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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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***R v Walls*, [2025 SKCA 93]**

Caldwell Tholl Kalmakoff, 2025-09-25 (CA25093)

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Criminal Law - Appeal - Defence
Criminal Law - Defences - Bias

A jury convicted the appellant of aggravated assault. On appeal, the appellant argued the trial judge made procedural and instructional errors that denied him a fair trial by admitting the appellant's police statement as voluntary; refusing an adjournment after the Crown removed several doctors as witnesses; sequencing jury selection before pre-trial motions; limiting access to and use of medical records; declining to re-open the case for a jury viewing; aspects of the jury charge instruction and self-defence; restricting cross-examination about a withdrawn criminal charge against the complainant; and alleged judicial bias. The Court of Appeal (court) had to decide whether the trial judge made an error, and whether any actual or apparent bias made the trial unfair.
HELD: The court dismissed the appeal and upheld the conviction. On the issue of voluntariness of statements made to the police,
the court found that the trial judge correctly applied the law of admissibility of an accused's statement from the test in *R v Oickle*, 2000 SCC 38. The trial judge relied on the following

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Civil Procedure - Court of Appeal Rule 46.1

Civil Procedure - *King's Bench Rules*, Rule 10-444

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supporting facts: the police gave repeated rights and warnings; no threats or promises were made; the setting was not oppressive; the appellant had an operating mind; and the record showed no trickery. On the issue of adjournment, the court held that the trial judge exercised discretion properly. The court found no error in the rulings on production or cross-examination of the record compiler. The judge reasonably declined to reopen for a jury view because photographs and testimony already addressed the relevant point. On the issue of jury charge, the court determined that the trial judge properly equipped the jury and the self-defence instruction correctly placed the Crown's burden; and the judge's neutral comments on evidence stayed within permissible guidance (see *R v Abdullahi*, 2023 SCC 19). The record did not show bias or a reasonable apprehension of bias. The trial judge managed a difficult jury trial even-handedly. The court ordered the appellant, who was on release, to surrender into custody by the specified date and time.

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***R v Standingready*, 2025 SKCA 94**

Tholl Kalmakoff McCreary, 2025-09-30 (CA25094)

Criminal Law - Appeal
Criminal Law - Appeal - Conviction
Criminal Law - Appeal - Conviction - Sexual Assault
Criminal Law - Assault - Sexual Assault - Consent
Criminal Law - Evidence - Credibility

A Provincial Court judge convicted the appellant of sexual assault. The judge accepted the complainant's account that the appellant touched her breasts while she was passed out or sleeping on a basement couch and later had intercourse with her on the main floor while she slept. A friend intervened in the basement and later saw the complainant pulling up her pants with the appellant nearby. The judge rejected the appellant's denial that anything had happened beyond consensual kissing. The Court of Appeal (court) had to decide whether the trial judge misapprehended the evidence in a way that caused a miscarriage of justice, whether the verdict was unreasonable, whether the judge made legal errors about consent, and whether the judge's remedy for a breach of the rule in *Browne v Dunn* resulted in unfairness.
HELD: The court dismissed the appeal and upheld the conviction. The court held that two

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misstatements in the judicial reasons (about who helped the complainant upstairs and who appeared to remove a bra) did not drive the result and did not meet the strict test for a material misapprehension that taints a verdict (see: *R v Lohrer*, 2004 SCC 80). The court found the verdict was reasonable. The evidence supported the trial judge's finding that intercourse occurred. Capacity does not turn on memory, speech, or motor skills (see: *R v G.F.*, 2021 SCC 20). No palpable and overriding errors appeared, and the judge's reasoning was not illogical or inconsistent with accepted evidence. The court found no legal error regarding consent. The defence of mistaken belief in communicated consent had no air of reality because the appellant denied any sexual activity beyond kissing and took no steps to ascertain consent. On the issue of the *Browne v Dunn* rule regarding witness credibility and the opportunity to cross-examine, the judge acknowledged a violation of the rule but decided to allow arguments on the weight of the evidence, as defence counsel urged the judge not to recall the witness. The appeal was dismissed.

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***Innovation Federal Credit Union v MacVicar*, 2025 SKCA 96**

Schwann Kalmakoff McCreary, 2025-10-01 (CA25096)

Debtor and Creditor - Mortgage - Foreclosure
Mortgage - Foreclosure - Application for Judicial Sale - Order *Nisi*
Statutes - Interpretation - *King's Bench Act* - Section 10, Section 11
Statutes - Interpretation - *Limitation of Civil Rights Act*, Section 11

The appellant lender started foreclosure proceedings after the respondents defaulted on the residential mortgage. The lender's draft order *nisi* included $3,505.42, which it paid for fire insurance on the mortgaged property when the respondents let the coverage lapse. A chambers judge issued an order *nisi* but refused to include the insurance amount. The judge relied on s. 10-11 of *The King's Bench Act*, s. 11 of *The Limitation of Civil Rights Act* and caselaw to treat the insurance as an impermissible "cost or fee" incidental to default. The Court of Appeal (court) had to decide whether to grant leave to appeal (and, if so, whether to grant it *nunc pro tunc*), and whether the chambers judge erred in excluding the insurance amount.
HELD: The court allowed the appeal. If leave was required, the court granted it nunc pro tunc (making the order valid retroactively). The court held that s. 10-11 of *The King's Bench Act* deals with acceleration clauses and a mortgagor's right to cure default; it does not define or limit the

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categories of "money due" under a mortgage. The court further held that s. 11 of *The Limitation of Civil Rights Act* lists specific items a mortgagee cannot add (for example, most "taxes, rates or assessments" other than property taxes, collection charges, late fees, and life insurance premiums). That section does not mention property insurance premiums on the mortgaged buildings. The mortgage here expressly required the mortgagors to keep fire insurance and allowed the mortgagee, on default, to procure insurance and add the cost to the mortgage account. The court found that the chambers judge misapplied the rules from *Innovation Credit Union v Panteluk*, 2025 SKKB 3, and *Home Equity Mortgage Corporation v Matycio*, 2018 SKQB 283. Those rulings did not bar recovery of property insurance costs. The court ordered the insurance amount to be included in the mortgage account and remitted the matter to the Court of King's Bench to finalize the order *nisi* (including recalculating interest).

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***Anderson v Moose Jaw (City)*, 2025 SKCA 100**

Leurer Tholl Bardai, 2025-10-08 (CA25100)

Civil Procedure - Court of Appeal Rule 46.1
Municipal Law - Appeal Procedure
Municipal Law - Property Taxes - Appeal
Municipal Law - Taxation - Enforcement
Real Property - *Tax Enforcement Act*

The corporate appellant owned a commercial property in Moose Jaw. After years of unpaid property taxes and failed assessment appeals, the City of Moose Jaw (the city) took title under The Tax Enforcement Act in 2021. In 2022, the individual appellant paid the arrears at City Hall. Staff accepted the money in error (because the title had already been transferred). The city tried to return the funds. The appellant then filed an originating application seeking a declaration that the tax payment restored their position and that they could remain in possession of the property. The city applied for summary judgment and for a writ of possession. A chambers judge found no genuine issue for trial, rejected the promissory estoppel argument, dismissed the appellants' application, and granted the city possession of the property. The appellant appealed. The city applied in the Court of Appeal (court) to quash the appeal, arguing it was without merit. The court

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had to decide whether to quash the appeal.
HELD: The court granted the application and quashed the appeal, finding it “manifestly without merit” under Rule 46.1(c) of *The Court of Appeal Rules* (see also *Jardine v Hyggen*, 2018 SKCA 38). The appellant did not allege any error in the chambers judge’s application of promissory estoppel, laches, or the law governing possession after title issues under *The Tax Enforcement Act*. Their complaints targeted matters not before the chambers judge, such as the accuracy of property tax assessments and steps in the tax-enforcement process. Payment of arrears after the title passed to the city could not undo the transfer. The chambers judge correctly concluded that promissory estoppel did not apply because the fundamental elements of this legal rule did not apply here (see paragraphs 10, 11, 22 of the decision). As none of the grounds of appeal could succeed, the court quashed the appeal.

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***R v Van Zyl*, 2025 SKCA 104**

Kalmakoff McCreary Kilback, 2025-10-02 (CA25104)

Criminal Law - Appeal - Summary Conviction Appeal
Charter of Rights - Demand for a Breath Sample - Right to Counsel
Constitutional Law - *Charter of Rights*, Section 8, Section 9 - Search - Demand for Breath Sample - Reasonable and Probable Grounds

The appellant had been convicted in Provincial Court of having a blood alcohol concentration equal to or exceeding .08 within two hours of ceasing to operate a conveyance. His summary conviction appeal to the Court of King’s Bench was also dismissed. The appellant sought leave to appeal, contending that the summary conviction appeal judge erred in failing to find error in two determinations made by the trial judge: (i) that the police had reasonable grounds to make a breath demand; and (ii) that a ten minute delay in informing him of his right to counsel was reasonable and not a breach of his rights under s. 10(b) of the *Charter*.
HELD: Leave to appeal was denied. (1) The appellant did not raise a valid question of law. To obtain leave to appeal, an appellant must establish that the proposed appeal raises a question of law that is either (i) significant to the administration of justice generally, or (ii) compellingly meritorious in the case in question. In this case, the appeal judge correctly identified that different

burdens of proof were involved in determining whether the appellant was guilty of operating the truck while his ability to do so was impaired by alcohol and establishing the existence of reasonable grounds to make a breath demand. As a result, the appellant's argument that this conclusion was in error and that the facts as found by the trial judge did not amount to objectively reasonable grounds to make a breath demand because he was acquitted of impaired driving did not give rise to a compellingly meritorious question of law. The case also involved the application of settled law to a factual matrix that was not unique or unusual in any material way, meaning that the issue was not significant to the administration of justice more generally. (2) Whether the appeal judge's conclusion that the facts as found by the trial judge did not amount to a violation of the appellant's rights under s. 10(b) of the *Charter* was correct did not give rise to a compellingly meritorious question of law. The appeal judge applied the proper legal lens to the facts found by the trial judge and determined the trial judge was correct to find no violation of the appellant's s. 10(b) rights. The appellant's argument that this conclusion was in error did not meet the merit criterion for granting leave.

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***R v Ungar*, 2025 SKCA 103**

Kalmakoff McCreary Kilback, 2025-10-14 (CA25103)

Criminal Law - Appeal - Assault Causing Bodily Harm
Criminal Law - Evidence - Reliability
Criminal Law - Reasonable Inference

The appellant attended a party in April 2023. A fight broke out during the party in which the appellant pulled the complainant backward by the neck of his hoodie. The complainant fell and lost consciousness, and while unconscious, two other people fell on his head and torso. All of this resulted in a skull fracture for the complainant. The trial judge determined that the appellant's actions were a factual but not a legal cause of the complainant's skull fracture. The appellant was, however, convicted at Provincial Court of assault causing bodily harm. The appellant appealed the conviction on the basis that the judge rendered an unreasonable verdict.

HELD: The appeal was dismissed. (1) The trial judge did not make a reasoning error when he assessed the reliability of the complainant's evidence of tactile sensation. If a trial judge considers a witness to be credible and reliable, they can conclude that the witness is unlikely to have been mistaken in their account of a sensation they felt. The trial judge's reasons disclosed that he carefully reviewed the complainant's evidence and concluded that it was both credible and reliable because it was internally consistent and did not change during cross-examination. The judge also determined that the fact that the complainant's evidence was straightforward and not exaggerated was supportive of both its credibility and reliability. All of this constituted a complete and thorough analysis of the complainant's credibility and reliability in the circumstances of the case. Given that the trial judge found that the complainant's evidence was credible and reliable as a whole, he was entitled to find that the complainant's direct evidence respecting what he felt (and did not feel) was also reliable. (2) The judge's verdict was based on direct evidence that he did accept and there was no need to draw a circumstantial inference. While an appellate court is entitled to review and reweigh the evidence to determine if the verdict was reasonable, it is not entitled to overturn factual or credibility findings absent palpable and overriding error. A trial judge's verdict is unreasonable if the judge found a fact or drew an inference that could not be supported by the evidence, or plainly contradicted the evidence, or if it were illogical or irrational. In this case, the key issue was whether the appellant pulled at the neck of the complainant's hoodie, causing him to fall. The conclusion the trial judge drew respecting who pulled the complainant, causing him to fall to the ground, was consistent with the facts the judge found from the direct evidence that was available. The judge's verdict was justified by and grounded in the evidence, and his reasons contained no irrationality or illogical reasoning.

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***Royal Bank of Canada v Preston*, 2025 SKKB 144**

Danyliuk, 2025-09-10 (KB25140)

Debtor and Creditor - Mortgage - Foreclosure
Mortgage - Foreclosure - Application for Judicial Sale - Order Nisi
Mortgages - Immediate Possession Order
Civil Procedure - King's Bench Rules, Rule 10-44

The Royal Bank (RBC) initiated foreclosure proceedings after the defendant fell into arrears on a loan, line of credit, and Visa credit card account secured by a mortgage on a home. The appraised value of the house was below the amount owing. The bank asked the court for an order nisi for sale by real estate listing and immediate possession under Rule 10-44 of *The King's Bench Rules*. The defendant appeared, cooperated with service, and did not oppose the sale order. The court had to decide whether to grant immediate possession under Rule 10-44 in circumstances where the defendant had cooperated, and there was no evidence of obstruction, and whether to issue an order *nisi* for judicial sale (including the terms under which to do so).
HELD: The court granted an order *nisi* for judicial sale by real estate listing with a reserve bid of $92,000. The court, however, refused to grant immediate possession. The court explained that immediate possession is discretionary, must be pleaded and brought on with notice, and requires evidence that justifies removing an owner from their home before foreclosure is completed. Rule 10-44 does not make possession automatic; judges act on evidence to exercise their discretion in this regard (see

Co-operative Trust v Target 21 (1984), 36 Sask R 287 (QB)). The court rejected seeking possession as a routine, “just in case” request and emphasized that such orders are reactive and are granted when a mortgagor’s conduct or omissions put the property or the lender’s security at risk. They are not automatic (see *Blaine Lake Farm Equipment (1964) Ltd. v 101100505 Saskatchewan Ltd.*, 2011 SKQB 449 at para 110). Given the defendant’s cooperation and the absence of jeopardy, the court declined to order immediate possession.

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***R v Pacquette*, 2025 SKKB 145**

Popescul, 2025-09-11 (KB25141)

Criminal Law - Appeal - Sentence
Criminal Law - Appeal - Sentence - Fitness of Sentence
Criminal Law - Appeal of Sentence - Gravity of Offence
Criminal Law - Appeal - Sentence Appeal - Fitness
Criminal Law - Conditional Sentence Orders - Sentence Appeal

The respondent pled guilty to assaulting a peace officer. Police arrested the respondent outside a Saskatoon bar after a disturbance. During the arrest, the respondent struggled and kicked an officer in the face and body, causing minor injuries and dislodging the officer’s body-worn camera. The Crown and defence presented a joint submission for a nine-month conditional sentence order (CSO) with strict conditions (curfew, no alcohol or drugs, counselling, and treatment). The sentencing judge rejected the joint submission and instead imposed a conditional discharge with 12 months’ probation and community service. The Crown appealed. The court had to decide whether the sentencing judge applied the correct legal test in rejecting a joint submission, and, if necessary, whether the judge imposed an unfit sentence by failing to apply the proper sentencing principles.
HELD: The court allowed the appeal and varied the sentence in accordance with the joint submission (a nine-month CSO with the proposed conditions). The sentencing judge made an error of law by treating the joint submission as a regular fitness review and rejecting it as “disproportionate,” rather than asking whether accepting it would be contrary to the public interest. The relevant legal test for this issue is established in *R v Anthony-Cook*, 2016 SCC 43. On a fresh application of the correct test by the Court of King’s Bench, the court held that the CSO was not contrary to the public interest. Assaulting a police officer is serious and calls for denunciation and deterrence, and the joint proposal by the Crown and defence addressed those aims while supporting rehabilitation. The court found that the sentencing judge erred in law. The court substituted the sentence with the joint submission for the conditional sentence.

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***Boire v Boire*, 2025 SKKB 150**

Davis, 2025-09-16 (KB25146)

Estates and Trusts - Express Trust

The applicant was an 86-year-old widower who wanted to sell the now-vacant family home. In 2023, the applicant and his spouse signed a written agreement with their three children. The agreement said the children would be added to the title for estate planning purposes, but the parents would retain complete control, possession, and the right to sell during their lifetimes, receive all revenues, and pay all expenses. After the applicant's spouse died, the applicant decided to sell the house. The daughters agreed to list the house for sale. The respondent (the son) refused to sign and tried to block the sale unless the family guaranteed him a future share. The applicant asked the court to decide what the 2023 agreement meant and to clear the title so the sale could proceed. The court had to decide whether the 2023 agreement created an express trust in favour of the parents during their lifetimes or an *inter vivos* gift to the children, and what remedy would allow the sale to proceed.
HELD: The court found that the 2023 agreement created an express trust. The parties met the three certainties for a trust: clear intention, defined subject matter (the land), and identified beneficiaries. The children held bare legal title as trustees; the parents kept the full beneficial interest while alive, including the right to sell and keep the proceeds. Because the respondent had no beneficial interest during the applicant's lifetime, he had no basis to block the sale. The court granted a vesting order under s. 109(3) of *The Land Titles Act, 2000*, directing the Registrar to transfer title to the applicant alone, and awarded the applicant $2,000 in costs.

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***Thompson, Re (Bankrupt)*, 2025 SKKB 151**

Shalashniy, 2025-09-17 (KB25143)

Bankruptcy and Insolvency - Conditional Discharge
Bankruptcy - Conditional Discharge - Factors
Bankruptcy - Discharge - Absolute
Bankruptcy - Discharge - Personal Income Tax Debt
Bankruptcy - Income Tax
Income Tax - *Canada Pension Plan*

The bankrupt applied for a discharge in a single-creditor and tax-driven bankruptcy. The Canada Revenue Agency (CRA) assessed large personal income tax debts after the bankrupt failed to file returns for years; proven claims totalled about $344,610,

including $325,648 in personal income tax and $18,962 in *Canada Pension Plan* (CPP). The bankrupt was a first-time bankrupt who had fully complied with his duties, now worked steadily, and supported a young family on limited means. The trustee recommended a one-day suspension. The Minister of National Revenue sought a three-year suspension, repayment of the CPP principal (less estate funds), and ongoing tax filing conditions. The court had to decide whether to grant the discharge and, if so, on what terms under s. 172.1 of the *Bankruptcy and Insolvency Act* (BIA).
HELD: The court granted a conditional discharge with a modest payment condition and no suspension. The court applied the BIA's objectives of equitable distribution and rehabilitation, which bar an absolute discharge and require consideration of the debtor's circumstances, efforts to pay, preferences to other creditors, and prospects. The court accepted the bankrupt's rehabilitation and limited ability to pay. The court also recognized that s. 172.1(8) of the BIA focuses on personal income tax debt and excludes CPP. The court rejected a one-day suspension as too lenient on these facts and dismissed the Minister's three-year suspension and CPP-linked repayment as disproportionate and misaligned with s. 172.1's focus. The court ordered discharge upon payment totalling 2.25% of the principal of the personal income tax ($3,585.35). Because the estate already held $3,438.35, the bankrupt must pay an additional $147 to meet the condition and finalize the discharge.

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***R v Cimmer*, 2025 SKKB 162**

Tomka, 2025-09-26 (KB25156)

Constitutional Law - *Charter of Rights*, Section 8 - Unreasonable Search and Seizure
Criminal Law - Misleading Statement
Criminal Law - Search and Seizure
Regulatory Offences - *Wildlife Act* - Search and Seizure
Wildlife Act - Hunting Offences
Wildlife Act - Offences - Appeal

Conservation officers stopped the appellant during a hunting patrol in 2022. While holding the appellant's phone (first handed over to show documents), an officer learned it contained a video of the hunt. The officer seized the phone to preserve evidence, and the appellant then consented to play the video while the officer recorded it. After a blended *Charter* voir dire hearing, the trial judge admitted the evidence, convicted the appellant on seven regulatory counts under *The Wildlife Act, 1998* and *The Wildlife Regulations, 1981* (the Crown later stayed one count under *Kienapple* at sentencing), imposed fines and surcharges, and ordered a two-year hunting licence prohibition. The appellant appealed the voir dire and trial rulings. The court had to decide whether the trial judge erred in the rulings and sentencing.
HELD: The Court of King's Bench (court) allowed the appeal in part. The court set aside the conviction for providing false information (count 5) and entered an acquittal on that count. The court dismissed all other grounds and left the remaining convictions and sentences intact.

Section 64(a) of the *Criminal Code* targets statements that mislead an officer or send an investigation down a wrong path. Here, on the issue of count 5, the officer knew the appellant had been hunting, so the “no, not really” answer to the question of whether he was hunting did not mislead. The court substituted a not guilty verdict on count 5. On the issue of search and seizure of the mobile phone, *The Wildlife Act* authorizes seizure of “anything to which this Act applies,” including items that will provide evidence. That text is clear and aligns with the Act’s public welfare purpose of enforcing regulated hunting. In a regulatory setting, participants have a lower expectation of privacy regarding evidentiary items tied to the regulated activity. The seizure to preserve the video was lawful, and there was no breach of the appellant’s s. 8 *Charter* rights. The appellant gave informed, voluntary consent to show the specific video while retaining control of the device. The officer explained the options for seizing the phone, including refusing consent and seeking a warrant. The court found that the seizure was valid.

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***Wright Estate v Saskatchewan Government Insurance*, [2025 SKKB 165]**

Danyliuk, 2025-10-02 (KB25168)

Automobile Accident Insurance Act - Appeal
Practice - Application for Summary Judgment

The plaintiff’s spouse (J.R.W.) died in a motor collision in July 2023. The defendant investigated and assessed the collision and concluded J.R.W. had committed suicide by causing the collision with a semi unit. It denied benefits on this basis. The plaintiffs appealed this decision. Shortly after completing mediation, the defendant disclosed to the plaintiffs a coroner’s report which, in turn, referenced text messaging that had been exchanged between the deceased and the plaintiff on the date of the collision. The plaintiffs subsequently served a summary judgment application.
HELD: The matter was adjourned *sine die* to be brought back on 14 days’ written notice by either side. The request for case management under General Practice Directive #9 was premature. At the time of a Practice Directive #9 review, litigants and their counsel must be ready for trial. This includes having evidence ready or a timeline for such evidence to be ready. Second, to effectively deal with Practice Directive #9 and to ensure the parties are each able to put their best evidentiary foot forward, disclosure of documents is required. In this case, the plaintiffs had not filed any affidavit of documents and there was no affidavit on file from the plaintiff.

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***Holmes v Emuze*, 2025 SKKB 173**

Zerr, 2025-10-09 (KB25169)

Administrative Law - Procedural Fairness
Landlord and Tenant - Appeal - *Residential Tenancies Act*
Landlord and Tenant - Summary Order of Possession

The parties both appealed an order made by a hearing officer pursuant to *The Residential Tenancies Act, 2006* (the Act) where the hearing officer found the tenant and her former domestic partner jointly and severally liable to the landlord in the amount of $1,065.96. The landlord submitted that the hearing officer erred in his interpretation of ss. 49(2), (6), and (7) of the Act, made inconsistent findings, and failed to uphold procedural fairness. The tenant submitted that she had vacated the rental unit before any damages were incurred and sought an order relieving her from any financial obligation to the landlord.
HELD: The landlord's appeal was allowed in part and the tenant's appeal was allowed. (1) The hearing officer erred in his interpretation of s. 49 of the Act. The words in an enactment are to be read in their grammatical and ordinary sense, in context, and harmoniously with the scheme of the Act, its object, and the intention of the legislative body that enacted it. Under s. 49(6) of the Act, a tenant must repair damage to the residential property or services and facilities that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. In this case, considering the grammatical and ordinary meaning, context, object, and legislative intent, neglect in s. 49(6) of the Act meant carelessness. In this case, the hearing officer erred by concluding that neglect meant a failure to do something the tenant was duty bound to do. The hearing officer also erred by holding that causation is established when but for the neglect, the damage could not have occurred. The correct legal test was whether "but for" the tenants' act or neglect or the act of neglect or person they permitted on the residential property, the damage would have occurred. (2) The hearing officer did not err in his interpretation of s. 46(2) of the Act: the landlord was responsible for snow removal. (3) The landlord was not denied procedural fairness. (4) The hearing officer did not consider whether holding the tenant jointly and severally liable was just and equitable in the circumstances. When making an order pursuant to s. 70(6) of the Act, a hearing officer must have regard to whether it is just and equitable to do so. The hearing officer must exercise their discretion judicially and provide meaningful reasons for their determination. At minimum, there must be a demonstrated awareness of the facts and circumstances of the individual case. In this case, the tenant's personal circumstances were not considered before making the tenant jointly and severally liable for damages.

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***Dykstra v Saskatchewan Power Corporation*, 2025 SKKB 175**

Kuski Bassett, 2025-10-10 (KB25170)

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Environment - Climate Change - Greenhouse Gas Emissions
Public Utilities - Greenhouse Gas Emissions
Torts - Fiduciary Duty

The applicants had concerns about the adequacy of the government's strategic direction in relation to SaskPower's electricity generation and related GHG emissions due to climate change dangers. They claimed that the respondents' construction of two new unabated fossil fuel-based generation assets (UFFGAs), which generate electricity without carbon capture and sequestration technology, and the government's failure to impose sufficiently stringent GHG cumulative emissions caps (GHG Caps), result in unacceptable GHG emissions that exacerbate the dangerous harms associated with climate change and therefore violate their protected *Charter* rights to life, liberty and security of the person and to equality. The respondents asserted that the issues raised in the claim were not justiciable and did not give rise to a reasonable cause of action. In response, the applicants sought leave to amend the claim.
HELD: The applicants' application was allowed in part as a preliminary issue, but the respondents' application to strike the claim was granted. (1) In determining whether to allow the amendment of a claim, the following principles apply: (a) amendments are liberally granted when required to enable the court to determine the true points of controversy between the parties. (b) An amendment should not be allowed if the result would be a pleading that could be struck pursuant to Rule 7-9(2) of *The King's Bench Rules* or would be "undone" for other reasons. (c) An amendment will not be allowed if material prejudice will be caused by the change in the pleading that cannot be sufficiently ameliorated by an award of costs or an adjournment. In this case, six of the proposed amendments contravened Rule 13-8 of *The King's Bench Rules* because they expressly described contents of affidavit evidence. The remaining amendments did not contravene *The King's Bench Rules*, result in a pleading to be struck pursuant to Rule 7-9(2), nor cause non-compensable prejudice. (2) In determining whether to strike a pleading, the following principles apply: (a) it is incumbent on a plaintiff to clearly plead the facts upon which it relies in making its claim; (b) applications to strike pleadings proceed on the basis that the facts pled are true, "unless they are manifestly incapable of being proven"; (c) a claim will only be struck if it is plain and obvious it discloses no reasonable cause of action, that is, it has no reasonable prospect of success; and (d) the approach taken in applications to strike "must be generous and err on the side of permitting a novel but arguable claim to proceed". In this case, the UFFGAs did not raise a question that could be resolved by application of law nor a claim that was otherwise tethered to a legally defined, objective standard. The nature of the impugned approval and construction of the UFFGAs was also not grounded in any alleged breach of any statutory obligation or law. The claim was also grounded in requests for relief that would require the court to disregard the time-honoured separation of powers and its proper role within Canada's constitutional framework so as to encroach on the roles of the legislative and executive branches by forcing the respondents to make specific decisions for the power supply in the province. The claim as it related to the asserted "unreasonably inadequate government action" relating to the GHG Caps was not justiciable as it was manifestly incapable of being proven and the issues in the claim were not properly advanced for constitutional adjudication. (3) The claim did not properly disclose a cause of action. There was no factual basis in the claim to ground the bald assertion that SaskPower and CIC, as Crown corporations, owed a fiduciary duty to the applicants or the Saskatchewan public at large. There was no pleading that could be taken to be true that either of the Crown corporations had undertaken to act in the best interests of the applicants. There were no facts pled to the effect that SaskPower and CIC were to secure the paramountcy of the applicants' interests. Quite simply, there was nothing in the claim to ground the cause of action that contemplated SaskPower and CIC having a duty as claimed.

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***T.B. v K.M.*, [2025 SKKB 176]**

Richmond, 2025-10-15 (KB25171)

Family Law - Child Custody - Parenting Arrangements
Family Law - Custody and Support - Variation

The parties separated in July 2021. Their first daughter was born in November 2018, and their second daughter was born after they separated in February 2022. A parenting order was made in July 2022 requiring the first daughter to be returned to the petitioner. The parties proceeded to a pretrial in January 2024 where a parenting assessment was ordered and the parties negotiated minutes of settlement. A further pretrial was held in May 2025 with no settlement. The respondent subsequently filed an application varying the interim consent parenting order of the January 2024 minutes of settlement to increase parenting time with their second daughter.
HELD: The application was granted. Varying the interim parenting agreement was in the best interests of the child. *De facto* or legal interim parenting agreements should not be varied in the absence of a child being at risk or other compelling reason. This principle applies generally to changes in custody and primary residence, as opposed to changes in access. Interim tweaking of access may be permissible if the facts establish that it is in the child's best interests. In this case, the respondent was not requesting a change in the status quo of the petitioner being the primary care giver but rather sought an increase in parenting time. There was nothing to suggest that the parties' second daughter would not benefit from having the same amount of time with the respondent as the first child.

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***United Food and Commercial Workers Union, Local 1400 v Saskatoon Co-operative Association Limited*, [2025 SKKB 177]**

Elson, 2025-10-17 (KB25172)

Administrative Law - Judicial Review - Collective Agreement - Standard of Review - Reasonableness
Labour Law - Arbitration Board - Judicial Review - Standard of Review

On November 1, 2018, the all-employee bargaining unit at the respondent went on strike: a walkout that lasted more than five months. The

central and most divisive issue between the parties surrounded the respondent's proposal for a two-tier wage schedule in a renewed collective agreement. During the labour dispute, individuals opposed to the respondent's bargaining stance decided to pursue their own strategies. First, a petition was created for the ostensible purpose of forcing a special meeting of the respondent's membership where the existing board of directors could be replaced with candidates who would support a different bargaining position. The respondent took exception to this strategy, bringing an unfair labour practice application to the Saskatchewan Labour Relations Board (board). The board found that the applicant had contravened ss. 6-7 and 6-63(1)(c) of *The Saskatchewan Employment Act*. The applicant sought review of the board's decision.
HELD: The application for judicial review was dismissed. The board's decision was reasonable. In reviewing a decision for reasonableness, the reviewing court is required to answer two questions; that is, whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision. A decision will be unreasonable if it fails to reveal a rational chain of analysis or exhibits an irrational chain of analysis and may be unreasonable if it exhibits clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. In this case, the board's decision demonstrated the hallmark qualities of justification, transparency and intelligibility that are necessary to meet the initial reasonableness assessment. The outcome of the decision as well as the reasoning leading to the outcome also reflected justification in relation to the factual and legal constraints that bore on the decision. The board was careful not to overstate its concern about the applicant's breach of the duty to bargain in good faith and did not say anything, implicit or otherwise, that purported to prohibit the respondent or its members from participating in the election of the board of directors. The board's understanding that freedom of expression could not justify failure to comply with the minimal amount of order necessary to meet statutory collective bargaining obligations was also an understanding that the board was entitled to apply in its consideration of the respondent's argument.

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***R v Singh*, 2025 SKPC 24**

Watson, 2025-09-04 (PC25023)

Controlled Drugs and Substances Act - Possession for the Purpose of Trafficking
Controlled Drugs and Substances Act - Possession for Trafficking - Sentencing
Criminal Law - *Controlled Drugs and Substances Act* - Trafficking - Sentencing
Criminal Law - Sentencing - Immigration Consequences
Criminal Law - Sentencing - Trafficking - Cocaine, Fentanyl, Methamphetamine

The accused pled guilty to possessing drugs for the purpose of trafficking and possessing proceeds of crime over $5,000. In 2024, police surveillance tied the accused to a hotel room and multiple hand-to-hand transactions. Police arrested the accused in a rental vehicle and found over 5.3 kg of methamphetamine, 507 g of cocaine, 2.1 kg of fentanyl and fentanyl analogues, and $77,546 in cash across the vehicle, person, and hotel room. Photos and a notebook showed kilogram-level stock, daily sales, reloads, and customer entries. A toxicologist explained fentanyl's extreme potency and risk. The accused, a non-citizen with an expired work permit, would face removal from Canada after the sentence was imposed. The Crown said the accused operated at a high level in the trafficking hierarchy; the defence said the role fell between low and mid-level. The court held a Gardiner hearing and heard expert evidence on drug markets, packaging, quantities, and trafficking levels. The court had to decide whether the Crown proved the accused was a high-level trafficker, how the *Pankewich* factors applied, and how much weight to give immigration consequences when setting a proportionate sentence.

HELD: The court sentenced the accused to 11 years for possession of fentanyl for the purpose of trafficking, with concurrent sentences of six years (methamphetamine), three years (cocaine), and three years (proceeds of crime). The court credited 557 days for pre-sentence custody, leaving a sentence of 3,458 days and other ancillary orders. The court applied proportionality and the sentencing purposes set out in sections 718–718.2 of the *Criminal Code* and s. 10 of the *Controlled Drugs and Substances Act*, emphasizing denunciation and deterrence in the context of hard drug trafficking (see also *R v Pankewich*, 2002 SKCA 7). The court found the accused operated at a high level of drug trafficking based on the quantities of drugs involved, the wholesale packaging, the detailed scoresheets showing kilogram-scale inventory and multi-ounce sales, and the large cash proceeds. Profit was the motive, which increased culpability. Evidence of community harm and coroner data supported a strong case for general deterrence. Mitigating factors included guilty pleas, no prior record, not being the directing mind, and remorse; the absence of weapons or a separate stash location did not reduce the sentence, as neither was an additional aggravating factor. The court considered immigration consequences as a collateral consequence but gave them limited weight (see *R v Suter*, 2018 SCC 34).

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***R v Bayly*, 2025 SKPC 25**

Martinez, 2025-09-18 (PC25024)

Wildlife Act - Hunting Offences
Wildlife Act - Indigenous Rights
Wildlife Offences

Two accused went to hunt wild boar in Saskatchewan. They saw a cow moose and a calf. One accused shot the calf and loaded it onto a trailer. A conservation officer stopped their truck on the highway for a hunting compliance check per *The Wildlife Act*. The officer saw no big-game seals on the carcass. Both accused produced driver's licences and treaty cards from outside Saskatchewan. Neither had a moose-hunting licence. The shooter claimed Treaty 6 rights, but the officer later confirmed neither accused had Indigenous subsistence hunting rights in Saskatchewan. The Crown charged both with hunting without a licence and possessing wildlife. The court had to decide whether the shooter needed a valid hunting licence in Saskatchewan, and whether the accused individuals had Indigenous treaty hunting rights that excused licensing.

HELD: The court found the shooter guilty of unlawfully hunting the moose and of possessing wildlife taken in contravention of *The Wildlife Act*. He had no treaty right in Saskatchewan and needed a licence, which he did not have. He shot, took, butchered, and consumed the calf. The court found the non-shooter not guilty of unlawfully hunting. The court held that “hunting” can include retrieval of the animal in some contexts, but the non-shooter’s post-kill assistance in transporting the carcass occurred after the hunt ended and did not amount to hunting on these facts. The court found the non-shooter guilty of possessing wildlife taken in contravention of the Act because he knew, or should have known, the moose was unlawfully hunted, and he helped transport it (see also *R v Morin*, 2022 SKCA 98).

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