CaseMail

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highlighting recent case digests from all levels of Saskatchewan Court.
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***Moose Jaw (City) v New Edge Properties Development Inc.*, 2024 SKCA 116**

Jackson Schwann Tholl, 2024-11-28 (CA24116)

Municipal Law - Appeal - Property Taxes - Assessments
Statutes - Interpretation - *Cities Act*, Section 210, Section 216, Section 217

The appeal in this case was from a decision of the Assessment Appeals Committee of the Saskatchewan Municipal Board (committee). The committee had assumed jurisdiction over an appeal brought by the respondents to the City of Moose Jaw's Board of Revision (board), where the board had told the parties it was refusing to hear the respondents' appeal. The committee addressed the preliminary matter of whether the respondent had filed their appeal from the board to the committee within the time period established by *The Cities Act*. The committee found in favour of the respondents and directed that it would schedule the respondents' appeals to be heard *de novo*.
HELD: The appeal was allowed. (1) The committee erred in law by incorrectly interpreting s. 217 of *The Cities Act* and, thereafter, taking jurisdiction over the appeal

when the respondents had missed the relevant appeal deadline. Section 216(a) of *The Cities Act* envisions an appeal to the committee from a decision made by a board of revision; whereas in s. 216(b) an appeal may be taken where no assessment decision has been made because the board either omitted, neglected or refused to decide it. Section 217 of *The Cities Act* establishes two distinct appeal periods, only one of which can apply to any given fact pattern. Either an appellant has received a written notice of the decision of the board of revision, or the board of revision has omitted, neglected or refused to hear or decide an appeal from a property tax assessment. The legislature did not intend that a board of revision could both decide an appeal and omit, neglect or refuse to hear the appeal. In this case, the committee tied the issue of the applicable appeal period to whether the board provided written confirmation of its refusal to hear an appeal. This was contrary to the wording of *The Cities Act*. (2) The committee erred in law by incorrectly interpreting s. 210 of *The Cities Act* in stating a refusal to hear an appeal by the board must be in writing. Section 210 of *The Cities Act* provides that after hearing an appeal, a board or panel may confirm the assessment or change the assessment. It does not impose the requirement to give reasons when a determination is made refusing to hear an appeal. The decision mentioned in s. 210 is one confirming or varying an assessment after hearing an appeal, not after refusing to hear it. (3) The legislature did not intend to create multiple appeal periods based on whether a decision was oral or written, and an appeal period must end with the with calendar year for which the assessment was prepared.

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***R v Umpherville*, [2024 SKCA 117]**

Leurer Jackson Caldwell, 2024-12-20 (CA24117)

Criminal Law - Aboriginal Offender - Sentencing
Criminal Law - Appeal - Sentencing - Firearms Offences

The appellant was convicted of two firearms offences under the *Criminal Code* and possession of a controlled substance contrary to the *Controlled Drugs and Substances Act* and had been sentenced to five years' imprisonment. The appellant appealed against the firearms convictions and sought leave to appeal the overall sentence he received for his crimes. The conviction appeal had been dismissed orally on the day the appeal was heard.
HELD: The appeal was allowed. (1) The judge erred in principle in his application of the

Criminal Law - Breathalyzer - Certificate of Analysis

Criminal Law - *Controlled Drugs and Substances Act* - Possession for the Purpose of Trafficking

Criminal Law - Driving Over .08 - Breathalyzer - Certificates of Analysis

Criminal Law - Drug Offences - Appeal

Criminal Law - Firearms Offences - Manufacturing and Trafficking Firearms

Criminal Law - Firearms Offences - Possession of a Firearm

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Criminal Law - Impaired Driving - Presumption of Accuracy

Criminal Law - Manslaughter - Sentencing

Criminal Law - Sentencing - Aboriginal Offender

Criminal Law - Sentencing - Aboriginal Offender - Appeal

Criminal Law - Sentencing - Mandatory Minimum Sentences

Criminal Law - Sentencing - Sentencing Principles

Gladue principles to the circumstances of the appellant. In sentencing an Aboriginal offender, a judge must consider: (i) the unique systemic or background factors that may have played a part in bringing the offender before the courts; and (ii) the types of sentencing procedures and sanctions that may be appropriate in the circumstances for the offender because of his or her Aboriginal heritage or connection. In this case, the judge, after recognizing the need to account for the presence of *Gladue* factors, reached no conclusion as to their impact on the appellant's moral culpability. The absence of the required analysis concerning the appellant's *Gladue* factors and their impact on his moral blameworthiness constituted an error in principle. The judge's view that because of the need to emphasize the sentencing objectives of denunciation and deterrence, the appellant's *Gladue* factors could not affect his assessment of the appropriate term of imprisonment, also reflected legal error. (2) The errors made by the judge affected the sentence imposed. The requirement of proportionality demands that the impact systemic and background factors have on an individual's moral blameworthiness be considered when determining the period of incarceration. In this case, because of systemic circumstances, the applicant had not completed anything more than a rudimentary education. The only practical teaching he had received was at the hands of similarly affected peers who involved him in drugs and the drug trade. As a result, he had struggled with addictions and has had no opportunity to develop productive work experience. For these reasons, the judge was required to account for the appellant's reduced moral responsibility for his crimes, which he did not do. (3) A sentence of 30 months' imprisonment was fit in the circumstances. If a sentence is demonstrably unfit or if a sentencing judge made an error in principle that had an impact on the sentence, an appellate court must perform its own sentencing analysis to determine a fit sentence. It will apply the principles of sentencing to the facts afresh, without deference to the existing sentence, even if that sentence falls within the applicable range. Thus, where an appellate court has found that an error in principle had an impact on the sentence, that is a sufficient basis for it to intervene and determine a fit sentence. In this case, the appellant's illegal possession was not in a fully public place. There was also no evidence that the gun in the appellant's possession was a tool of his trade. There were several significant aggravating factors. The appellant was in possession of the restricted weapon while subject to such prohibition. The appellant also had 51 convictions entered against him starting from his youth. However, the appellant had been deprived of a meaningful education which most certainly affected his employability. He had been on a waitlist for four years with the Learning Disabilities Association, and the delay in securing an assessment had done nothing to improve his situation. The pre-sentence report also provided some room for optimism that the appellant was open to rehabilitation.

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102021880 Saskatchewan Ltd. (Canadiana Foods) v Baiton, **2024 SKCA 118**

Schwann Tholl Kilback, 2024-12-23 (CA24118)

Civil Procedure - Appeals
Civil Procedure - Application to Strike Affidavits
Civil Procedure - Interlocutory Injunction

In August 2023, the appellants applied for an interlocutory injunction to restrain the respondents from selling food using the Tumblers Pizza name or logo. The appellants also sought to prohibit them from selling frozen pizza to certain identified customers and to impose conditions on the storage, detention or destruction of goods using the Tumblers Pizza trademark, tradename, or logo. Before the injunction was heard, the respondents applied to strike parts of four affidavits filed by the appellants. A Court of King's Bench judge (chambers judge) struck parts of the affidavits, which settled the evidentiary record. The injunction application was also dismissed.
HELD: The appeal was dismissed. (1) The chambers judge did not err by failing to recognize the nature of the goodwill associated with Tumblers pizza. There was no palpable and overriding error in characterizing the goodwill in issue as goodwill in the Tumblers Pizza brand for purposes of determining whether the appellant's passing off claim raised a serious issue to be tried. This characterization was consistent with the way the goodwill in issue was framed in the statement of claim and was supported by the evidence before the chambers judge. (2) The chambers judge did not err in failing to find that the respondent owed a fiduciary obligation to the appellants following the termination of the application. The chambers judge was not required to make a definitive finding on this point to decide the injunction application. The chambers judge correctly framed and addressed the question of whether the applicant was a fiduciary under the first element of the *Mosaic* test (see: 2011 SKCA 120). A final determination of whether the respondent was a fiduciary of the appellant could not properly be made on the interlocutory application before the chambers judge. (3) The chambers judge did not err in finding that the appellant had not established a meaningful risk of irreparable harm if the injunction were not granted. In this case, on the evidence before the trial judge, the appellant's losses could be readily calculated, quantified in monetary terms, and compensated by an award of damages. The chambers judge also clearly considered, but ultimately rejected, the idea that the appellants had established a loss of market share sufficient to constitute irreparable harm. This conclusion was supported by the evidence before the chambers judge. It was also open on the evidence before the chambers judge for her to conclude that the fact that the respondent had made an

Statutes - Interpretation - *Municipalities Act*, Section 355, Section 356, Section 357

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assignment in bankruptcy several years earlier was not sufficient to establish a risk of irreparable harm based on an inability to recover damages from the defendants if the injunction was not granted and the appellant was ultimately successful at trial. (4) The chambers judge did not err in how she applied the balance of convenience test. It was apparent that the evidence of the respondent's entry into the appellant's production facility and his assignment into bankruptcy was not disregarded but was considered by the chambers judge. The chambers judge simply made it clear that she would not use it for an improper purpose. She did not misapprehend the evidence relating to the appellant's staff recording a meeting with the respondent or reach an improper conclusion. The chambers judge finding that whether the respondent's actions after 2017 constituted "estoppel by acquiescence" to the appellant's continued use of the Tumblers name and logo was an issue to be decided at trial was also not an error in the circumstances. Further, the chambers judge did not err on the balance of convenience by failing to recognize that the respondent sold Tumblers pizza to retail customers contrary to his obligations to the appellant as his former employer and while he was still in bankruptcy. (5) The chambers judge did not err in failing to consider granting an interlocutory injunction prohibiting the respondents from selling Tumblers frozen pizza to their customers. The chambers judge expressly reviewed each of the alternatives proposed by the appellant, which included "an interim and/or interlocutory injunction prohibiting the respondents from selling any frozen pizzas to the customers identified in Appendix 'A'" to the amended notice of application. The chambers judge was clearly aware that granting an injunction on these terms was an option and determined not to do so.

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***Probe v Sherwood (Rural Municipality)*, 2024 SKCA 119**

Leurer Caldwell Barrington-Foote, 2024-12-23 (CA24119)

Municipal Law - Council Members - Disqualification - Conflict of Interest
Statutes - Interpretation - *Municipalities Act*, Section 355, Section 356, Section 357

The appellant had been found to have contravened the conflict-of-interest provisions of *The Municipalities Act* (Act) and, for that reason, he declared that he was disqualified from serving on the council and that his seat was vacant. Both before and after his disqualification, the appellant paid legal fees to lawyers he had retained due to his involvement in various administrative, civil and criminal proceedings that related in some

R v Grassing

R v Johnston

R v McKenzie

R v Robillard

R v Sabiston

R v Umpherville

Rodrigue v Nutzhorn

Sasco Developments Ltd. v Moose Jaw (City)

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fashion to his services in his former office. The appellant in 2022 filed a statement of claim seeking recovery of his legal fees from the respondent. The claim was dismissed. HELD: The appeal was dismissed. (1) The chambers judge did not err by concluding that the respondent did not have a statutory duty to pay the appellant fees pursuant to s. 355(3) of the Act. It is reasonable to describe the purpose of s. 355(3), together with ss. 355(1), 356 and 357 of the Act, as being to better enable not only council members but the other municipal actors to whom they refer to effectively carry out their duties by limiting their exposure to claims and losses to the extent specified in the various provisions. This interpretation was consistent with the fact that the Act did not limit claims or provide that a municipality would bear costs to the same extent in relation to all of the named persons. Similarly, the requirement in s. 355(3) that the action or proceeding must be against the member of council and must claim liability could only be read as evidencing the intention to limit the reach of that provision, leaving the member of council or other named person to fend for themselves in cases where there is no claim of liability, even if their involvement could be exposed to criticism or censure. In light of this, it was reasonable for the respondent to decide that s. 355(3) granted it the discretion to pay if the appellant met the specified conditions, rather than imposing a statutory duty that it do so. (2) The chambers judge did not err in concluding that the respondent did not have a statutory duty to pay the appellant some or all of the fees pursuant to s. 356(2) of *The Municipalities Act*. It was reasonable to conclude that a council member was not an agent of the respondent within the meaning of s. 356(2) absent an appointment or grant of authority to act in that capacity on behalf of the municipality. The appellant did not claim that there was evidence before the chambers judge that could reasonably support the conclusion that council made such an appointment or granted such authority, whether directly or indirectly. It was accordingly reasonable to conclude that the appellant was not an agent for this purpose. (3) The chambers judge did not err by failing to find that the respondent erred in concluding that the Chief Administrative Officer (CAO) of the respondent could not bind the respondent in contract to pay the fees incurred by the appellant at the inquiry. Despite having concluded that the authority to make the purported agreement could not be delegated to the CAO, the chambers judge also held in the alternative that the settlement of the reimbursement proceeding meant that the appellant's claim for reimbursement of the fees relating to the inquiry was *res judicata*. This finding of *res judicata* was not appealed by the appellant. Therefore, the issue was moot.

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***R v Grassing*, 2025 SKCA 1**

Caldwell Drennan Bardai, 2025-01-03 (CA25001)

Constitutional Law - *Charter of Rights*, Section 8 - Unreasonable Search or Seizure - Reasonable and Probable Grounds
Constitutional Law - *Charter of Rights*, Section 24(2) - Exclusion of Evidence
Criminal Law - Firearms Offences - Possession of Firearm - Conviction - Appeal
Criminal Law - Drug Offences - Appeal

The appellant was convicted in Provincial Court of drug and firearm possession, tampering with a serial number on a firearm, and possession of ammunition while prohibited. At trial, a voir dire was held for the purposes of assessing whether the police had violated the appellant's s. 8 *Charter* right not to be unreasonably searched when they searched his apartment. The trial judge found no violation of the appellant's rights under s. 8 of the *Charter* and thereafter found the appellant guilty of the charges.
HELD: The appeal was allowed. (1) The trial judge erred when she concluded that the police had not violated the appellant's s. 8 *Charter* rights. In order for a search to be reasonable, it must be authorized by law, the law itself must be reasonable and the manner in which the search is carried out must be reasonable. Where the legality of a search is challenged, the onus is on the Crown to establish that the objective facts articulated by the police witnesses rise to the level of reasonable suspicion. The judicial assessment seeks to determine whether "a reasonable person, standing in the shoes of the police officer, would have held a reasonable suspicion of criminal activity." In this case, the request made by the appellant's probation officer to "do a curfew check and possibly a search", was not imbued with certainty and presumptive weight to give rise to a reasonable suspicion. Moreover, the constellation of facts identified by the police, when viewed through the lens of the reasonable person standing in their shoes, was insufficient to objectively sustain the trial judge's conclusion that their suspicion was a reasonable one. (2) The factual matrix required to determine whether admission of the evidence obtained during the unreasonable search was not present; there was insufficient evidence for the court to perform a s. 24(2) analysis. Therefore, the court could not conclude whether the admission of the evidence would bring the administration of justice into disrepute. The court ordered a new trial.

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***Bahrani v Peters*, 2025 SKCA 2**

Jackson Tholl Kalmakoff, 2025-01-07 (CA25002)

Family Law - Appeal - Custody and Access - Variation
Family Law - Appeal of Interim Order - Costs
Family Law - Child Custody and Access - Variation - Best Interests of Child
Family Law - Decision-Making Authority
Statutes - Interpretation - *Children's Law Act, 2020*, Section 10

The appellant and respondent were the parents of two children (aged 4 and 7). The respondent had sole decision-making authority and primary care of the children under an interim order issued in July 2023, which also provided limited parenting time for the appellant. The appellant applied to the Court of King's Bench to have more parenting time and joint decision-making authority. The appellant was liable for costs from numerous prior court actions. The chambers judge dismissed the appellant's applications and restricted further applications until existing costs were paid. The appellant brought this appeal to the Court of Appeal (court) to challenge the chambers judge's decision on multiple grounds. The court had to decide whether the chambers judge demonstrated actual bias or a reasonable apprehension of bias; whether the judge erred in striking portions of the appellant's affidavits; whether the chambers judge erred by refusing to alter decision-making authority or parenting time; and whether the costs awards and the precondition to future applications were justified.
HELD: The court dismissed the appeal challenging interim parenting, decision-making orders, and procedural rulings, emphasizing judicial discretion and the children's best interests. The court applied the test for reasonable apprehension of bias from *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369, and *R v T.F.*, 2019 SKCA 82: judges are presumed impartial unless clear evidence suggests otherwise and the claim of apprehension of bias must be a reasonable one. The appellant alleged bias based on courtroom interactions, rulings against him, and procedural limitations. The court found no evidence of bias, noting that courtroom management, including enforcing time limits and addressing procedural issues, does not indicate partiality. Portions of the appellant's affidavits were struck for containing irrelevant, speculative, argumentative, or inadmissible content, consistent with Rule 15-46 of *The King's Bench Rules*. The court upheld the chambers judge's rulings as properly limiting evidence to material facts. Parenting time was reviewed under *The Children's Law Act, 2020*, which prioritizes the best interests of the children (s. 10). The chambers judge focused on stability, noting the appellant's lack of communication and cooperation. Decision-making authority was not subject to review without evidence of a material change in circumstances (see: *Inglis v Inglis*, 2022 SKCA 82). The appellant conceded that no material change had occurred. The appellant was required to pay $7,000 in outstanding costs before filing new applications. The court found this measure reasonable, considering the appellant's history of excessive and unfounded litigation. Requiring accountability in litigation is within judicial discretion. The court dismissed the appeal and upheld the chambers judge's rulings. Costs of $3,500 were awarded to the respondent.

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***R v Sabiston*, 2025 SKCA 3**

Barrington-Foote Tholl Drennan, 2025-01-08 (CA25003)

Criminal Law - Appeal - Sentencing - Firearms Offences
Criminal Law - Sentencing - Aboriginal Offender - Appeal
Constitutional Law - *Charter of Rights*, Section 8 - Unreasonable Search and Seizure

The appellant was convicted of a series of firearm related offences by a Provincial Court trial judge, receiving a global sentence of five years' imprisonment less pre-sentence custody. The appellant initially appealed both his conviction and sentence in 2023. The conviction appeal was allowed but the sentence appeal was not dealt with in the majority judgment. The Supreme Court of Canada

allowed the Crown's appeal, restored the appellant's convictions and remitted the sentence appeal to the court for determination.
HELD: The sentence appeal was allowed, and the appellant was sentenced to three years of imprisonment. (1) The trial judge erred in not considering the *Charter* breaches, and the error impacted the appellant's sentence. If a sentence is demonstrably unfit or if a sentencing judge made an error in principle that had an impact on the sentence, an appellate court must perform its own sentencing analysis to determine a fit sentence. In this case, the trial judge's decision to impose the sentence she did reflected her understandable emphasis on deterrence, denunciation and public safety, on the appellant's record of ignoring court orders, and what she characterized as his failure to make necessary changes in his life. However, if the trial judge had considered the *Charter* breaches, she would have concluded that they were serious, had a highly significant impact on the appellant, and called for a sentence that took account of the communicative aspect of sentencing. For these reasons, she would have imposed a lesser sentence. (2) A sentence of three years' imprisonment was fit and proportionate in the circumstances. The fundamental principle of sentencing requires that the sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender. The offences for which the appellant was convicted were collectively serious. The appellant's criminal record was also aggravating. The appellant accepted responsibility for the offences, which was a mitigating factor. The appellant's moral culpability was also reduced significantly by the nature of his specific *Gladue* factors and the particulars of the crimes. There were also serious *Charter* breaches that had a profound impact on the appellant, leading to his illegal arrest and to two illegal searches, and as a result, to the location and seizure of the key evidence upon which he was convicted of the offences related to the firearm.

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***Pfeifer Holdings Ltd. v North Battleford (City)*, 2025 SKCA 4**

Leurer Caldwell Drennan, 2025-01-14 (CA25004)

Administrative Law - Standard of Review - Correctness or Reasonableness
Municipal Law - Appeal - Property Taxes - Assessments
Statutes - Interpretation - *Cities Act*, Section 197

The appellant owned a hotel (the Adobe Inn) located in the City of North Battleford. The second respondent had determined the 2022 assessed value of the appellant's hotel to be $5,344,500. The appellant initially appealed the assessment to North Battleford's Board of Revision (board), and the appeal was allowed in part. Both the appellant and the second respondent appealed the board decision to the Assessment Appeals Committee of the Saskatchewan Municipal Board (committee). The committee dismissed the appellant's appeal and allowed the appeal of the second respondent. The appellant was granted leave to appeal the committee decision on the questions of law or jurisdiction.
HELD: The appeal was allowed and the orders made by the board were restored. (1) There was nothing on the record to suggest that the board did not understand the foundational rule that its authority was defined by the notice of appeal filed with it by the appellant. The board understood that (a) it could only correct for errors that were raised in the notice of appeal; and (b) the appellant's notice of appeal raised issues of comparability beyond simply whether the Adobe Inn should have been classified as a full-service hotel. (2) The committee erred in law by applying the correctness standard in its review of the board's interpretation of the

notice of appeal to the board. In the context of Saskatchewan's property tax assessment appeal regime, notices of appeal filed with a board of revision serve the function of a pleading that defines the issues to be decided in an appeal to the board. A judge's interpretation of a pleading is not a question of law and is therefore an issue that is subject to the palpable and overriding error standard of review on appeal. For an issue to be identified as one of jurisdiction or law it must be one that is appropriate for the court to entertain and in which it is prepared to substitute its opinion on the matter for that given by either the committee or the board. It would also encourage appeals to the committee if notices of appeal to boards were to be scrutinized for correctness. The overall scheme of property tax assessments is better served if the interpretation of notices of appeal is left to boards of revision, subject only to their interpretation being reasonable. (3) The board's interpretation of the notice of appeal was reasonable. A reasonable decision has two aspects: (a) it is based on an internally coherent and rational chain of analysis; and (b) it is justified in relation to, among other things, the facts, circumstances and conditions affecting the property. In this case, considering the words used in the appellant's notice of appeal, and in the context of the arguments that were presented to the board, it was reasonable for the board to interpret the notice of appeal as encompassing a broader challenge to the use of the Adobe Inn sale than simply an assertion that the Adobe Inn should not have been classified as a full service hotel. (4) The committee did not err in law by failing to apply the reasonableness standard of review when it concluded that it was reasonable for the board to accept the second respondent's explanation of why the Melville sale was excluded from the capitalization rate analysis. The committee had a proper understanding of the argument before it. The committee also displayed a correct understanding of what was entailed by a reasonableness review. In the absence of the appellant pointing to an issue of fact or law that was left unanswered in the arguments summarized in the board decision, there was no basis to conclude that the committee decision lacked an internally coherent and rational chain of analysis.

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***Sasco Developments Ltd. v Moose Jaw (City)*, [2025 SKCA 5]**

Leurer Caldwell Drennan, 2025-01-14 (CA24006)

Administrative Law - Standard of Review - Correctness or Reasonableness
Municipal Law - Appeal - Property Taxes - Assessments

The appellants owned full-service hotels located in the City of Moose Jaw. They contended that there were errors in the 2022 property tax assessment of their hotels. The appellant initially appealed the assessment to North Battleford's Board of Revision (board), and the appeal was allowed in part. Both the appellant and the second respondent appealed the board decision to the Assessment Appeals Committee of the Saskatchewan Municipal board (committee). The committee dismissed the appellant's appeal and allowed the appeal of the second respondent. The appellant was granted leave to appeal the committee decision on the questions of law or jurisdiction.
HELD: The appeal was allowed and the orders made by the board were restored. (1) The committee erred in law when it applied a correctness standard in its review of the board's interpretation of the notice of appeal filed with the board. (2) The committee erred in law when it found that the board had no jurisdiction to find that the Adobe Inn was not comparable to the Owners' properties. (3) The

committee did not err in law by failing to apply the reasonableness standard of review when it concluded that it was reasonable for the board to accept the second respondent's explanation of why the Melville sale was excluded from the capitalization rate analysis.

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***R v McKenzie*, [2024 SKKB 221]**

Zerr, 2024-12-11 (KB24218)

Criminal Law - Manslaughter - Sentencing
Criminal Law - Sentencing - Sentencing Principles

The accused had been convicted of kidnapping and committing manslaughter. The court had to determine the appropriate sentence. The Crown sought a sentence of life imprisonment. The first accused sought a sentence for manslaughter in the range of eight to 10 years and the second offender considered that the appropriate sentence was time served. Neither accused took issue with the suggested four-year concurrent sentences for kidnapping or the ancillary orders sought by the Crown.
HELD: The first accused was sentenced to 3,653 days' imprisonment for manslaughter and 1,462 days for kidnapping to be served concurrently. The second accused was sentenced to 4,384 days for manslaughter and 1,462 days for kidnapping to be served concurrently. (1) The sentences were appropriate in view of their seriousness, the circumstances surrounding the offence, victim impact and degree of responsibility of the offenders. The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility for the offender. In this case, considering the *Criminal Code* provisions specific to the offences of kidnapping and manslaughter, the circumstances of the offences specific to the accused and the victim impact, the gravity of these offences was very high. Considering the extent of each accused's *Gladue* factors, their moral culpability was attenuated to a modest extent. Each of the accused had criminal records and was assessed as a high risk for general recidivism.

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***R v Robillard*, [2024 SKKB 217]**

Danyliuk, 2024-12-17 (KB24214)

Appeal - Criminal Law - Care or Control over .08
Criminal Law - Appeal - Standard of Review
Criminal Law - Breathalyzer - Certificate of Analysis
Criminal Law - Driving Over .08 - Breathalyzer - Certificates of Analysis

Criminal Law - Impaired Driving - Presumption of Accuracy

The appellant was convicted under s. 320.14(1)(b) of the *Criminal Code* for operating a vehicle with a blood alcohol concentration exceeding 80 mg per 100 ml of blood within two hours of driving. The conviction was based on two breath sample readings, 0.170 and 0.150, obtained after a traffic stop and arrest. The appellant challenged the validity of two certificates of an analyst, arguing their wording did not meet statutory requirements. The court had to decide the appropriate standard of review and whether the trial judge erred in finding the certificates of an analyst valid, thereby allowing the presumption of accuracy for breath sample results under s. 320.31 of the *Criminal Code*.
HELD: The court dismissed the accused's conviction appeal for impaired driving, rejecting arguments about the validity of certificates of an analyst under s. 320.34 of the *Criminal Code*. The court applied the standard of correctness for legal issues and palpable and overriding error for factual issues, as established in Part XXVII of the *Criminal Code* and *R v Helm*, 2011 SKQB 32. The appellant argued that using the word "was" instead of "is" in the certificates rendered them invalid. The appellant claimed this wording failed to certify the alcohol standard as suitable for future use, undermining the presumption of accuracy under s. 320.31 of the *Criminal Code*. The court rejected this argument, emphasizing the plain and purposive interpretation of statutory provisions and documents. It held that the certificates' language confirmed the suitability of the alcohol standard from the test date until its expiration. This interpretation aligned with statutory intent and practical realities of scientific certification. The court found the wording of the certificates unambiguous, concluding they clearly met the requirements of s. 320.34(1)(e). The appellant's interpretation would lead to absurd results, such as certifying alcohol standards for only a single day. The court dismissed the appeal, affirming the trial judge's findings and the appellant's conviction.

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***Nemean Ventures Corp. v Merasty*, 2024 SKKB 218**

Elson, 2024-12-17 (KB24215)

Family Law - Division of Family Property
Real Estate - *Lis Pendens* - Discharge

The proceeding related to the registration of a certificate of pending litigation (CPL) where the registrant's underlying claim did not bring into question any title to or interest in land. The respondents had been in a spousal relationship from 2016 to December 2022, after which the second respondent commenced family law proceedings for spousal support and division of family property. The second respondent did not oppose the vacating of the CPL but sought safeguards for her family property relative to the sale proceeds on one of the properties constructed by the applicant.
HELD: The court ordered that the CPL be discharged. The net proceeds from the sale of the lands were also ordered to be held in trust by the solicitors for the applicant. Under s. 9-3 of *The King's Bench Act*, the Court may vacate a CPL: "(a) if the plaintiff or other party at whose instance the certificate was issued does not proceed with the action or matter in good faith; (b) if the plaintiff's claim is not solely to recover land or an interest in land, but to recover money or money's worth: (i) that is chargeable on or payable out of

land or some interest in land; or (ii) for the payment of which the plaintiff claims that the land or the interest in land ought to be subjected; (c) if the plaintiff claims land or an interest in land and, in the alternative, damages or compensation in money or money's worth; or (d) on any other ground that the judge considers appropriate." In this case, while there was no concern about the legitimacy of the secured debt against the properties subject to litigation, the possibility that some of the net sale proceeds might be diverted in a way that would adversely impact a fair division of the family property values could not be completely discounted. The court had no information about any assurances the second respondent could give to support a fair division of the family property after the properties subject to litigation were sold.

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***KP Group Ventures Ltd. v 101223484 Saskatchewan Ltd.*, [2024 SKKB 219]**

Robertson, 2024-12-18 (KB24216)

Civil Procedure - Breach - Damages
Civil Procedure - Summary Judgment
Trusts - Resulting Trust
Unjust Enrichment - Elements

This was a decision on an application for summary judgment claiming damages resulting from the private sale of a liquor permit. The decision only addressed the issue of whether the plaintiff had established liability on the part of the defendants. The plaintiff argued that that the lease agreement clause requiring that the premises be returned in their "original condition" implicitly meant that the off-sale permit would be returned to the plaintiff at the end of the lease term. The plaintiff also argued in the alternative that there was a resulting trust in its favour because it allowed the defendant to take over the permit without any payment. The plaintiff also argued in the alternative that the defendant should compensate it for the loss of the off-sale permit under the equitable doctrine of unjust enrichment.
HELD: The application was dismissed. (1) The matter was suited to summary judgment. Summary judgment may be granted in a case if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence or the parties agree to have all or part of the claim determined by summary judgment and the court is satisfied that it is appropriate to grant it. In this case, counsel for the parties had cooperated in agreeing on facts and framing the issues. While there were some controverted facts, the decision did not require determination of those disputed allegations. (2) There was no breach of contract by the defendants. In contractual interpretation, the goal is to ascertain the objective intent of the parties – a fact-specific goal – through the application of legal principles of interpretation. While surrounding circumstances are relevant to understanding the parties' mutual and objective intent, the interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract. In this case, the clause in the lease agreements relied upon by the claimants meant that the physical property must be returned in its original condition at the end of the tenancy. In addition, the respondent could not return a retail store permit to the applicant or issue a permit to anyone. (3) There was no resulting trust between the parties. There was no documentary evidence supporting any agreement to enter into a trust relationship. Furthermore, *The Liquor Retail Modernization Act* made a fundamental change in

permitting by creating the new retail liquor permit in 2016 and, after 2018, authorizing the sale of same, while confirming that SLGA maintained both ownership of the permits and ultimate control over their issuance. A resulting trust could not apply to a permit that did not exist when the initial lease of the premises began. There was no unjust enrichment. To succeed in establishing liability based upon the equitable doctrine of unjust enrichment, the plaintiff must establish three elements: (a) an enrichment of the defendant; (b) a corresponding deprivation of the plaintiff; and (c) an absence of a juristic reason for the enrichment. In this case, while there was an enrichment of the plaintiff and a corresponding deprivation of the defendant, the enrichment came as a result of deliberate public policy enacted into legislation.

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***Canadian Imperial Bank of Commerce v Custom Agricultural Intelligence Incorporated*, 2024 SKKB 220**

Gerecke, 2024-12-19 (KB24217)

Bankruptcy and Insolvency - Duty of Receiver - Commercially Reasonable
Bankruptcy - Procedure
Debtor and Creditor - Receiver - Approval of Sale
Debtor and Creditor - Receivers - Duties of Receiver

The receiver, BDO Canada Limited, sought court approval for its sale process and the activities described in its first report. The receiver proposed selling certain personal property assets of the debtor companies through an auction process. While the sale order was granted in chambers, the court reserved its decision on approving the receiver's activities due to concerns about the short notice provided to stakeholders. The application materials were served on most parties three days before the hearing, raising questions about procedural fairness. The central issues before the court were whether the receiver's activities could be approved on short notice, given the limited time available for interested parties to review the materials and respond, and how short notice approvals impact the legal standards for granting leave to sue a receiver in future proceedings.
HELD: The court acknowledged that the approval of a receiver's activities is a routine part of insolvency proceedings, particularly in Canadian law. The court cited *Target Canada Co. (Re)*, 2015 ONSC 7574, referencing several purposes for such approvals. These include enabling the receiver to move forward with the next steps in insolvency, providing transparency to stakeholders, addressing concerns, and protecting the receiver from unnecessary litigation. The court emphasized that these objectives support efficiency in insolvency proceedings and reduce costs for creditors and debtors. However, the court also highlighted the procedural fairness concerns arising from short notice. The court referenced *Royal Bank of Canada v 6382330 Manitoba Ltd.*, 2021 MBQB 72, which distinguishes between two standards for granting leave to sue a receiver: 1) when no approval of the receiver's activities has been granted, leave is granted unless the claim is frivolous or vexatious, and 2) when the receiver's activities have been approved, the stronger prima facie case standard applies, as parties are expected to have raised objections earlier. Short notice limits stakeholders' ability to evaluate the application and respond, potentially undermining the fairness of the process. Although short notice is common in insolvency proceedings due to logistical challenges, such as the need to preserve asset value, the court stressed that notice must balance efficiency with fairness. The court further noted that standard protections for receivers, such as

limitations on liability for gross negligence or wilful misconduct, are embedded in insolvency orders. These provisions, while necessary, do not negate the importance of procedural safeguards when approving receivers' activities. The court approved the receiver's first report and activities, finding no objections or evidence of impropriety. However, the court expressed concerns about the procedural implications of short notice approvals and their impact on future claims against the receiver. The court suggested that insolvency practitioners collaborate with the judiciary to refine practices, ensuring that approvals are granted in a manner that protects both efficiency and stakeholder rights.

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***Rodrigue v Nutzhorn*, 2024 SKKB 222**

Robertson, 2024-12-20 (KB24219)

Civil Procedure - Amendment to Pleadings
Civil Procedure - Application to Strike Claim - Abuse of Process - *King's Bench Rules*, Rule 3-72, Rule 7-9
Civil Procedure - Pleadings - Statement of Claim - Striking Out

The plaintiff was the son of the owner of the estate for which the defendant was the executor. The plaintiff claimed damages against the estate for historical abuse suffered by the plaintiff during his childhood. The defendant applied for the claim to be struck out. The plaintiff also applied to amend his claim.
HELD: The defendant's application was dismissed, and the plaintiff's application was granted. (1) The applicant did not satisfy the court that the claim should be dismissed. The conditions for an order striking out all or part of a pleading or other document are that the pleading or other document: (a) discloses no reasonable claim or defence, as the case may be; (b) is scandalous, frivolous or vexatious; (c) is immaterial, redundant or unnecessarily lengthy; (d) may prejudice or delay the fair trial or hearing of the proceeding; or (e) is otherwise an abuse of process of the court. In this case, the plaintiff delayed for over 30 years. However, s. 16 of *The Limitations Act* removes limitations for victims of family abuse. Furthermore, the delay had not irreparably prejudiced the estate's defence of the claim. (2) The amendment would ensure true points of the controversy would be addressed. In exercising discretion to amend a claim, the following principles apply: (a) the overarching purpose for allowing amendments is to enable the court to determine the true points of controversy between the parties; (b) an amendment must be a proper pleading, meaning it 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 "undone" for other reasons; and (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, the amendments to the paragraphs made them more complete and easier to comprehend.

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***R v Brandt Industries Canada Ltd.*, 2024 SKPC 35**

Evanchuk, 2024-10-07 (PC24035)

Criminal Law - Strict Liability - Defences - Due Diligence
Statutes - Interpretation - *Saskatchewan Employment Act*, Section 3-78(g), Section 3-79

The accused was charged with offences under ss. 3-78(g) and 3-79 of *The Saskatchewan Employment Act*. The charges stemmed from an incident that occurred at a Brandt facility in Regina where an employee suffered an accident that left him with ongoing mobility and sensory issues. The Crown alleged that the accident occurred because of failures by the accused to provide the necessary training, supervision, and information for the employee and additionally that the employee operated the forklift without proper certification.
HELD: The accused was found guilty of failing to ensure that only trained operators were permitted to operate power mobile equipment. The accused was acquitted of the offence of failing to provide the information, instruction, training and supervision that is necessary to protect the health and safety of workers at work. (1) The Crown did not sufficiently prove the *actus reus* of the offence of failing to provide the information, instruction, training and supervision that is necessary to protect the health and safety of workers at work. In establishing the *actus reus* of a workplace injury, the Crown must prove the following: a) there was an accident; b) the accident was caused by failure to provide any information, instruction, training and supervision; and c) the items that were not supplied were necessary to protect the health and safety of workers at work. In this case, it was not disputed that the complainant was the victim of a workplace accident that caused him injury. The complainant was also provided with substantial information, training, supervision, and instruction. There was also no indication that formalized and written risk assessments were necessary to satisfy the accused's obligation to provide the necessary information, training, instruction and supervision. (2) The Crown established the *actus reus* of the offence of failing to ensure that only trained operators were permitted to operate power mobile equipment. To prove the *actus reus* of the offence of failing to ensure that that only trained operators were permitted to operate power mobile equipment, the Crown must establish the following: (a) the worker operated powered mobile equipment; b) the worker was not trained to operate it; c) the employer, while failing to ensure that the worker would not operate powered mobile equipment, also required or permitted the action; and d) that failure resulted in the serious injury of a worker. In this case, it was not in dispute that the worker operated the forklift equipment. The accused also failed to provide the necessary retraining that the worker needed to remain as a trained operator. The evidence in this case also showed that there was a failure to make certain that an untrained operator was not permitted or required to operate powered mobile equipment. The Crown also proved beyond reasonable doubt that the failure to ensure the worker was not permitted to operate the forklift resulted in the injury he suffered. (3) The accused could not rely on the defence of mistake of fact. The accused did not take reasonable steps to prevent the worker's unqualified operation of the forklift, nor did they make reasonable inquiries or take reasonable steps to ascertain that the information they had received from the worker regarding his certification was correct. (4) The accused could not rely on the defence of due diligence. By failing to take reasonable steps to ascertain whether the worker was indeed a trained operator, including failing to request the certification before the accident and failing to inspect the worker's resume in closer detail to ascertain whether re-training would be necessary, the accused simultaneously failed to exercise due diligence.

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***R v Johnston*, 2024 SKPC 39**

Howarth, 2024-11-06 (PC24034)

Controlled Drugs and Substances Act - Possession for Trafficking - Sentencing
Criminal Law - *Controlled Drugs and Substances Act* - Possession for the Purpose of Trafficking
Criminal Law - Firearms Offences - Possession of a Firearm
Criminal Law - Sentencing - Aboriginal Offender
Criminal Law - Sentencing - Sentencing Principles

The accused was convicted of multiple offences, including possession of fentanyl, methamphetamine, GHB, and cocaine for the purpose of trafficking under s. 5(2) of the *Controlled Drugs and Substances Act* (CDSA). Additional convictions included possession of a prohibited firearm under s. 95 of the *Criminal Code*, and breaches of firearm prohibition orders under s. 117.01. The charges arose from a vehicle stop in Saskatoon by University of Saskatchewan Peace Officers during which a search uncovered substantial quantities of controlled substances and a prohibited firearm in the trunk. The court had to decide on the appropriate sentence, consider deterrence and denunciation purposes, and determine how *Gladue* factors and the principle of totality should influence the sentence.
HELD: The court imposed a global sentence of 8.5 years after applying the totality principle and accounting for *Gladue* factors. The sentence included reductions for the accused's pre-sentence custody. Ancillary orders, such as a lifetime firearms prohibition and a DNA order, were also issued. The court began by addressing the seriousness of the offences, emphasizing the destructive societal impact of fentanyl and methamphetamine trafficking. The accused's role as a low-level dealer was considered, as there was insufficient evidence to classify him as a mid-level trafficker. However, the significant quantities of drugs, combined with the presence of a prohibited firearm and ammunition, aggravated the circumstances. The accused's extensive criminal record, including prior convictions for drug trafficking and firearm-related offences, further supported the need for a sentence prioritizing deterrence and denunciation. The court referenced *R v Gladue*, [1999] 1 SCR 688, and *R v Ipeelee*, 2012 SCC 13, recognizing the systemic factors contributing to the accused's criminality, such as intergenerational trauma and addiction. While these factors reduced his moral blameworthiness, they did not outweigh the gravity of the offences. The principle of totality was applied to ensure that the global sentence did not exceed what was appropriate given the offender's circumstances. The court reduced the Crown's proposed sentence, finding that 8.5 years sufficiently reflected the seriousness of the offences while considering the accused's potential for rehabilitation.

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***R v Fisher*, 2024 SKPC 41**

Evanchuk, 2024-12-18 (PC24036)

Criminal Law - Firearms Offences - Manufacturing and Trafficking Firearms
Criminal Law - Sentencing - Mandatory Minimum Sentences

The charges against the accused arose after a lengthy and detailed investigation that began after the offender made a provocative social media post that engaged the suspicion of local and national security authorities. The offender had pled guilty to offences relating to the manufacturing – by 3D printer – and transferring of firearms. The court had to determine the appropriate sentence.
HELD: The accused was sentenced to four years' imprisonment for the offence of manufacturing a firearm and three years for the offence of trafficking a firearm. (1) A sentence of four years for the offence of manufacturing a firearm and three years for the offence of trafficking a firearm was appropriate in the circumstances. It is fundamental that a sentence is proportionate to the gravity of the offence and the degree of responsibility of the offender. A fit sentence must also demonstrate parity in that similar offenders committing offences in similar circumstances should attract similar sentences. Additionally, a sentence must look to all available sanctions, other than imprisonment, that are reasonable in the circumstances having account for the harm done to victims, with particular attention to the circumstances of Aboriginal offenders. In this case, the offences in question were serious matters that affected public safety. The accused was also a self-professed enthusiast who was aware of the rules and regulations underpinning his restricted possession and acquisition licence but chose specifically to flout these rules. The firearms were sold for profit and the trafficked firearms remained unaccounted for. The accused however had no criminal record and was previously a law-abiding citizen with significant community supports. He was also remorseful and had a reasonable chance of rehabilitation. The accused's cultural dislocation and residential school effects also displayed clear *Gladue* factors that had to be taken into account.

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