections 445.1 and 447.1. Amendments in 2019 increased the penalties for these offences. The court reviewed sentencing decisions from across Canada to conclude that animal cruelty offences are crimes of violence and are serious offences. The primary focus in sentencing for animal cruelty offences is deterrence and denunciation. Incarceration is appropriate for serious cases of intentional harm, even for a first-time offender. Aggravating factors include harming animals in the offender's care and harming the pets of others to exert control or as retribution. The court added that different cultural norms will not reduce an offender's moral responsibility. Restitution orders to cover the costs of treatment for the animal are common.1) The sentencing judge considered and gave appropriate weight to the circumstances of the offence and offender; the court did not find the sentence imposed to be excessive. 2) The court found that the omission of the trial judge to ask the offender if he had anything to say prior to sentencing did not affect the sentence and was a harmless error. Section 726 of the *Code* uses mandatory language to require the sentencing judge to ask the offender if they have anything to say. Here, there was no objection on the record from defence counsel, and defence counsel mentioned the personal circumstances of the offender in sentencing submissions. There was no error in the sentencing judge's reasons for the decision, and the sentence was not unfit. 3) There was nothing to indicate that the sentencing judge failed to consider all sentencing options. Crown and defence both set out sentencing

submissions with reasons in support. The sentencing judge did not accept the offender's request for a conditional discharge, which would have avoided a criminal conviction. Here, the court found that a conditional discharge was not appropriate for this offence. A conditional discharge may be granted only if that disposition is both in the best interests of the accused and not contrary to the public interest. The court noted that discharges were rare in reported animal cruelty cases.

 Back to top

***R.R. v M.K.*, 2025 SKKB 112** (Not yet available on CanLII)

Turcotte, 2025-07-24 (KB25114)

Family Law - Variation Application - Material Change in Circumstances
Statutes - Interpretation - *Children's Law Act, 2020*, Section 8(4)

The respondent father applied to vary the parenting terms of a judgment. There was a history of family violence between the parties, and the father had previously been convicted of assault. After the judgment, the mother brought an application to vary based on her allegations that the father had been hitting the child. She overheld the child from the father. The mother's variation application was dismissed with the court finding the mother's allegations to be overstated and unsubstantiated by police investigations and doctors' reports. No compensatory parenting time was granted to the father. Compensatory parenting time after this incident remained a festering issue between the parties. The father sought orders: to vary aspects of his parenting time; to limit the number of extracurricular activities for the child; that both parties be entitled to receive information directly from the child's school and care providers; allowing each party to take the child to their respective churches; directing that the child attend French Immersion at a specific kindergarten; for compensatory parenting time; and to direct the parties into counseling.
HELD: There was no material change in circumstances to warrant a variation to the terms of the judgment. However, the court found it was necessary to resolve some of the parties' unresolved parenting decisions. The court set a fixed amount of compensatory parenting time for the father and confirmed that there was no restriction against the father from obtaining information directly from the child's school and healthcare providers. The court determined which kindergarten the child should attend but declined to set a restriction on the number of activities the child was involved in and declined to make an order regarding the parents' churches. The court did not make changes to parental decision-making or the father's parenting time as set out in the judgment. Subsection 8(4) of *The Children's Law Act, 2020* allows for an application to vary a parenting order if there has been a material change in circumstances since the date of the order. The applicant must demonstrate that there has been a material change in the condition, means, needs or other circumstances of the child. The change must have materially altered the child's needs or the ability of a parent to meet the child's needs in a fundamental way. If the applicant meets this threshold the court considers the second stage and considers the impact of the change on the best interests of the child. The court set the father's compensatory parenting time in

order to put the issue to rest between the parties. There had not been any material change in the parties' personal or employment circumstances since the judgment. The court found there was no restriction under the judgment preventing either party from obtaining information about the child's health, education, and welfare. Given that the father had experienced issues obtaining this information from the child's care providers, the court made an order confirming that each party was entitled to make inquiries and to receive care information about the child. The court did not direct the parties to attend counselling; they could engage a parenting coordinator on their own. The court declined to make an order on the number of activities the child was involved in, or which religious services she attended. It is not the court's role to determine these details: the parents had to use common sense to determine the appropriate balance of activities in the child's best interests. The father wanted the child to attend French immersion kindergarten at a specific school, but the mother was opposed to the selection of this school. The school she preferred was closer to her home, and closer to the school her stepchildren attended. Courts typically defer to the view of the custodial parent. Here, there was limited objective evidence to assess the impact on the child's best interests for her participating in French immersion or English language kindergarten. The court determined it was in the best interests of the child to attend the school closer to the mother's home, as she was primarily responsible for transportation.

Back to top

***D.C.K. v L.H.-K.*, [2025 SKKB 118]**

Goebel, 2025-07-30 (KB25115)

Family Law - Access and Custody
Family Law - Child Custody and Access - Shared Parenting
Family Law - Custody and Access - Best Interests of Children
Family Law - Division of Family Property
Family Law - Distribution of Family Property
Family Law - Divorce

This matter involved the topics of parenting, financial support, and division of family property. The parties married in 2006 and have three children. They separated in 2019 and informally followed a 28-day parenting schedule tied to the mother's shift work as a health-care aide. The father started a divorce and family property action in 2021. Earlier interim orders treated the arrangement as shared parenting and required annual income exchange and sharing of special (s. 7) childcare expenses. At trial, the court considered parenting arrangements, child support (including any retroactive claim), division of family property, and costs. The court had to decide whether the mother should have sole decision-making authority for major matters, whether to maintain a parenting schedule tied to the mother's work rotation, whether retroactive child support or different sharing of s. 7 expenses were warranted, how to adjust child support going forward, whether and how to equalize family property, including the family home, and whether to

order costs.
HELD: The divorce was granted, effective on the 31st day after judgment. The court emphasized that the best interests of the children are the basis of parenting matters because the children have the right to be protected from harm and they have the right to the best possible arrangement available to them in the circumstances (see *Divorce Act*, s. 16; *Young v Young*, [1993] 4 SCR 3). The mother was given sole decision-making authority for the children on health, education, counselling, care, extracurricular activities, cultural engagement, and religious involvement. The court also maintained the current parenting schedule and arrangement. The court reminded the parents of their obligations to keep the children out of their conflicts. As for child support, the parenting schedule was deemed shared parenting under the *Federal Child Support Guidelines* (s. 9). The court applied a quantitative and qualitative approach in determining a shared parenting situation, based on the evidence available to the court (see paragraphs 124 to 127 of the decision for a comprehensive legal summary of this topic). The parties would share s. 7 expenses equally and the father must pay the mother $5,800 for the past four years of s. 7 expenses. The parties must exchange their income tax returns and assessments annually for future child support calculations. Either party may use the Saskatchewan Child Support Recalculation Service. If a payor fails to disclose their financials, income may be deemed to increase under *The Family Maintenance Act, 1997* and regulations. On the issue of the division of family property, the court applied *The Family Property Act*'s equal division presumption. The court appended a family property table and ordered an equalization payment to the mother. The mother must sign any documents needed to release her rights or registered interest in the family home. If the father failed to make the court-ordered payment, the mother could apply for an order directing the sale of the family home. On request, each party must release future claims to the other's pension. The court did not issue an order as to costs. The judge took the matter under consideration for 12 months to address implementation issues upon written request through the local registrar.

Back to top

***Gencore Properties GP Inc. v Kowbel*, 2025 SKKB 121**

Tochor, 2025-07-31 (KB25113)

Administrative Law - Arbitration Award - Leave to Appeal - Question of Law
Statutes - Interpretation - *Arbitration Act, 1992*, Section 45(2)

The applicants sought leave to appeal an arbitration award. After an arbitration hearing, the arbitrator found the applicants liable for damages on a variety of bases and awarded damages and solicitor-client costs against the applicants. The applicants and respondents entered into a limited partnership agreement (LPA) to invest in apartments. The parties disagreed on how the applicants were managing the affairs of the limited partnership, and the dispute was referred to arbitration as set out in the LPA and *The Arbitration Act, 1992* (Act). The arbitrator found the applicants acted in bad faith, with wilful misconduct, and breached the LPA both in contract and in negligence. The arbitrator found that this misconduct resulted in serious breaches of the LPA and caused

financial loss. He concluded that the breaches entitled the limited partners to $844,373.05 in damages, plus proportionate costs of arbitration fees, expert witness costs, and court reporter fees, half of the pre-judgment interest, and the solicitor-client costs of the claimants. Here, the court determined: 1) whether to grant leave to appeal the arbitration award; 2) whether to set aside the award of the arbitrator; and 3) costs.
HELD: The court granted the application for leave to appeal the decision of the arbitrator on the sole ground of whether pre-judgment interest was properly awarded by the arbitrator. The court dismissed all other grounds of the application for leave to appeal the decision of the arbitrator. Section 45(2) of the Act sets out the statutory basis for an application for leave to appeal from an arbitral award. The section provides that a party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that the importance to the parties of the matters at stake in the arbitration justifies an appeal and that a determination of the question of law at issue will significantly affect the rights of the parties. There are three requirements set out in the case law that must be met before leave to appeal under the Act may be granted: (i) the issue raised by the applicant is a question of law; (ii) the matters at stake in the arbitration are sufficiently important to justify an appeal; and (iii) the determination of the question of law at issue will significantly affect the rights of the parties. An applicant for leave has the burden of establishing a genuine question of law. The court found that the only question of law established by the applicants was whether the arbitrator's order for pre-judgment interest was correct. There was no issue of law identified in the award of solicitor-client costs. The court noted that it was not an error of law for the arbitrator to accept the evidence of the respondents over that of the applicants. While the applicants alleged that the arbitrator gave insufficient reasons for certain rulings or statements, there was no specific articulation as to why the reasons were insufficient. Merely stating that the reasoning was insufficient did not elevate the allegation into a question of law. 2) The court also dismissed the application for an order under s. 47 of the Act to set aside the award of the arbitrator. The court was not satisfied that the applicants were treated unfairly or unequally. 3) The court awarded $7,000 in costs against the applicants.

Back to top

***Chatfield v Bell Mobility*, 2025 SKKB 124**

Elson, 2025-08-13 (KB25118)

Civil Procedure - Class Action - Dismissal after Certification
Civil Procedure - Class Action - Jurisdiction of the Court
Civil Procedure - King's Bench Rules, Rule 4-44(a) - Application to Strike for Delay

This certified class action challenges “system access fees” on cellular bills. The statement of claim was issued more than 20 years ago. After that, the representative plaintiff took no meaningful steps toward a common issues trial until February 2024, when the plaintiff filed a notice application under Part IV of *The Class Actions Act* to address class notice. The defendants then applied to

dismiss the action for want of prosecution under Rule 4-44 of *The King's Bench Rules*. The parties asked the court to decide which applications should be heard first. The defendants also applied to strike parts of an affidavit that disclosed "without prejudice" settlement communications. The court had to decide whether Rule 4-44 could apply to an already-certified class action; how to sequence the defendants' dismissal applications and the plaintiff's class-notice application; and whether portions of the affidavit should be struck as settlement-privileged.
HELD: The court directed that the dismissal applications be heard first and held that Rule 4-44 applied to certified class actions because *The King's Bench Rules* apply unless they conflict with *The Class Actions Act* (s. 44). The court relied on delay-dismissal principles and accepted Ontario authority confirming dismissal for delay can apply after certification (*Barbiero v Pollack*, 2024 ONSC 1548, aff'd 2024 ONCA 904). On sequencing, the court applied the efficiency and fairness themes from *Hoedel v WestJet Airlines Ltd.*, 2023 SKCA 135, and found the dismissal applications are potentially dispositive and should proceed first. The court noted the long, inordinate delay since 2011 and prior attempts to re-plead deceit/misrepresentation contrary to earlier rulings. The court also struck specified affidavit paragraphs and exhibits as settlement-privileged (see *Sable Offshore Energy Inc. v Ameron International Corp.*, 2013 SCC 37 and *Union Carbide Canada Inc v Bombardier Inc.*, 2014 SCC 35). Costs for the sequencing application and the strike motion were set under column 2 of the tariff of costs.

 Back to top

***R v Nerenberg*, 2025 SKKB 129**

Wildeman, 2025-08-15 (KB25121)

Criminal Law - Appeal - Conviction - Sexual Assault
Criminal Law - Appeal - Sexual Touching
Criminal Law - Evidence - Admissibility
Criminal Law - Evidence - Record Screening

The accused was convicted in Provincial Court of sexual assault because of incidents during a photoshoot. The key dispute at trial was over nude photographs taken by the accused during the photography session. The trial judge had held that the photos were private "records" and could be admitted but did not admit the photos as they would not add any probative value to the case. At trial, the complainant testified she had no expectation of privacy in the photos and described details of the alleged touching. After that testimony, the defence sought a mistrial and asked the judge to revisit the admissibility, arguing that the testimony constituted a change in circumstances affecting the trial judge's earlier ruling on the photos and requested that the photos be tendered as evidence. The trial judge refused, and the trial proceeded to a conviction. The accused appealed by way of a summary conviction appeal. The court had to decide whether the trial judge erred by refusing to reconsider the earlier ruling about the photos, whether a

mistrial should have been declared, and how the record-screening framework and standard of review applied to these rulings.
HELD: The appeal was allowed and a new trial ordered. The court applied the material change principle, which permits trial judges to revisit orders relating to the conduct of a trial when circumstances change sufficiently (see *Canadian Broadcasting Corp. v Manitoba*, 2021 SCC 33). The complainant's trial evidence created a change that required, at a minimum, reconsideration of admissibility under s. 278.92 of the *Criminal Code*; declining to revisit the ruling was an error of law reviewable for correctness (see the *Criminal Code*, s. 278.97). The court held that a mistrial was not warranted on these facts because a targeted remedy, reopening and reassessing admissibility, was available and should have been considered first; furthermore, a decision to declare a mistrial is a discretionary determination. The conviction was quashed, and a new trial was ordered so that admissibility could be determined on the proper legal footing, having regard to the record-screening regime in s. 278.92 and any material changes arising from the trial evidence.

Back to top

***R v Miller*, 2025 SKKB 130**

Danyliuk, 2025-08-18 (KB25122)

Criminal Law - Sexual Assault - Credibility
Statutes - Interpretation - *Criminal Code*, Section 271

The accused was charged with sexual assault. The complainant was at a bar with her mother. They met the accused there, and the accused chatted with the mother. They all became intoxicated, with the complainant the least intoxicated, and the mother very intoxicated. As the bar started shutting down, they all decided to stop for more liquor on their way to the complainant's mother's house. They arrived at around 3:00 am. Once there, the mother passed out or fell asleep. When she awoke, the complainant was in distress. The complainant later told the mother that the accused had sexually assaulted her. The mother and accused exchanged numerous texts over the next several days. The complainant, her mother, and the accused testified at the trial. The court found as a fact that the accused entered the complainant's bedroom, removed her clothes while she was asleep, and began engaging in oral sex with her. The court set out: 1) the applicable legal principles; 2) how credibility and reliability were resolved; and 3) whether the Crown proved its case beyond a reasonable doubt.
HELD: The court found the accused guilty of sexual assault. 1) The court stressed that the Crown had the burden of proving beyond a reasonable doubt that the accused was guilty. Every accused begins every criminal trial as an innocent person and is presumed innocent throughout the trial. Here, the Crown had to prove the identity of the accused, that the matter occurred at the place and on the date set out in the indictment, that the accused assaulted the complainant (the application of force directly or indirectly to the

complainant), that the accused intended to apply force to the complainant, that the complainant did not or could not consent to the application of force by the accused, that the accused knew that the complainant did not or could not consent, and that the assault was of a sexual nature. 2) The court found almost no probative value or truth in anything the accused said during the trial. The court did not believe the accused's evidence but did believe the evidence of the complainant and her mother. The court had to resolve issues of credibility and reliability using the principles in *R v W.(D.)*, [1991] 1 SCR 742. The court did not accept and believe the evidence of the accused, and the accused's evidence did not leave the court with reasonable doubt. The court considered the admissions made by the accused in text messages, and the accused's unbelievable explanations for them. Overall, the court found the complainant's testimony to be internally and externally consistent on key points. The accused's texts did not expressly admit to a sexual assault, but he did text that he did something very bad the night before and was thinking of killing himself. His explanation at trial for the "bad thing" was going to the bar by himself, drinking, and then going home with the complainant and her mother. 3) The court found that the Crown proved its case, and that the elements of sexual assault under s. 271 of the *Code* were met. The complainant was initially incapable of consenting because she was asleep, and when she awoke, she communicated that she did not consent to the sexual activity.

Back to top

***Saskatchewan Crop Insurance Corporation v Work Smarter Systems Ltd.*, [2025 SKKB 133]**

Sinclair, 2025-08-21 (KB25124)

Civil Procedure - Amendments to Pleadings
Civil Procedure - King's Bench Practice Directive #9
Contract - Unconscionability
Insurance - Crop Insurance

The plaintiff sued to recover alleged overpayments of crop insurance and AgriStability benefits. The defendants denied the claims except for the unpaid 2019 premiums. The plaintiff applied for summary judgment on the AgriStability overpayment, for directions under the court's Practice Directive #9, and to strike parts of the defence. The defendants applied to amend their defence and to add a counterclaim. They sought to plead that the AgriStability and crop insurance terms were unconscionable and breached s. 8 of the *Charter*, and they requested orders compelling the plaintiff to process AgriStability appeals and benefits for 2020–2024, set-off and reinstatement of cancelled insurance. The plaintiff argued that disputes regarding AgriStability must be addressed through the program's internal appeal process and, if necessary, judicial review, rather than a collateral attack in this action. The court had to decide whether the defendants should be granted leave to amend their defence, whether they should be granted leave to add the

proposed counterclaim, and whether the plaintiff's applications should be set down for a hearing with case management timelines under Practice Directive #9.
HELD: The court granted leave to amend in part and refused leave to add the counterclaim. The court set the plaintiff's applications for hearing with timelines. The court allowed clerical amendments. Substantive amendments were refused. The proposed s. 8 of the *Charter* pleading did not allege a reasonable expectation of privacy or identify a "search" or "seizure." Furthermore, the participants agreed to provide records as a condition of the insurance programs. The unconscionability pleading was also refused. AgriStability terms are governed by government policy under federal-provincial agreements and are not subject to court review for unconscionability. The crop insurance contract is a statutory contract that courts consider a written contract between the parties, which cannot be modified on equitable grounds. Regarding the counterclaim request, leave was refused. The requested orders to compel processing of benefits, to set-off, and to reinstate insurance constituted mandatory injunctive relief and were barred by s. 17 of *The Proceedings Against the Crown Act, 2019*, which applies to Crown agents such as the plaintiff. The request for *mandamus* to compel an internal appeal must be brought by application for a prerogative remedy, not by counterclaim. In any event, the counterclaim did not disclose a reasonable cause of action. The matter was set down under the court's Practice Directive #9. This was not one of the rare cases to be decided on the summary judgment application at the first appearance. Filing and cross-examination timelines were established, a hearing date was to be set by the local registrar, and costs of $1,500 were awarded to the plaintiff in connection with the amendment application.

 Back to top

***Brochu v Brown*, [2025 SKKB 134]**

Sinclair, 2025-08-25 (KB25130)

Family Law - Spousal Support
Family Law - Spousal Support - Interim - Determination of Income
Family Law - Spousal Support - Retroactive

The parties commenced cohabitation in April 2009 and married in August 2018. They separated on June 22, 2024. The petitioner filed for divorce in July 2024, seeking spousal support and a division of family property. The respondent agreed to pay spousal support to the petitioner and equally divide family property. The parties were unable to agree on the quantum of interim spousal support, which led to the petitioner bringing an interim application for spousal support and other relief. An arbitrator determined that interim support of $1,269 per month was appropriate. The petitioner appealed this decision.
HELD: The application was dismissed. (1) The arbitrator did not err in assessing the respondent's income. While the arbitrator used the word "impute" when she determined Mr. Brown's income, the arbitrator clearly relied on Mr. Brown's indication that he was on track to earn $140,000 in 2025. The petitioner's assertion that s. 16 of the *Federal Child Support Guidelines* (*Guidelines*) compelled

the arbitrator to determine the respondent's income based on his prior years' income was not supported by the *Guidelines* or the case law. (2) The arbitrator did not err in awarding spousal support below the *Spousal Support Advisory Guidelines* (SSAG) range without proper justification. There was sufficient justification in the arbitrator pointing to the greater home expenses for the respondent versus the petitioner's accommodation expenses to explain the arbitrator's reasons for departing from the SSAG range. (3) The arbitrator did not err in law in failing to modify her spousal support award when she determined that she had made an error in her SSAG calculation. The arbitrator was entitled to correct a calculation or amend the award. The arbitrator was also entitled not to amend the award despite a calculation error. (4) The arbitrator did not overlook material facts that impacted the determination of spousal support. (5) The arbitrator did not err by failing to make the award of spousal support retroactive to January 2025. It was within the arbitrator's discretion to determine interim spousal support only on a prospective basis and have the issue of spousal support dating back to the filing of the petition addressed in the final adjudication.

 Back to top

***Riemer, Re (Bankrupt)*, [2025 SKKB 137]**

Shalashniy, 2025-08-28 (KB25133)

Bankruptcy and Insolvency - Conditional Discharge
Bankruptcy - Conduct of Bankrupt
Bankruptcy - Conditional Discharge - Factors
Bankruptcy - Property of Bankrupt - Exempt Property

The bankrupt applied for a discharge. The trustee and the superintendent opposed it. The bankrupt was assigned into bankruptcy in 2020, and only $1,953.52 had been realized. The record showed serious non-disclosure of finances and poor cooperation from the bankrupt. She failed to disclose a defined-benefit pension (about $3,140/month), failed to disclose self-employment income, filed income/expense reports that omitted these amounts, and refused for years to provide routine documents. The bankrupt also participated in tax shelter schemes, used credit heavily in 2019, and made significant purchases close to the assignment. Her proven unsecured claims totalled about $561,000 (including a large CRA claim). Despite this, the bankrupt's net worth was over $820,000, with a home (agreed value $387,800) and registered funds. The court had to decide whether the bankrupt was an "honest but unfortunate" debtor in light of facts under s. 173(1) of the *Bankruptcy and Insolvency Act*, whether those facts were proven, and, if so, what terms should attach to any discharge. The court also had to consider how to exercise its discretion under s. 172, including whether to account for significant exempt assets and the integrity of the bankruptcy system.
HELD: The court granted a conditional discharge, having determined that the bankrupt was not an honest debtor and was not eligible for an absolute discharge. The bankrupt was ordered to pay $247,010, with a minimum of $3,000 per month and a right of

prepayment. The court found facts under s. 173(1)(a) (assets less than fifty cents on the dollar without a satisfactory explanation) and s. 173(1)(e) (unjustifiable extravagance) were established. The court emphasized the duty of honesty and full disclosure in bankruptcy and accepted that the trustee's work had been obstructed by concealment and non-cooperation. In setting terms, the court applied the purposes of the equitable distribution and rehabilitation principles from the *Bankruptcy and Insolvency Act*, giving primary weight and emphasis to upholding the integrity of the system (see *Poonian v British Columbia (Securities Commission)*, 2024 SCC 28). On the record, an absolute discharge was not available; a refusal was warranted in principle but would further consume resources. Therefore, the conditional discharge on payment terms was ordered.

 Back to top

***Kielo v Poirier*, 2025 SKKB 138**

Elson, 2025-08-28 (KB25137)

Administrative Law - Judicial Review - Bias - Apprehension of Bias
Administrative Law - Judicial Review - Standard of Review - Reasonableness
Administrative Law - Parenting Coordination - Judicial Review
Courts and Judges - Discretion - *Nunc pro Tunc*
Family Law - Parenting Coordination

The parties separated in 2019 and have three children. They generally followed a shared parenting arrangement. In May 2022, a consent order required them to appoint a parenting coordinator (PC) under *The Children's Law Act, 2020*. A PC was appointed, and a 24-month parenting coordination agreement began in 2023. The parties paused the PC process while they tried counselling, then resumed it. The last session was in 2024. The PC issued a written determination in 2025 setting specific terms regarding exchange dates and locations, participation in extracurricular activities on each parent's time, resolution of activity disputes in alternating years, and weekly phone contact with the other parent. The respondent applied to set the determination aside, arguing that the PC exceeded its authority, acted outside the two-year limit, and was biased. The court had to decide whether the PC acted within the scope allowed by ss. 32 to 36 of *The Children's Law Act, 2020* and the regulations; whether the determination was invalid because it was released after the two-year period; whether a reasonable apprehension of bias was shown; and whether the court could backdate the determination using the equitable doctrine of *nunc pro tunc*.
HELD: The application was dismissed, and the PC's determination was upheld. A *nunc pro tunc* order backdated it to July 2024 (the date of the last parenting coordination session), ensuring it fell within the statutory time limit. The court applied reasonableness as the standard of review for the substance of a PC's decision (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, for the reasonableness standard of review) and found the PC's directions were reasonable, focused on the children and their best interests, and squarely within the prescribed matters such as their daily routine, exchanges, extracurricular activities, and

communication as set out in *The Children's Law Regulations, 2021*. The bias claim failed because negative comments about a party's cooperation do not establish a reasonable apprehension of bias (see *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369, for apprehension of bias analysis). On the issue of timing, the court declined to treat the parties' pause as an implied extension but exercised its discretion to backdate the determination *nunc pro tunc*, emphasizing that neither party caused the delay and that backdating avoids unfairness.

 Back to top

***R v Olubobokun*, [2025 SKPC 22]**

Watson, 2025-07-21 (PC25021)

Criminal Law - Assault - Assault with a Weapon
Criminal Law - Corporal Punishment
Criminal Law - Defences - Consent
Criminal Law - Evidence - Credibility
Statutes - Interpretation - *Criminal Code*, Section 43, Section 265(3)(d)

The accused, then the director of a private faith-based school in Saskatoon, was charged with assault with a weapon for paddling nine students between September 2002 and June 2011. The discipline at the school involved striking students with a wooden paddle. Several former students testified to being paddled in the accused's office (and, in a few instances, at the student's home) for conduct such as attitude, dishonesty, or rule infractions. The accused denied paddling any student and said that after a 2004 Supreme Court decision on corporal punishment, paddles were removed, and no paddling occurred. The court had to decide whether the accused assaulted the complainants with a weapon by paddling them, whether any force was consented to or excused under s. 43 of the *Criminal Code*, and whether the Crown proved the offences beyond a reasonable doubt in light of credibility and reliability concerns.
HELD: The accused was found guilty on all counts. The court applied the Supreme Court of Canada's approach from *R v W. (D.)*, [1991] 1 SCR 742 [*W.(D.)*]: if the accused's testimony is believed, he must be acquitted; if not believed but left with a reasonable doubt, he must be acquitted; otherwise, the court must still ask whether the remaining evidence proves guilt beyond a reasonable doubt. The court considered all the evidence at the first *W.(D.)* step and assessed credibility using guidance from *R v Van Deventer*, 2021 SKCA 163; *R v W.D.M.*, 2022 SKCA 64; and *R v A.M.*, 2014 ONCA 769. On the scope of s. 43 of the *Criminal Code*, the court relied on *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC 4 (*Canadian Foundation*), which limits any s. 43 justification by excluding force that uses objects, targets the head, harms or degrades, or constitutes corporal punishment of teenagers. The court adopted a recent King's Bench decision (*R v Duff Friesen*, 9 May 2025, Sask KB) that treated

Canadian Foundation as an interpretive precedent applicable to conduct predating the Supreme Court's 2004 ruling. Given those limits, s. 43 could not justify using a wooden paddle by a school authority. On the issue of consent, the court held that any purported agreement by students to be paddled was invalid because they submitted due to the exercise of authority by the director; s. 265(3)(d) of the *Criminal Code* vitiates consent obtained through authority. Applying these principles, the court accepted the essential parts of the complainants' accounts, found the accused's denials not credible, and concluded that the Crown proved assaults with a weapon under s. 267(a) for each complainant. The court entered convictions on every count.

Back to top