Law Society of Saskatchewan

# Case Mail

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

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**Subject Index**



***Ace Burger Ltd. v G and I Construction Group Inc.*, 2025 SKCA 82**

Jackson McCreary MacMillan-Brown (ad hoc), 2025-09-03 (CA25082)

Contract - Cost-plus Contracts
Contract - Interpretation
Contracts - Breach - Non-payment
Contracts - Compensation

This appeal centred around a contractor’s claim under a cost-plus construction contract where there was no initial estimate requested or provided by the parties. The appellants hired the respondent contractor to renovate a restaurant under an oral “cost-plus” agreement, plus a markup percentage. There was no estimate, quote, or maximum price. The contractor finished the work using multiple subcontractors and sent several inconsistent final invoices. The appellants paid a sum of money and refused to pay more until they saw fuller details of their account. The contractor sued and obtained summary judgment for a portion of the remaining balance, plus pre-judgment interest and costs. The appellants appealed. The court had to decide whether the chambers judge made errors by misapplying the law on cost-plus contracts, failing to assess related-party supplier invoices, giving little weight to the appellants’ lay opinions on cost reasonableness, and accepting the contractor’s proof without expert evidence. The court also addressed the correct standard of review for these issues.
HELD: The appeal was dismissed. The court confirmed the governing approach to cost-plus disputes. On the issue of standard of proof, the court relied on *F.H. v McDougall*, 2008 SCC 53 at para 53: there is only one standard of proof in civil matters and that is proof on a balance of

probabilities (see also *Cosgrove v Saskatchewan Government Insurance*, 2025 SKCA 56 at para 61). Therefore, where there is no estimate, the contractor must prove, on a balance of probabilities, that the charges were incurred to do the contracted work and that the accounts are accurate. Proving a claim under a cost-plus contract involves three steps: 1) the contractor must show that the charges were for the agreed work and are accurate; 2) if proven, the opposing party must provide evidence that the charges are incorrect or unreliable; and 3) if doubt is raised, the contractor must then prove the accuracy and reliability of its accounts again. The court found that the chambers judge properly relied on accepted cost-plus principles and found the fourth, corrected invoice (with negotiated discounts) to be the most reliable. The chambers judge was entitled to give little weight to the appellants' lay opinions on reasonableness, because such views are opinion evidence and require proper expert qualification. Witness affidavits must focus on facts, not opinions or arguments, unless the witness is a qualified expert. On the other hand, expert evidence was not required for the contractor to prove the accuracy of its own accounts. The court awarded costs in favour of the respondent.

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***R v Emereuwa*, 2025 SKCA 83**

Leurer Drennan Kilback, 2025-09-03 (CA25083)

Criminal Law - *Mens Rea* - Driving Offences - Impaired Driving
Appeal - Grounds - Sufficiency of Evidence
Statutes - Interpretation - *Criminal Code*, Section 320.15(1)

The appellant was convicted in Provincial Court of failing to comply with a breath demand. The appellant appealed to the Court of King's Bench arguing that the trial judge applied the wrong legal standard in finding the Crown had proven the necessary *mens rea* because it had not proven he intended to fail to provide a suitable sample. The King's Bench judge dismissed the appeal and found that the appellant was properly convicted (appeal decision). The appellant sought leave to appeal, contending that the appeal judge misidentified the *mens rea* required under s. 320.15(1) of the *Criminal Code*.
HELD: Leave to appeal was granted and the appeal was allowed. The *mens rea* for failing to provide a breath sample under s. 320.15(1) required proof that the accused intended to fail or proof that the accused knew a demand had been made. The *mens rea* of the offence under s. 320.15(1) of the *Criminal Code* requires proof that the accused had subjective knowledge that a

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breath demand was made. But that is not enough to establish the *mens rea* for the entire offence. The *mens rea* of the prohibited act of failing to comply with the demand is satisfied by proof that the accused intended or was reckless in bringing about a failure, not by knowledge or awareness of the fact the demand was made. This conclusion is supported by a contextual interpretation of s. 320(1) that respects fundamental criminal law principles, and it is supported by textual and purposive analysis. The appeal judge erred by failing to identify the required *mens rea* and concluding that the appellant was properly convicted regardless of which expression of *mens rea* applied. At the outset of the appeal decision, the appeal judge recognized that the appellant's summary conviction appeal squarely raised the question of the proper interpretation of s. 320.15(1) and the *mens rea* standard expressed by that section, as well as the application of that legal standard to the facts. Those are questions of law reviewable on a correctness standard. It was therefore incumbent on him to identify the applicable *mens rea* standard and assess whether the trial judge had correctly identified and applied it. Considering that the *mens rea* of s. 320.15(1) requires proof of intent, the appeal judge erred in finding that the trial judge did not err by applying the mens rea formulation in *R v Sweet*, 2022 SKQB 126 and determining that the appellant had the requisite *mens rea* because he knew a breath demand had been made.

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***R v Bull*, [2025 SKCA 87](#)**

Caldwell Kalmakoff Bardai, 2025-09-11 (CA25087)

Criminal Law - Appeal - Crown
Criminal Law - Appeal - Sentence Appeal - Fitness
Criminal Law - Appeal - Sentence - Sexual Assault
Criminal Law - Appeal - Sentence - Parity

The respondent was convicted of sexual assault causing bodily harm. The Crown appealed the sentencing, arguing that the sentence imposed by the Provincial Court judge was demonstrably unfit given the severity of the crime. In 2021, the complainant was visiting the respondent's home, and the respondent sexually assaulted the complainant multiple times over several hours. The conduct included repeated and forceful sexual touching and penetration. A medical exam four days later documented abrasions and irritation in and around the complainant's genitals. The complainant was found to be vulnerable. The respondent was 56 years old, Indigenous, and had prior convictions including for assault, assault with a weapon, and a 2014

sexual assault. At sentencing, the Crown sought seven years' imprisonment; the defence sought two to three years. The judge imposed three years' imprisonment and ancillary orders. On appeal, the respondent sought to file fresh evidence about post-sentence conduct in custody. The court had to decide whether to admit the proposed fresh evidence, whether the sentencing judge's sentence was demonstrably unfit or affected by errors in principle, and, if intervention was warranted, what sentence should be imposed.
HELD: The appeal was allowed. The Court of Appeal (court) dismissed the application to adduce fresh evidence because much of it was hearsay, and the alleged positive post-sentence behaviour did not relate to the issue of sentence fitness. The court also found that the sentence was demonstrably unfit. The court applied the proportionality framework and the high threshold for appellate intervention from the principles found in *R v Friesen*, 2020 SCC 9. The court noted the judge's starting point of three years' imprisonment for major sexual assaults on adults assumes a first-time offender of otherwise good character; however, in the current matter, aggravating factors included the violent, intrusive, and prolonged nature of the assaults, the complainant's vulnerability, bodily harm, significant ongoing impacts, and the respondent's prior record (including a prior sexual assault). While *Gladue* considerations reduced moral culpability (see *R v Gladue*, [1999] 1 SCR 688; and *R v Ipeelee*, 2012 SCC 13), they did not justify a sentence at the starting point given the facts of this case. The court emphasized the parity and proportionality considerations along with the denunciation and deterrence objectives of sentencing under section 718.04 of the *Criminal Code*. The court substituted a sentence of 4.5 years (54 months) imprisonment and left the ancillary orders in place.

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***Peepeekisis Cree Nation v Whitecalf*, 2025 SKCA 89**

Leurer Jackson Bardai, 2025-09-12 (CA25089)

Creditor and Debtor - Seizure
Family Law - Child Support - Arrears - Enforcement
Statutes - Interpretation - *Enforcement of Maintenance Orders Act, 1997*
Statutes - Interpretation - *Indian Act*, Section 89

The appeal concerned whether a one-time $30,000 per capita payment from a Treaty 4 agricultural benefits settlement could be seized to enforce child support. A trust was created to receive the $150 million settlement by the Peepeekisis Cree Nation (Nation). The Nation then passed orders-in-council directing a per capita distribution to adult members. A member of the nation, the child support payor, owed child support to the support recipient. The Maintenance Enforcement Office served a notice of seizure on the

Nation. A chambers judge ordered the Nation to remit the payor's $30,000 share to Maintenance Enforcement to satisfy arrears of child support obligations. The Nation appealed. The court had to decide whether the $30,000 per-capita share was an "account" owed to the payor and therefore subject to seizure under *The Enforcement of Maintenance Orders Act, 1997* (EMOA), and whether s. 89(1) of the *Indian Act* barred seizure because the funds were connected to a reserve and Indigenous parties. HELD: The appeal was dismissed. The court held that the Nation's discretion ended once the trust and orders-in-council approved the *per capita* distribution and payments began to be forwarded to the eligible members. At that point, the payor's $30,000 share became a "monetary obligation" (an "account") that could be seized under the EMOA. The court further reviewed and interpreted the order-in-council, the relevant bylaws and regulations applicable to this matter and found that once the *per capita* payments were made to some members, the shares became a monetary obligation (account) subject to seizure. Furthermore, s. 89 of the *Indian Act* permits seizure where the support recipient is a status Indian. The recipient of child support arrears was a status indigenous person in this case. If status were disputed, a court could require the Director to state the basis (for example, that the treaty card was reviewed), using the EMOA flexible evidentiary rule for trustworthy hearsay. On the record, the evidence was sufficient to establish the recipient's status.

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***Mosiuk v BASF Canada Inc.*, [2025 SKCA 90]**

Drennan Bardai Kilback, 2025-09-12 (CA25090)

Civil Procedure - Interlocutory Injunction - Appeal
Civil Procedure - Mootness
Appeals - New Issue Raised

The appellant farmers signed a licensing contract with Bayer that gave them a limited license to use InVigor canola seed to plant a single crop. They were prohibited from harvesting seeds to plant a second-generation crop. Bayer's rights under the contract were assigned to BASF (the respondent) in 2018. The respondent suspected that the appellants planted canola in violation of the contract, but the appellants refused to cooperate with the respondent's audit request. The respondent commenced an action against the appellants for breach of contract and patent infringement. The appellant opposed the respondent's application and argued that the contract was not enforceable because he signed it without reading it, the seed dealer had told him it was a mere formality, and he received no consideration. The Court of King's Bench granted the respondent's application for an interlocutory injunction and preservation order. The decision authorized the respondent to enter onto the appellants' land, take canola leaf samples, and conduct testing on those leaves. The judge found that the respondent established a serious issue to be tried in the underlying action for breach of contract and patent infringement. The judge found that the respondent would suffer irreparable harm if it could not preserve evidence to prove that the appellants grew canola contrary to the terms of the licencing contract and concluded that the balance of convenience favoured the respondent's position. On appeal, the appellants sought an order directing the respondent to destroy the leaf samples and test results. In the alternative, the appellants sought an order prohibiting the respondent from using the test results in evidence at trial. The Court of Appeal (court) had to determine whether: 1) the appeal was moot; 2) the appellants should be permitted to raise new issues on appeal; 3) the judge erred by finding the respondent had established a serious issue to be tried in the absence of detailed evidence of the specific patents it sought to enforce; 4) the judge erred by finding the respondent had established a serious issue to be tried when the contract was unenforceable because of the absence of consideration or misrepresentation; and 5) whether the judge considered inadmissible evidence.

HELD: The court dismissed the appeal with costs to the respondent. 1) Even if the appeal were moot, it should still be heard. It would have been difficult for the appellants to challenge the decision before the respondent took the samples, given the tight timeframe. 2) The court found it was not in the interests of justice to permit the appellants to raise new issues on appeal. Generally, an argument that was not raised or considered in chambers cannot be raised for the first time on appeal, but the court noted that the decision to entertain a new argument on appeal was discretionary and guided by balancing the interests of justice as they affect the parties. Here, it would not be appropriate to consider the new issues because there would be procedural prejudice to the respondent. The court added that the appellants filed an application in the Court of King's Bench for an order dismissing the action based on a forum selection clause. As this was a live issue in King's Bench, it would not be in the interests of justice for the court to determine it here. 3) The court found no error in the discretionary decision of the Court of King's Bench to grant the interlocutory injunction. The court will only interfere in a decision to grant or refuse an interlocutory injunction if the decision "involves an error of principle, the disregard or misapprehension of a material fact, a failure to act judicially or a result that is so plainly wrong as to amount to an injustice" (para 26). For the purposes of the interlocutory injunction application, the uncontested evidentiary assertion that Bayer's right under the InVigor patents was assigned to the respondent was sufficient to establish that fact. To raise a serious issue to be tried, the applicant is not required to prove their claim will succeed, just that it is not frivolous or vexatious. The court found no error in the judge's finding that the respondent had raised a serious issue to be tried. 3) The court did not find that the judge erred by finding the respondent had established a serious issue to be tried because the licensing contract was unenforceable. The judge accepted the respondent's submission that the consideration the appellant received for signing the contract was the right to use InVigor seed. The judge was not persuaded the seed dealer's statement to the appellant that the contract was for "housekeeping" purposes was a misrepresentation that called into question the enforceability of the contract in a way that prevented him from finding there was a triable issue. The judge's conclusion did not reveal an error. 4) The court did not agree that the judge erred by considering inadmissible affidavit evidence. The admission of the evidence did not cause a substantial wrong or miscarriage of justice. The appellants did not object to the paragraphs or raise concerns about them during the hearing. Generally, if no objection is raised to the admissibility of evidence in a civil trial, an objection on appeal will be unsuccessful unless the admission of the evidence has caused a substantial wrong or a miscarriage of justice.



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***Canalta Real Estate Services Ltd. v Melfort (City)*, 2025 SKCA 91**

Leurer Tholl Bardai, 2025-09-17 (CA25091)

Administrative Law - Judicial Review - Appeal
Municipal Law - Property Assessment Appeal

The appellants owned limited service hotels. They appealed the decision of a judge of the Court of King's Bench dismissing their application for judicial review of their 2017 property tax assessment. The appellants argued that it was an error for the judge to find that the Saskatchewan Assessment Management Agency (SAMA) reasonably interpreted the directions given to it by the Assessment Appeals Committee of the Saskatchewan Municipal Board (committee) for the reassessment of the hotels. A decision of the committee can be appealed to the Court of Appeal under section 33.1 of *The Municipal Board Act*. Where an assessor is alleged not to have complied with directions given to it in a remittal decision, the aggrieved party may seek judicial review. First, the owners appealed each property's assessment to the applicable board of revision. The board agreed with the owners that the room expense ratio used by SAMA was too low and directed a reassessment using a different ratio. SAMA appealed the board's decisions to the committee. The owners cross appealed the board's decisions to the committee. The committee directed SAMA to redo the assessment calculation. The owners then applied for leave to appeal the committee's decision to the Court of Appeal, which was dismissed. SAMA reassessed the property tax assessments for the hotels, and the owners applied for judicial review. The owners argued that SAMA misinterpreted the committee decision and breached the duty of fairness owed to them by failing to give them the opportunity to offer submissions on the proper recalculation of the assessed value. The judge dismissed the application for judicial review. Here, the only issue raised on appeal was whether the judge erred when she held that SAMA's interpretation of the committee decision was reasonable.
HELD: The Court of Appeal (court) dismissed the appellants' appeal and granted one set of costs to the respondents. The judge did not err in dismissing the application for judicial review of the reassessment decision and correctly held that the respondent reasonably interpreted the committee decision. The court was satisfied that SAMA's interpretation of the committee decision was reasonable, and that it was impossible for SAMA to have read the committee decision in any way other than it did. The committee decision directed SAMA to recalculate the assessments for the hotels by incorporating the revised room expense ratio in all parts of the assessment model. There was only one assessment model before the committee. SAMA asked the committee to order that the adjusted room expense ratio be carried forward through the entirety of the model; this is exactly what the committee ordered SAMA to do. The committee was clear that any adjustment to the room expense ratio would carry into all parts of the assessment calculation.

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**_A.N.H. v Saskatchewan (Justice)_, 2025 SKCA 95**

Leurer Tholl Bardai, 2025-09-30 (CA25095)

Appeal - Administrative Law - Adequate Alternative Remedy

The parties had been engaged in active family law litigation for 15 years, with most of it taking place in British Columbia. The respondent mother was granted primary residency of the children and was permitted to move to Saskatchewan. She successfully applied to change the children's names pursuant to the administrative process in *The Change of Name Act, 1995* (Act). She did not notify the appellant father of the application and did not seek his consent, notifying him only after the change was granted. He filed two applications in the Court of King's Bench and concurrently applied to the director to have the name changes annulled under the Act. The chambers judge dismissed the appellant's judicial review application, finding that an adequate alternative remedy existed under the Act and that it was not appropriate to proceed with the originating application until the administrative process under the Act was exhausted. At the time of that decision, the application to annul the name changes was still outstanding; it was later dismissed by the director. The appellant's application for judicial review of the annulment decision had not yet been heard. On appeal, he sought to file new evidence that he argued required disclosure by the director and he argued that the chambers judge erred in finding an adequate alternative remedy existed. The mother was opposed to the appeal and applied to have the appellant designated a vexatious litigant. The government made submissions on relevant procedure and legal considerations and opposed the application seeking disclosure of documents. The Court of Appeal (court) determined: 1) whether the appellant's new evidence and disclosure application should be granted; 2) whether the chambers judge erred in determining that an adequate alternative remedy existed; 3) whether the chambers judge erred regarding the appellant's *Charter* rights; and 4) whether to grant the respondent's application to designate the appellant a vexatious litigant.

HELD: The court dismissed the appeal, dismissed the application to declare the appellant a vexatious litigant, and awarded $2,000 in costs to the respondent. 1) The court noted that the appellant sought a first instance order from the court requiring that documents be disclosed by the director; it was not a new evidence application under Rule 59 of *The Court of Appeal Rules*. As the appellant did not identify any basis for the court to grant this relief, this aspect of his application was dismissed. 2) The chambers judge did not make an error in finding that there was an adequate alternative remedy available. The chambers judge correctly identified and applied the law on the exercise of judicial discretion in the face of an adequate alternative remedy (*Saskatoon (City) v Walmart Canada Corp*., 2019 SKCA 3 and *Strickland v Canada (Attorney General)*, 2015 SCC 37). 3) There was no error in the chambers judge's disposition of the *Charter* issue given the narrow issues that were in front of her, and the court accordingly did not give effect to the appellant's submissions on this issue. 4) The respondent's application under Rule 46.2 of *The Court of Appeal Rules* to have the appellant declared a vexatious litigant was dismissed without prejudice to the respondent's right to bring another such application in the future. The appellant had been declared a vexatious litigant in British Columbia, but the court held that his actions here had not yet risen to the level required to invoke the exceptional remedy to declare him a vexatious litigant.


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***Holmes v Jastek Master Builder 2004 Inc.*, 2025 SKKB 141**

Clackson, 2025-09-03 (KB25139)

Civil Procedure - Class Action
Civil Procedure - Class Action - Costs
Civil Procedure - Costs - Enhanced Costs
Civil Procedure - Costs - Full Indemnity

This was the costs stage of a long-running certified class action about a failed condominium development. Earlier decisions held the corporate defendants liable for breach of contract and later for breach of fiduciary duty and awarded the class $3,263,881.91 in principal damages plus $687,774.64 in pre-judgment interest. The plaintiffs asked for costs on a full-indemnity basis (or, alternatively, a multiple of the Tariff). The defendants argued there should be no costs for the certification phase, that any post-certification costs should be "modest," and that the plaintiffs should be sanctioned for breaching a sealing order about financial statements. The defendants also objected to two specific Tariff items in the draft bill of costs. The court had to decide whether the plaintiffs were entitled to costs for the certification proceedings and what costs should be awarded overall.
HELD: The court awarded the plaintiffs their costs of the proceedings, to be taxed under column 2 of the current Tariff of Costs, with specified adjustments. For certification, the court held that s. 40 of *The Class Actions Act* permits cost awards for all stages, including certification. The plaintiffs succeeded on certification, and therefore, they were entitled to certification costs. The court declined full indemnity or enhanced costs. The court applied Rule 11-1 of *The King's Bench Rules*, its discretion and the *Siemens* framework for solicitor-client costs (see *Siemens v Bawolin*, 2002 SKCA 84), and stated that this case was not "exceptional" and did not warrant full indemnity. Using the current Tariff as a reference and considering complexity, importance, duration, experts, amounts, and parity, the court held that this matter did not justify column 3 or enhanced multiple costs and that the column 2 costs were appropriate. On the issue of the sealing-order complaint, the court refused sanctions or contempt. The order was ambiguous, allowing parties to "refer to" the sealed information in submissions. No actual harm was shown or suffered, and the strict elements for civil contempt were not met. As to the bill of costs, the court allowed item 23 (responses to written questions) at column 2 for each of 36 class members, totalling $13,500, and for item 29 (summary judgment on damages) the court fixed costs at $47,500 (an upward adjustment from the column 2 figure) to reflect the preparation of 36 affidavits for the summary judgment application.

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***Saskatchewan Rivers Public School Division No. 119 v Dorion*, 2025 SKKB 143**

Wempe, 2025-09-09 (KB25144)

Administrative Law - Judicial Review - Jurisdiction
Arbitration Board Decision - Grievance - Collective Bargaining Agreement

The applicant school division sought judicial review of a decision made by an arbitration board appointed under *The Education Act, 1995* (Act). The board found that it had jurisdiction to hear a grievance. The background involved the Saskatchewan Teachers' Federation (STF) bringing a grievance on behalf of a substitute teacher. The grievance alleged that the school division informed the substitute teacher via phone call that he would be removed from the substitute teachers list. The phone call was on a day the teacher was not working. The teacher did not have a representative from the STF present and was not offered the opportunity to arrange for one. The STF alleged that the school division violated the collective bargaining agreement by making the decision arbitrarily or in bad faith, and by having a disciplinary telephone meeting without providing the opportunity to obtain representation. The school division's assertion that the arbitration board did not have jurisdiction over the grievance stemmed from its position that the collective bargaining agreement did not apply to a substitute teacher working on a day-to-day basis and who was not employed on the day he was advised he would be removed from the list. The parties submitted an agreed statement of facts for the board to determine the preliminary issue of jurisdiction. The arbitration board found that it had jurisdiction to hear the grievance because there was nothing to suggest this fact scenario would not apply to Article 15 of the collective bargaining agreement. The court determined the following issues: 1) the appropriate standard of review; 2) whether the application for judicial review was premature; 3) what were the relevant statutory and collective bargaining agreement provisions; 4) whether the arbitration board's decision was reasonable.
HELD: The court dismissed the school division's application for judicial review and ordered costs payable by the school division to the STF in the amount of $5,000. The court found that the arbitration board's decision that it had jurisdiction to hear the grievance was reasonable. The arbitration board did not exceed its jurisdiction by making findings unsupported by the evidence, and it provided sufficient reasons. 1) Both parties agreed that the appropriate standard of review was reasonableness. The presumption of reasonableness is rebutted in two situations: i) where the legislature has prescribed a standard of review in the governing statute; and ii) where the rule of law requires the standard of correctness to be applied (for constitutional questions, general questions of law of central importance to the legal system as a whole, or questions on the jurisdictional boundaries between administrative bodies). The court agreed that reasonableness was the correct standard of review because none of the above situations applied. 2) The court found the application for judicial review was not premature. The parties agreed to a bifurcated process, and they sought a ruling from the board on the jurisdiction issue. There was no reason to force the parties to obtain a final determination from the board on the grievance proper prior to seeking judicial review on the issue of jurisdiction from the court. 3) The court set out the applicable provisions of the Act and Regulations, and the collective bargaining agreement. 4) The arbitration board's decision was reasonable; it did not exceed its jurisdiction. It was reasonable and appropriate for the arbitration board to consider the overall context of substitute teachers, including the rights and obligations created between substitute teachers and the school division. Even on a narrow and discrete decision about jurisdiction, the board needed context to inform its decision. The school division did not suffer any breach of procedural fairness; the arbitration board did not delve into the merits of the grievance. The board's reasons were sufficient, and there was nothing unreasonable in the board's conclusion that the provisions of the collective bargaining agreement were broader than the language of the collective agreements in the cases cited by the school division. The court agreed with the board that the school division's argument did not accord with the broader context of substitute teachers.

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***Schiller v Saskatchewan (Education)*, 2025 SKKB 146**

Mitchell, 2025-09-11 (KB25138)

Privacy - Access to Information
Public Authorities - Freedom of Information
Statutes - Interpretation - *Freedom of Information and Protection of Privacy Act*

The applicant appealed the respondent's decision to withhold certain information following the release of a report filed by Saskatchewan's Information and Privacy Commissioner (commissioner). In the report, the commissioner recommended that virtually all the information that the respondent had redacted from its response to the applicant's initial access to information request should be disclosed to him. The respondent complied with most of the commissioner's recommendations; however, it continued to refuse to disclose personal and professional information relating to certain public servants involved in the matter.
HELD: The application was dismissed. It was not necessary for the contested records to be reviewed in camera. Under s. 29(1) of *The Freedom of Information and Protection of Privacy Act*, "no government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with [section 29] or section 30." In this case, the respondent adequately explained why it continued to redact personal and professional information of employees of various public or governmental institutions.

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***Lac La Ronge Indian Band v Canada (Attorney General)*, 2025 SKKB 147**

Popescul, 2025-09-16 (KB25145)

Civil Procedure - Class Action - Certification
Civil Procedure - Class Action - Certification Application
Civil Procedure - Class Action - Representative Plaintiff

The Lac La Ronge Indian Band and the Peter Ballantyne Cree Nation applied pursuant to *The Class Actions Act* (Act) seeking certification of this proceeding as a class action. They further requested that one of those plaintiffs, the Lac La Ronge Indian Band, be appointed the representative plaintiff.
HELD: The court refused the application to certify the action as a class action. Section 6(1) of the Act requires a court to certify a proceeding as a class action if five criteria are satisfied: (1) the pleadings must disclose a cause of action; (2) there must be an identifiable class; (3) the claims of the class members must raise common issues; (4) a class action would be the preferable procedure for resolving the common issues; and (5) there must be a suitable representative plaintiff, who is willing to be appointed, who can fairly represent the group, has a workable method of advancing the action on behalf of the class and informing members, and does not have a conflict of interest with others in the group. (1) The claim pled material facts which, if accepted as true,

provided a sufficient basis for the action. It could not fairly be said that the claim had no reasonable prospect of success. The 47 bands were also clearly identified and mutually agreed upon by the parties as those currently covered by Treaty 6. (2) The claims of the class members raised common issues. For an issue to be considered a common issue, it must be a substantial ingredient of each class member's claim, and its resolution must be necessary for the resolution of each class member's claim. An issue can be a common issue if it is an issue of fact or law that is common to all claims, and its resolution would advance the litigation for (or against) a class. In this case, the questions of whether the opioid crisis constitutes a "pestilence or calamity" within the meaning of Treaty 6 and whether the respondent was obliged to provide necessary and sufficient assistance to relieve the opioid crisis on Treaty 6 reserves were clearly common issues. Success for one class member necessarily meant success for all, and the resolution of these questions would either advance or dispose of the claims of all class members. However, the plaintiffs did not establish a sufficient basis in fact to support the issue of remedies in the event of the defendant being obliged to provide "necessary and sufficient" assistance to relieve the opioid crisis on Treaty 6 reserves as being a common issue. (3) The plaintiff was a suitable representative plaintiff. In this case, the proposed plaintiff was willing and prepared to be appointed as the representative plaintiff and would properly and adequately represent the interests of the class. (4) The plaintiffs failed to establish some basis in fact that a class action would be the preferable procedure to resolve the common issues. In determining whether a class action is the preferable procedure, the court must determine whether a class proceeding offers a fair, efficient and manageable method for advancing the claim and conduct a comparative analysis, weighing the relative advantages of a class action against all other reasonably available means of resolving the class members' claims, including non judicial avenues. The ultimate question is whether these alternative methods are preferable, not whether the class action would fully achieve the goals of fairness, efficiency and manageability. (5) The court found that the Lac La Ronge Indian Band would fairly and adequately represent the interests of the class. However, in this case, a class action failed to serve the interests of Indigenous people and Canada alike. The individual issues in this case would have continued to predominate following the common trial such that the conclusion of the class action would only mark the beginning of the broader litigation. At best, a class action would only address some preliminary issues but would leave the majority of substantive matters unresolved. A conventional lawsuit or a representative action was the preferable procedure.

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***Anstead v Saskatchewan Medical Association*, 2025 SKKB 160**

Currie, 2025-09-26 (KB25154)

Civil Procedure - Class Action - Certification
Civil Procedure - Class Action - Certification - Summary Judgment
Civil Procedure - Limitation Period - Discoverability Principle

This action had been certified as a class action but had not reached the common issues trial. The defendant applied for dismissal of the action by way of a summary judgment.
HELD: The court concluded that three of the four issues raised by the defendant were appropriate for summary judgment. Under

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Rule 7-5 of *The King's Bench Rules*, the court may grant summary judgment if satisfied that there is no genuine issue requiring a trial with respect to a claim or defence or if there is a genuine issue requiring a trial: (a) the issue can be resolved through the court's fact-finding powers and (b) it is in the interests of justice to exercise the fact-finding powers and to grant judgment. In this case, the following issues raised by the defendant were appropriate for summary judgement: (a) whether the organizational and consultative framework that is established in The Saskatchewan Medical Care Insurance Act (the SMCIA), is a comprehensive code that displaces common law duties such as those claimed in this action; (b) whether the pleaded common law duties conflict and are superseded by the provisions of the SMCIA; (c) whether the common law duties, as alleged in the pleadings, were in fact complied with. The issue of whether the action was barred by the applicable limitation period was not appropriate for determination by way of summary judgment.



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