The Law Society of Saskatchewan Library's online newsletter
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R v H.L., **2025 SKCA 6**

Caldwell Kalmakoff Drennan, 2025-01-15 (CA25006)

Criminal Law - Evidence - Credibility
Criminal Law - Procedure - Mistrial
Criminal Law - Procedure - Appeal - Fresh Evidence

The appellant was convicted of an historical count of sexual interference against his granddaughter. Following the appellant's conviction but prior to his sentencing, the complainant provided a letter to the appellant's counsel commenting on the offence, the complainant's feelings towards the appellant, and her influences and emotional state at the time the offence was disclosed. On the basis of the letter, the appellant filed applications for a mistrial and a reopening of the trial to adduce the letter as fresh evidence.
HELD: The appellant's conviction was quashed and the matter remitted for a new trial. The applications for a mistrial and to reopen the trial for adducing fresh evidence were

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Civil Procedure - Class Action

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dismissed. (1) The trial judge erred by not granting the applications to reopen the trial or declare a mistrial. When analyzing a mistrial application, a trial judge must determine if an accused person's ability to make full answer and defence has been impaired and assess whether there is a real danger that trial fairness has been compromised. A mistrial should only be granted in the clearest of cases where there has been a fatal wounding of the trial process that cannot be remedied by a lesser remedy and it is required to prevent a miscarriage of justice. In this case, the trial judge did not consider the appellant's complete submission on how the letter affected his ability to make full answer and defence and, relatedly, how it affected trial fairness. The trial judge did not also address how aspects of the letter could be relevant to the credibility or reliability of the complainant or to an element of the offence in light of the relevant legal principles despite the appellant's submissions as to the various reasons why a mistrial or trial reopening was justified. (2) In considering the application to reopen the trial and adduce the letter as fresh evidence, the trial judge did not apply the appropriate lens to his consideration of the criteria in *R v Palmer*. In considering the admission of fresh evidence at trial, the following principles apply: (a) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases; (b) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial; (c) The evidence must be credible in the sense that it is reasonably capable of belief; and (d) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result. In this case, the complainant's letter bore upon a decisive issue at the trial: i.e., whether the complainant's evidence was both credible and reliable. It was also relevant to the assessment of whether any touching that was found to have occurred was intentional in nature and whether it was done for a sexual purpose. All of this had the potential to affect the result of the trial. The trial judge's singular focus on whether the letter constituted a recantation led him to err in his consideration of the application to reopen the trial to adduce the letter as fresh evidence.

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***Altus Group Limited v Saskatchewan Assessment Management Agency*, 2025 SKCA 7**

Leurer Schwann Kalmakoff, 2025-01-21 (CA25007)

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

The appellants were representing various commercial property owners in the city of Estevan

Constitutional Law - Validity of Legislation

Criminal Law - Appeal - Acquittal

Criminal Law - Blood Alcohol Level Exceeding .08 - Presumption of Accuracy

Criminal Law - Breathalyzer - As Soon As Practicable

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Criminal Law - Defences - Officially Induced Error

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Criminal Law - Evidence - Credibility

Criminal Law - Forfeiture

Criminal Law - Procedure - Appeal - Fresh Evidence

Criminal Law - Procedure - Mistrial

who had appealed the 2017 and 2018 tax assessments of their properties to the Assessment Appeals Committee of the Saskatchewan Municipal Board (committee). The appeals had been resolved largely in the appellant's favour and Saskatchewan Assessment Management Agency (the first respondent) had been directed to make consequent adjustments to the assessments. The first respondent purported to make these adjustments and provided its replies to the committee, but the appellants were of the view that the first respondent did not follow the committee's directions. Eventually, the appellants applied to the Court of King's Bench for judicial review of the first respondent's response to the committee's orders. The application was dismissed.
HELD: The appeal was partly allowed. (1) The chambers judge did not improperly narrow the scope of the judicial review. Generally speaking, judicial review is not available where an adequate alternative remedy, such as a comprehensive statutory appeal process, exists. It is only where there is no statutory path for a taxpayer to obtain a remedy that access to judicial review will be necessary to fill the gap. In this case, the judicial review was properly limited by the chambers judge to the first respondent's actions or inactions in response to the remittal directions. (2) The chambers judge did not misidentify the applicable standard of review. Where a court reviews the merits of an administrative decision, there is a presumption that the applicable standard of review is reasonableness. This presumption can be rebutted: (a) where the legislature has indicated that it intends for a standard other than reasonableness to apply, by either: (i) explicitly prescribing a certain standard of review; or (ii) creating an appeal mechanism, such that appellate standards of review apply; (b) where the rule of law requires that a standard of correctness apply because constitutional questions, general questions of law of central importance to the legal system as a whole, or questions regarding jurisdictional boundaries between two or more administrative bodies are engaged; or (c) when courts and administrative bodies have concurrent first instance jurisdiction over a legal issue in a statute, in which case a standard of correctness will apply. In this case, the appellants had identified nothing in any of the relevant legislation that prescribed a standard of review in relation to judicial review of the actions or inactions of the first respondent. The first respondent's compliance or non-compliance with the remittal directions of the committee was also not a question of law of central importance to the legal system as a whole. (3) The chambers judge erred in her application of the reasonableness standard of review with respect to the two committee decisions dealing with 2017 assessments. The committee's direction to the first respondent, in both cases, was to correct the inequity that the committee had found to exist in the assessments for properties over 6,000 square feet in size by making specific adjustments to the capitalization rate applicable to such properties. Despite the committee's explicit

Criminal Law - Proceeds of Unlawful Activity - Seizure of Criminal Property

Debtor and Creditor - Mortgage - Foreclosure

Debtor and Creditor - Receiver - Approval of Sale

Debtor and Creditor - Receivers - Duties of Receiver

Evidence - Legal Test for Harm

Forfeiture - Seizure of Criminal Property

Insurance - Property Insurance

Mortgage - Judicial Sale - Costs

Mortgages - Foreclosure

Mortgages - Foreclosure - Order *Nisi* - Judicial Sale

Mortgages - Judicial Sale - Costs

Municipal Law - Appeal - Property Taxes - Assessments

Statutes - Interpretation - *Crown Liability and Proceedings Act*, Section 22

Statutes - Interpretation - *Health Information Protection Act*, Section 38(1)(f)

direction, however, the first respondent made no modification to the overall capitalization rate. The chambers judge erred by concluding to the contrary. (4) The chambers judge did not err in her application of the standard of review with respect to the third committee decision dealing with 2018 assessments. She correctly characterized the relevant constraints under which the first respondent was to operate. The chambers also rightly concluded that the first respondent's reasoning in relation to the decision was transparent, intelligible, rational and logical. The court remitted the decisions dealing with 2017 assessments to the first respondent to be reassessed in accordance with the committee's directions and dismissed the appeal of the third committee decision.

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***Saskatchewan Government Insurance v Giesbrecht*, 2025 SKCA 10**

Leurer Caldwell Kalmakoff, 2025-01-28 (CA25010)

Access to Information - Personal Health Information - Confidentiality
Administrative Law - Standard of Review
Evidence - Legal Test for Harm
Statutes - Interpretation - *Health Information Protection Act*, Section 38(1)(f)

The appellant had received a report submitted to it in confidence that questioned the respondent's medical fitness to drive (report). This caused the appellants to ask the respondent to furnish medical evidence to dispel the concern that the report raised. The respondent complied with the appellant's request, and the appellant ultimately decided that there was no reason to restrict the respondent's licence. The parties had disagreed as to whether the respondent was entitled to see the report. At the Court of King's Bench, it had been determined that the respondent was entitled to see it.
HELD: The appeal was allowed. (1) The chambers judge erred in law by limiting the application of s. 38(1)(f) of *The Health Information Protection Act* (HIPA). Section 38(1)(f) of HIPA permits a trustee to refuse to grant an applicant access to their personal health information if disclosure of the information could interfere with a lawful investigation or be injurious to the enforcement of an Act or regulation. There is no requirement that the investigation be existing or currently identifiable. The judge erred in law by holding that the appellant needed to establish such an investigation was underway to refuse disclosure. (2) The chambers judge applied the wrong legal test to determine whether the disclosure of the

Statutes - Interpretation - *King's Bench Act*, Section 10-11

Statutes - Interpretation - *Limitation of Civil Rights Act*, Section 11

Statutes - Interpretation - *Limitation of Civil Rights Act*, Section 7

Torts - Defamation - Damages

Torts - Defamation - Defences - Qualified Privilege

Cases by Name

2238649 Alberta Ltd. v Graham Carillion NBJV

Altus Group Limited v Saskatchewan Assessment Management Agency

Canadian Western Bank v Goshen Professional Care Inc.

Director under The Seizure of Criminal Property Act, 2009 v Romano

Home Trust Company v Haughian

Innovation Federal Credit Union v Panteluk

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report could interfere with a lawful investigation or be injurious to the enforcement of an Act or regulation. In this case, the chambers judge found s. 38(1)(f) of HIPA to be inapplicable because the evidence did not satisfy him that, on the balance of probabilities, there would in fact be fewer reports questioning the fitness of drivers if the report were released to the respondent. The appellant was only obligated to show that it was objectively possible that disclosure might have that effect. (3) The court found that disclosure of the report could indeed interfere with a lawful investigation or be injurious to the enforcement of an Act or regulation. In the particular circumstances, the court declined to make an order of costs.

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***Stilborn v Dunn*, [2024 SKKB 223]**

Norbeck, 2024-12-31 (KB24220)

Civil Procedure - Costs - Pre-judgment Interest
Torts - Defamation - Damages
Torts - Defamation - Defences - Qualified Privilege

The plaintiffs filed a statement of claim against the defendants in October 1994, claiming that the defendants maliciously and purposely published false statements about the plaintiffs. The defendants denied the claim, asserting that the statements made were all true or substantially accurate and relied on the defence of qualified privilege. One of the plaintiffs discontinued her claim in 2014.
HELD: Two of the plaintiffs were successful. The remaining plaintiffs' claims were dismissed. One of the successful plaintiffs was awarded $7,500 and the other $2,500 for damages. The claims for special and aggravated damages were dismissed. Pre-judgment interest was awarded to the successful plaintiffs, calculated from 1994 to 2002. (1) The statements by the defendant were defamatory. To succeed in a defamation claim, the plaintiffs must prove three elements: (a) that the words are defamatory; (b) that the words are defamatory to the plaintiff; and (c) that the words were published to a third party. In this case, the words published by the defendant were defamatory to three of the plaintiffs as the publication would tend to lower their reputation in the eyes of a reasonable person. (2) The defendant could not rely on the defence of truth. To rely on the defence of truth, the defendant must show the statement was true or substantially true. The defence of justification fails "if the publication in issue is shown to have contained only accurate facts, but the sting of the libel is not shown to be true" (see: *Bent v Platnick*, 2020 SCC 23 at para 107). In this case, the

R v Kluz

R v Oliphant

R v Straightnose

Racette v Little Black Bear First Nation

Regina Anti-Poverty Ministry v Saskatchewan

Saskatchewan Government Insurance v Giesbrecht

Scotia Mortgage Corporation v Schneikart

Stilborn v Dunn

Watch v Live Nation Entertainment Inc.

defendant's correspondence, read as a whole or separately, cast a pall on the plaintiffs without separating the issues, the policies, and the policyholders. The information passed by the defendant to insurers was somewhat true but inflammatory, sarcastic and reckless. (3) The defence of qualified privilege did not apply. Qualified privilege applies on occasions where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This defence can be defeated in two situations: where the dominant motive behind the words was malice, such as where the speaker was reckless as to the truth of the words spoken; or where the speaker exceeds the scope of the instance of privilege. In this case, it was unclear whether the defendant owed a duty to other potential insurers or the industry. Also, while some of the information communicated by the defendant was true, some information was also false. The defendant's tone and exaggeration made the communications more inflammatory than they otherwise could have been. (4) The general damages awarded were appropriate in the circumstances. In determining appropriate damages for a defamation claim, the following factors are relevant; (a) the conduct of the plaintiff; (b) the plaintiff's position and standing; (c) the nature of the defamation; (d) the mode and extent of publication; (e) the absence or refusal of any retraction or apology; (f) the conduct of the defendant from the time the libel was published until the conclusion of the case; and (g) evidence led in aggravation or mitigation of damages. In this case, the plaintiffs' standing was clear. The publication of the defendant's communications was limited to the named recipients and was not broadcast widely. There was no apology or sign of remorse from the defendant. There was no evidence that the defendant's communications negatively impacted the plaintiff's reputation. (4) The plaintiffs did not prove any special damages caused by the defendant's communications. (5) Pre-judgment interest for eight years on the damages award was appropriate. There was no adequate explanation for the 26-year delay in bringing the matter forward. A generous period for the matter to come to trial was eight years.

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***Regina Anti-Poverty Ministry v Saskatchewan*, 2025 SKKB 1**

Clackson, 2025-01-07 (KB25001)

Constitutional Law - *Charter of Rights*, Section 15(1)
Constitutional Law - Jurisdiction - *Ultra Vires*
Constitutional Law - Validity of Legislation

The Regina Anti-Poverty Ministry (RAPM) challenged the constitutionality of specific provisions in *The Saskatchewan Assured*

Income for Disability Regulations and *The Saskatchewan Income Support Regulations* (collectively, the regulations). These provisions require social assistance recipients to apply for *Canada Pension Plan* (CPP) benefits at age 60 rather than at 65 as a condition of eligibility for assistance. RAPM argued that this requirement frustrates the purpose of the CPP under federal paramountcy principles and discriminates against persons with disabilities, violating section 15(1) of the *Charter*. The court had to decide whether the RAPM had standing to challenge the constitutionality of the regulations, whether the requirement to apply for CPP benefits at age 60 frustrates the CPP's purpose under the doctrine of federal paramountcy, and whether the requirement discriminates against individuals with disabilities in violation of s.15(1) of the *Charter*.
HELD: The court dismissed RAPM's application. The court found that RAPM had standing to bring the challenge but determined that the regulations neither frustrated the purpose of the CPP nor infringed s. 15(1) of the *Charter*. The court granted public interest standing to RAPM, applying the test from *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45. RAPM demonstrated a genuine interest in the issues and presented a reasonable and effective way to bring them before the court, especially given the financial vulnerability of affected individuals. The court rejected RAPM's argument that the requirement to apply for CPP benefits at age 60 frustrates the purpose of the CPP. The court emphasized that the CPP is a contributory plan intended to provide partial replacement of earnings, not a social welfare program (See *Granovsky v Canada (Minister of Employment and Immigration)*, 2000 SCC 28). The regulations do not reduce or claw back CPP benefits but instead adjust social assistance entitlements based on recipients' overall income. The court concluded that the requirement to apply for CPP benefits at age 60 aligns with the federal scheme and does not frustrate its purpose. The court employed the two-step test for equality rights from *R v Sharma*, 2022 SCC 39. It was found that the regulations' requirements do not create a distinction based on disability. While RAPM argued that the policy disproportionately impacts persons with disabilities, the court determined that the regulations treat all social assistance recipients equally, regardless of disability status. Even if a distinction were found, the court concluded that the requirement is not discriminatory. The regulations are part of an ameliorative benefits program designed to address financial need and distribute resources equitably. The court noted that distinctions within social benefits legislation are not lightly deemed discriminatory (citing from Saskatchewan's brief of law: *Weatherly v Canada (Attorney General)*, 2021 FCA 158, and *Runchey v Canada*, 2013 FCA 16). The court dismissed RAPM's application, finding no conflict between the provincial and federal schemes and no infringement of s. 15(1) of the *Charter*.

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***Racette v Little Black Bear First Nation*, 2025 SKKB 2**

Davis, 2025-01-08 (KB25002)

Civil Procedure - Interlocutory Injunction
Constitutional Law - *Charter of Rights*, Section 15(1)
Statutes - Interpretation - *Crown Liability and Proceedings Act*, Section 22

The plaintiffs, descendants of a status Indian woman who lost her status upon marrying a non-status man, sought membership in Little Black Bear First Nation (Little Black Bear). Although they regained Indian status following amendments to the *Indian Act*, they

were denied band membership. The plaintiffs brought two applications to the court. First, the plaintiffs challenged Little Black Bear's membership code, alleging it perpetuated colonial-era sex-based discrimination, contrary to s.15(1) of the *Charter*. Second, the plaintiffs applied for a declaration that they had the right to participate in the settlement. The dispute arose in the context of a pending settlement agreement between Canada and Little Black Bear, which includes compensation for Treaty No. 4 violations. The court had to decide whether an injunction could be granted against Canada to delay the execution of the settlement agreement, whether the plaintiffs demonstrated irreparable harm and a balance of convenience favouring an injunction, and whether interim declaratory relief was appropriate to address the plaintiffs' claims.
HELD: The court dismissed both the application for injunctive relief and the request for declaratory relief. The court found the Crown was immune from injunctive orders under the *Crown Liability and Proceedings Act* and determined that the plaintiffs had not established irreparable harm. Declaratory relief was deemed inappropriate at this interlocutory stage. The court held that s. 22 of the *Crown Liability and Proceedings Act* bars injunctive relief against the Crown. While exceptions exist where a Minister breaches constitutional rights, the court found no evidence of bad faith or a failure by Canada to fulfill its obligations. The court applied the legal test from *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311, as the framework for assessing whether injunctive relief was warranted. In summary, the ultimate focus is whether granting the requested relief would be just and equitable in all circumstances. The court rejected the plaintiffs' claim of irreparable harm. It found that the settlement funds primarily involved monetary compensation, which could be addressed through damages if the plaintiffs succeeded at trial. The balance of convenience weighed heavily against granting an injunction. Delaying the settlement would deprive Little Black Bear and its members of immediate financial benefits. The court emphasized the transformative potential of these funds for the community, particularly in addressing poverty and improving quality of life. The plaintiffs sought a declaration recognizing their entitlement to participate in the settlement. The court declined to issue interim declaratory relief, noting that such relief would effectively grant the plaintiffs a substantial portion of the remedy they sought at trial. The court highlighted the importance of deferring substantive decisions until the full merits of the case could be assessed. The court dismissed the applications for injunctive and declaratory relief, noting the plaintiffs' challenging circumstances. The court hoped Little Black Bear band would consider the plaintiffs' membership applications again.

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***Innovation Federal Credit Union v Panteluk*, [2025 SKKB 3]**

Hildebrandt, 2025-01-08 (KB25003)

Insurance - Property Insurance
Mortgages - Foreclosure - Order *Nisi* - Judicial Sale
Statutes - Interpretation - *King's Bench Act*, Section 10-11
Statutes - Interpretation - *Limitation of Civil Rights Act*, Section 11

The plaintiff, Innovation Federal Credit Union (the mortgagee), applied for an order nisi for foreclosure on a residential property mortgaged by the defendant. The mortgage balance claimed as due and owing was $79,051.39, which included $563.92 for property insurance purchased by the mortgagee. The court had to decide whether the cost of fire or property insurance purchased by the mortgagee could be included in the amount claimed as due and owing under the mortgage for an order *nisi* for foreclosure.
HELD: The court granted the plaintiff leave to submit a revised draft order *nisi* and remove the insurance costs from the calculation of the mortgage account. The court commented that mortgagees have recently included fire/property insurance in calculating the amount due under the mortgage during foreclosure applications. The court emphasized that under s.10-11 of *The King's Bench Act* and s. 11 of *The Limitation of Civil Rights Act*, only arrears due under the mortgage — such as principal, interest, and taxes — can be included in the mortgage account. Including additional costs, such as fire or property insurance purchased by the mortgagee, is prohibited. While the mortgagee can purchase insurance to protect its interest, these costs are not added to the redemption amount. These costs could be reimbursed later by considering the insurance terms and any applicable refunds from the sale. The court reiterated that incidental costs cannot be added to the mortgage account (*Home Equity Mortgage Corporation v Matycio*, 2018 SKQB 283). The court directed the plaintiff to revise the draft order *nisi* to exclude the insurance costs.

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***R v Oliphant*, 2025 SKKB 4**

Morrall, 2025-01-10 (KB25004)

Criminal Law - Appeal - Acquittal
Criminal Law - Blood Alcohol Level Exceeding .08 - Presumption of Accuracy
Criminal Law - Breathalyzer - Certificate of Analysis
Criminal Law - Driving Over .08 - Breathalyzer - Certificates of Analysis

The Crown appealed the acquittal of the accused, who had been charged with operating a conveyance with a blood alcohol concentration exceeding 80 mg of alcohol per 100 mL of blood, contrary to s. 320.14(1)(b) of the *Criminal Code*. The trial court dismissed the charge, finding that key evidence presented by the Crown, specifically a Certificate of Qualified Technician with an attached instrument printout (Exhibit P-2), did not meet statutory requirements under s. 320.33 of the *Criminal Code*. The trial judge held that the printout and certification were not properly certified by the qualified technician because the printout was not physically attached to the attestation of certification, rendering the evidence inadmissible and preventing the Crown from relying on the presumption of accuracy for the breath test results. The court had to decide whether the trial judge erred in finding Exhibit P-2 inadmissible for non-compliance with s. 320.33 of the *Criminal Code*, whether the Crown's procedural rights were prejudiced due to the alleged lack of advance notice of the defence's objection to Exhibit P-2, whether the trial judge erred in not allowing the Crown to. rely on the presumption of accuracy under s. 320.31 of the *Criminal Code*, whether the acquittal should be overturned and what remedy would be appropriate if errors were found.
HELD: The court found errors in the trial judge's interpretation of s. 320.33 and ruled that Exhibit P-2 should have been admitted.

The court allowed the appeal, set aside the acquittal, substituted a guilty verdict, and sent the matter back to Provincial Court for sentencing. The standard of review for the trial judge's decision involved reviewing findings of fact on a standard of palpable and overriding error, while questions of law alone were reviewed on a correctness standard (see: para 11, citing *R v Wright*, 2023 SKKB 236 [*Wright*] at paras 35 to 42). The trial judge interpreted s. 320.33 as requiring the physical attachment of the instrument printout to the certification document by a "qualified technician." The court noted that s. 320.33 does not explicitly mandate physical attachment but instead requires certification that the printout is the product of an approved instrument. The court emphasized a practical and contextual approach to statutory interpretation (see: paras 59 to 62). The court found that the trial judge erred by imposing an overly rigid standard not supported by the legislative text, thereby improperly excluding Exhibit P-2. The court relied on a contextual reading of the law and the common law principle of joinder from *Doran v McKinnon* (1916), 53 SCR 609 (WL), for its decision on the admissibility of Exhibit P-2 (see: paras 75 to 88). For the purpose of presumption of accuracy, the court analyzed the relationship between ss. 320.31, 320.33, and 320.34 of the *Criminal Code* along with *Wright* and *R v MacDonald*, 2022 YKCA 7. The court found that the statutory framework provides evidentiary shortcuts for proving blood alcohol levels, provided procedural compliance. Since the certification requirements under s. 320.33 were met substantively, the Crown was entitled to rely on the presumption of accuracy. On the issue of procedural fairness, the Crown argued that it was procedurally unfair for the trial judge to allow the defence to challenge the admissibility of Exhibit P-2 without prior notice. The court determined that while the defence had raised its objection during the trial, the Crown had ample opportunity to address the issue, including recalling witnesses or seeking to reopen its case. The court concluded that there was no procedural unfairness. The court allowed the appeal, overturned the acquittal, substituted a guilty verdict, and remitted the matter to Provincial Court for a sentencing hearing.

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***Canadian Western Bank v Goshen Professional Care Inc.*, 2025 SKKB 5**

Bergbusch, 2025-01-10 (KB25005)

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

Goshen Professional Care Inc. (Goshen), the owner of a personal care home in Saskatchewan, defaulted on its loan obligations to Canadian Western Bank (CWB), leading to the appointment of MNP Ltd. as receiver of its assets. MNP sought approval for the sale of Goshen's assets to the Saskatchewan Health Authority (SHA), approval of its actions as receiver, an increase in its borrowing charge, and a sealing order for confidential reports. Goshen opposed the application, arguing the sale process was tainted by conflicts of interest, lacked transparency, and violated competition laws. Goshen also sought to cross-examine representatives of MNP and SHA. The court had to decide whether leave should be granted for Goshen to cross-examine representatives of MNP and SHA, whether MNP was disqualified from acting as a receiver due to an alleged conflict of interest, whether the sale of Goshen's assets to SHA should be approved, whether the sale should be delayed pending Goshen's application to the competition tribunal, whether the receiver's actions to date should be approved and its borrowing charge increased, and whether a sealing order for the

receiver's confidential reports should be issued.
HELD: The court dismissed Goshen's application for cross-examination and approved the sale of Goshen's assets to SHA. The court also approved MNP's actions, granted the requested borrowing charge increase, and issued a sealing order for confidential reports. The court held that cross-examination of a receiver is exceptional and requires compelling justification (rule 14 of the *Bankruptcy and Insolvency General Rules*; see paras 46 to 49 of the decision for a list of judicial authorities). MNP fulfilled its disclosure obligations, and no exceptional circumstances justified cross-examination. Also, Goshen failed to demonstrate how examining SHA representatives would assist the court. The application was dismissed. Goshen argued that MNP was in a conflict of interest due to its business dealings with the government of Saskatchewan and charitable donations by its partners to the Jim Pattison Children's Hospital Foundation. The court found no evidence of preferential treatment or bias by MNP and rejected the conflict of interest claim as speculative and unsubstantiated. The court relied on *Re Federal Trust Co. v Frisina* (1976), 28 CBR (ns) 201 (WL) (Ont H Ct J) for the description of a receiver's impartiality, and Confederation Treasury Services Ltd., Re (1995), 37 CBR (3d) 237 (Ont Sup Ct) for the applicable legal test from the viewpoint of a reasonable person who is objective and informed of all material facts. The court applied the *Royal Bank of Canada v Soundair Corp.* (1991), 7 CBR (3d) 1 (WL) (Ont CA) principles to evaluate the sale process and whether the court should approve the sale in a receivership. The court found that MNP acted prudently and in a commercially reasonable manner. SHA's offer represented 98% of the appraised value of the care home, which was substantially higher than its forced sale value. The sale process was fair and transparent, and no alternative proposals were identified. Goshen argued that the sale should be delayed, allowing it to pursue competition law claims against SHA. The court declined to authorize the delay, noting that the competition tribunal could address any anticompetitive effects post-sale without affecting the sale's integrity. Delaying the sale would unfairly prejudice creditors and other stakeholders. The court approved MNP's reports and actions, finding them consistent with its duties as the receiver. The increase in the borrowing charge to $150,000 was necessary to fund ongoing operations and ensure a smooth transition of ownership to SHA. To protect the integrity of the sale process, the court sealed the receiver's confidential reports until the sale was completed or further order of the court. The court dismissed Goshen's objections and approved the sale of the personal care home to SHA.

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***Scotia Mortgage Corporation v Schneikart*, [2025 SKKB 6]**

Bergbusch, 2025-01-13 (KB25006)

Civil Procedure - *Ex Parte*
Debtor and Creditor - Mortgage - Foreclosure
Mortgages - Judicial Sale - Costs
Mortgages - Foreclosure

Scotia Mortgage Corporation (SMC) brought an application to assess costs associated with the judicial sale of a property. The defendants, former property owners, had defaulted on their mortgage, leading to foreclosure proceedings and a judicial sale. SMC sought to recover costs related to the judicial sale, post-leave solicitor-client costs, and property management expenses incurred

after the defendants vacated the property. The application was made without notice (*ex parte*). The court, however, expressed concerns about SMC's continued attempts to claim certain costs that had been disallowed in previous court decisions. The court had to decide whether SMC was entitled to the costs it claimed.
HELD: The court allowed some of SMC's claims and reduced its post-leave legal fees by $500 as a sanction for attempting to claim closing costs of the sale that had been expressly disallowed in prior rulings. SMC sought to recover legal fees related to the closing of the sale, arguing that this included services such as searches, document preparation, and the disbursement of sale proceeds. The court rejected this claim and referenced prior rulings in *Scotia Mortgage Corporation v Keep*, 2024 SKKB 133, where similar fees were disallowed. The court criticized SMC for continuing to claim such costs despite clear precedent prohibiting them. The court imposed a $500 reduction in solicitor-client costs as a sanction. This followed warnings from *Scotia Mortgage Corporation v Yamniuk*, 2024 SKKB 48, where the court stated that future non-compliance with cost rulings would be met with consequences. The court also reiterated that when a party applies for *ex parte* relief, it has the responsibility to provide full, frank, and complete disclosure and cite all the relevant case law, including cases adverse to its position (*Bank of Nova Scotia v Herman*, 2016 SKQB 351). The court adjusted the amounts of relief sought and directed SMC to prepare an order and deficiency judgment accordingly.

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***Director under The Seizure of Criminal Property Act, 2009 v Romano*, 2025 SKKB 7**

Wildeman, 2025-01-13 (KB24207)

Criminal Law - Forfeiture
Criminal Law - Proceeds of Unlawful Activity - Seizure of Criminal Property
Forfeiture - Seizure of Criminal Property

The Royal Canadian Mounted Police (RCMP) seized large sums of money in 2021 during a traffic stop investigation. The RCMP officer searched the vehicle and found hidden bundles of cash in different areas of the car. The director under *The Seizure of Criminal Property Act, 2009* (Act) applied for an order forfeiting the money to the Crown in right of Saskatchewan pursuant to ss. 3 and 7 of the Act. The director argued that the seized funds were either proceeds or instruments of unlawful activity, specifically related to the trafficking of contraband cigarettes. The respondents did not appear in court to contest the application. The case was decided based on evidence from the affidavit provided by the director and RCMP officers involved in the seizure. The court had to decide whether the seized cash constituted proceeds or an instrument of unlawful activity and whether the evidence supported an inference of illegal activity.
HELD: The court found, on a balance of probabilities, that the seized cash was proceeds of unlawful activity and ordered the forfeiture of the funds to the Crown. The respondents failed to provide a credible explanation for the source of the cash, and the circumstantial evidence strongly suggested that the funds were linked to the illegal sale or purchase of contraband cigarettes. The court applied s. 7 of the Act, which mandates forfeiture of property if it is more likely than not that it was obtained through or used in unlawful activity. The court cited *Saskatchewan (Seizure of Criminal Property Act, Director) v Kotyk*, 2013 SKCA 140, which held that forfeiture may be granted based on strong circumstantial evidence. The court also referenced Chatterjee v Ontario (Attorney

General), 2009 SCC 19, which supports the principle that civil forfeiture laws aim to deter criminal activity by removing financial incentives. The court examined statements given by the respondents at the time of their arrest. The respondent's shifting narratives at the time of arrest were found to be unreasonable and without credibility. Under s. 7(1) of the Act, forfeiture may be denied if it "clearly would not be in the interests of justice." The burden was on the respondent to prove that forfeiture would be unduly harsh or unjust, as established in *Mihalyko (Re)*, 2012 SKCA 44. However, since he failed to provide any evidence in response to the application, the court found no basis to deny forfeiture. The court granted the director's application and ordered that the money be forfeited to the Crown.

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***Home Trust Company v Haughian*, [2025 SKKB 8]**

Wempe, 2025-01-13 (KB25008)

Debtor and Creditor - Mortgage - Foreclosure
Mortgage - Judicial Sale - Costs
Mortgages - Foreclosure
Statutes - Interpretation - *Limitation of Civil Rights Act*, Section 7

Home Trust Company (Home Trust) initiated foreclosure proceedings against the defendants after they defaulted on their mortgage. Capital One Bank and the Royal Bank of Canada (RBC) were named as additional defendants due to their subordinate enforcement charges on the property. Following standard foreclosure procedures, Home Trust obtained an order for sale by real estate listing and, later, an order confirming the sale. After the judicial sale, Home Trust applied for an assessment of costs, seeking legal fees and property management fees. RBC opposed certain aspects of the claim, particularly the standard legal fees and post-securement occupancy checks. The court had to decide on the appropriate amount of post-leave solicitor-client costs, and whether Home Trust should be permitted to recover post-securement maintenance fees for occupancy checks.
HELD: The court ruled in favour of Home Trust regarding the legal fees, confirming the benchmark amount at $5,500.00. However, it denied Home Trust's claim for post-securement occupancy fees, finding that such fees were barred under *The Limitation of Civil Rights Act*. RBC argued that the standard legal fee for foreclosure proceedings should remain at $5,000.00, as previously established in *Scotia Mortgage Corp. v Keep*, 2024 SKKB 133 (*Keep*). Home Trust contended that recent case law, including Scotia Mortgage Corp. v Irvine, 2023 SKKB 171, and *Scotia Mortgage Corp. v Yamniuk*, 2024 SKKB 48 (*Yamniuk*), supported increasing the benchmark to $5,500.00 due to inflation and rising legal costs. The court reviewed past decisions and found that the trend supported increased standard fees over time. It emphasized that the increase was consistent with recent adjustments to the tariff under *The King's Bench Rules*. As a result, the court upheld the $5,500.00 benchmark for standard foreclosure legal fees. Home Trust sought to recover $4,357.50 in post-securement maintenance fees, arguing that these were property management expenses necessary to protect the property after taking possession. RBC opposed the claim, arguing that such fees were essentially inspection fees barred under s. 7 of *The Limitation of Civil Rights Act*. The court examined previous rulings in *Yamniuk* and *Keep* where similar claims for post-securement inspection fees were denied. The court held that while Home Trust's argument was

creative, the statute clearly prohibited recovery of any inspection fees beyond those permitted for initial mortgage approval. The court reiterated that legislative clarity must be respected and refused to rewrite statutory provisions. The court granted Home Trust's request for legal fees, confirming the standard amount at $5,500.00. However, the court dismissed the claim for post-securement maintenance fees, reaffirming that such fees are non-recoverable under *The Limitation of Civil Rights Act*. The remaining funds from the sale proceeds were ordered to be paid to RBC.

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***R v Kluz*, 2025 SKKB 9**

Sinclair, 2025-01-14 (KB25009)

Constitutional Law - *Charter of Rights*, Section 8, Section 9 - Search - Demand for Breath Sample - Reasonable and Probable Grounds
Criminal Law - Breathalyzer - As Soon As Practicable
Criminal Law - Breathalyzer - Time Element - Time Between Tests

The appellant had been found guilty of having a blood alcohol concentration equal to or exceeding 80 mg of alcohol in 100 ml of blood within two hours after ceasing to operate a conveyance. The court had to determine whether the trial judge erred in determining that the police officer took the appellant's breath sample "as soon as practicable".
HELD: The appeal was dismissed. (1) The trial judge did not err in determining that the peace officer obtained Mr. Kluz's breath samples as soon as was practicable. Under s. 320.28 (1) of the *Criminal Code*, a police officer is required to perform the following "as soon as practicable": (a) make a demand on the accused for a breath sample; and (b) obtain the breath samples. In this case, the delay from the time of the mandatory screening demand to the departure by the police officer from the scene was reasonable for the following reasons: (a) while maintaining the chain of custody of the vehicle was not necessary under the *Traffic Safety Act*, the circumstances in this case justified it; (b) the arresting officer, being alone in his police unit, did not have the option available to leave one officer with the subject vehicle; (c) the officer's stated concern about ensuring the safety of the appellant's vehicle was reasonable given the location of the vehicle and the lack of option of keeping an officer behind to monitor the vehicle; (d) the officer was engaged in tasks during the 15-minute period that were reasonable and necessary; and (e) leaving the appellant's vehicle by the side of the road, unattended, with firearms inside would have been unadvisable.

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***Watch v Live Nation Entertainment Inc.*, 2025 SKKB 10**

Mitchell, 2025-01-15 (KB25010)

Civil Procedure - Class Action
Civil Procedure - Class Action - Class Counsel Fees
Civil Procedure - Class Action - Settlement Approval

The plaintiff had filed an action in 2015 alleging that the defendants breached the *Competition Act*; consumer protection legislation from all provinces in Canada and *The Ticket Sales Act*, when selling and distributing tickets to members of the public for events in Saskatchewan and the rest of Canada. Concurrent with the litigation, counsel for the parties engaged in a mediation process commencing in late 2022 and continuing into 2023. The parties eventually achieved the proposed settlement agreement for the Saskatchewan litigation and executed it on August 8, 2024. The plaintiff applied for an order approving the proposed settlement agreement among other relief.
HELD: The proposed settlement, class counsel fees and disbursements, honorarium for the representative plaintiff and notices to the class plaintiffs, including the notice plan, were all approved by the court. (1) The proposed settlement was fair, reasonable and in the best interests of the class members. Only a proposed settlement deemed to be fair, reasonable and in the best interests of the class members as a whole may be approved. In this case, counsel demonstrated that on a cost/benefit analysis the plaintiff and other class members were well-served by accepting this proposed settlement rather than proceeding to litigating their claims any further. The settlement was achieved with the agreement and endorsement of both the plaintiff and the defendants. The evidence presented at the hearing showed that only one objection to the settlement agreement was registered, which did not affect the reasonableness of the settlement agreement. (2) The fees requested for class counsel, as well as the disbursements paid out, were fair and reasonable. In determining whether class counsel fees were fair and reasonable, the following factors have been found by courts to be worthy of consideration: (a) the factual and legal complexities of the claim; (b) the risks undertaken, including the possibility that the action might not succeed; (c) the degree of responsibility of class counsel; (d) the monetary value of the matters at issue; (e) the degree of skill and competence demonstrated by class counsel; (f) the result achieved; and (g) the contingency fee agreement. In this case, it was apparent that counsel devoted considerable time and effort on behalf of the class members and achieved a fair and reasonable settlement for them, considering the evidentiary challenges they had to confront. (3) The honorarium sought for the plaintiff was appropriate considering the significant role the plaintiff played in initiating the litigation, and her exceptionally active participation throughout its prosecution. (4) Approval of the notice of certification and the notice plan was appropriate as it ensured that a substantial portion of the class was informed about the settlement.

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***Pryputniski, Re (Bankrupt)*, 2025 SKKB 11**

Shalashniy, 2025-01-16 (KB25011)

Bankruptcy - Conditional Discharge - Factors
Bankruptcy - Discharge - Surplus Income Obligations
Bankruptcy - Trustee
Bankruptcy - Discharge - Breach of Fiduciary Duty

The bankrupt in this case was applying for discharge from bankruptcy. The discharge of the bankrupt was opposed by a judgment creditor on the basis that the bankrupt made an assignment into bankruptcy solely in order to avoid the judgment creditor's judgment. The discharge was also opposed by the trustee on the basis that on the basis that the bankrupt had failed to comply with her duties under the *Bankruptcy and Insolvency Act* and to pay surplus income obligations.
HELD: The bankrupt was granted a conditional discharge and ordered to pay the trustee the sum of $84,800 for the benefit of creditors with a right of prepayment by means of minimum monthly payments of $400. (1) The factors for a conditional discharge had been met. Under s. 173(1) of the BIA, a discharge may be refused, suspended or granted conditionally in the following circumstances: (a) the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible; (b) the bankrupt has on any previous occasion been bankrupt or made a proposal to creditors; (c) the bankrupt has failed to comply with a requirement to pay imposed under s. 68. When faced with discharge applications, courts will strike a balance among three factors: (a) the interests of the creditors in obtaining payment of their claims; (b) the interests of the bankrupt in obtaining relief from their financial obligations; and (c) the integrity of the bankruptcy process, which is key to the system of credit in Canada and the public's perception and confidence in it. In this case, the bankrupt was a third time bankrupt. She had not met her surplus income obligations. In addition, the assets of the bankrupt were not equal to 50 cents on the dollar on the amount of her unsecured liabilities, and the bankrupt had not tendered any evidence that they arose from circumstances for which she could not justly be held responsible. She was not an honest but unfortunate debtor. She had not provided information to the satisfaction of the trustee or had done so late and had not made the many required payments even though sufficient income existed to do so. The bankrupt had also admitted that the main driver of the bankruptcy was to avoid the judgment debt, which was based on a breach of trust or fiduciary duty.

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***2238649 Alberta Ltd. v Graham Carillion NBJV*, 2025 SKKB 14**

Norbeck, 2025-01-06 (KB25012)

Civil Procedure - Pleadings - Application to Strike Statement of Claim - Abuse of Process
Civil Procedure - Security for Costs

The plaintiffs commenced four separate lawsuits against various entities, seeking relief relating to a multi-million-dollar construction project, a subcontract for information technology supply and the supply of material, equipment, and labour for electrical work for a University of Saskatchewan Health Sciences building renovation. The defendants had brought applications seeking security for costs in each of the four actions, and the plaintiffs had been ordered to pay security for costs.
HELD: The claims were dismissed and the actions struck out as an abuse of process. (1) The plaintiffs failed to post security for costs within 60 days as required by earlier orders in the action. Under King's Bench Rule 4-25(1), unless the court orders otherwise,

all or part of an action can be dismissed without further order if security for payment of a costs award is not provided in accordance with the order to provide security for payment of a costs award. In this case, the plaintiffs did not explain the delay in posting security for costs. There was little evidence or information to ground the court's discretion. (2) In a case where the expiry of a limitation period is at issue, this standard will be met where, at the time of issuing the claim, the plaintiff had knowledge of all the facts that would cause the plaintiff's claim to be statute-barred. In this case, it was plain and obvious that by December 2017, the plaintiffs had discovered their claims, quantified them, and sought compensation from the defendants for the same claims that arose in the actions. The plaintiffs was aware the alleged loss or damage occurred and that it appeared to have been caused by the acts or omissions of the defendants. Under the circumstances, the actions were commenced outside the limitation period. (3) The plaintiffs lacked the authority to commence the claims.

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***R v Straightnose*, [2024 SKPC 43](#)**

Howarth, 2024-12-19 (PC24037)

Criminal Law - Defences - Officially Induced Error
Criminal Law - Driving While Disqualified - Driving Prohibition
Criminal Law - Driving While Disqualified - Evidence

The accused was charged with operating a conveyance (driving a car) while prohibited under s. 320.18(1)(a) of the Criminal Code. She pled not guilty and represented herself at trial, arguing that she was unaware of the prohibition and had been misled by Saskatchewan Government Insurance (SGI) and the Alberta Registry. The prohibition was from a one-year driving ban imposed in 2022 following a conviction for refusing to provide a breath sample. The court had to decide whether the Crown proved beyond a reasonable doubt that the accused was aware of her one-year driving prohibition and whether the charge should be judicially stayed due to an officially induced error of law arising from the accused allegedly receiving incorrect information from SGI and the Alberta Registry.

HELD: The court found the accused guilty, ruling that the Crown had proven her awareness of the driving prohibition beyond a reasonable doubt and that she had not established the defence of officially induced error. The accused argued that she had no recollection of being prohibited from driving as part of her July 25, 2022, conviction. However, the court found this assertion implausible, citing the following factors. The accused called SGI three to four times before the offence date, seeking confirmation that she was not suspended. The court found it unreasonable that she would do this unless she suspected she was prohibited. The accused's mother testified that they knew she was suspended in Saskatchewan and had contacted the Alberta Registry to determine whether the suspension applied there. This contradicted the accused's claim that she had no knowledge of the prohibition. The accused and her mother travelled to Lloydminster to obtain a replacement Alberta driver's licence. The court questioned why this effort was necessary if she had no reason to believe she was suspended. The Crown presented a certified copy of the one-year driving prohibition order, issued and signed on July 25, 2022. Based on the presumption of regularity, the court assumed the order had been verbalized in court during sentencing, further supporting the accused's knowledge of the prohibition.

Based on these findings, the court concluded beyond a reasonable doubt that the accused was aware of her driving prohibition at the time of the offence. The accused argued that she was misled by SGI and the Alberta Registry, which allegedly told her she was not suspended. The court assessed whether this constituted an officially induced error of law, applying the test from *Lévis (City) v Tétreault*, 2006 SCC 12, and *R v Jorgensen*, [1995] 4 SCR 55. To establish this defence, the accused had to prove: 1) that an error of law occurred; 2) that she considered the legal consequences of her actions; 3) that she received erroneous advice from an appropriate official; 4) that the advice was reasonable; and 5) that she relied on the advice. The court found that the accused did not meet this test for several reasons: 1) her inquiries to SGI were vague. She did not provide specific details about her criminal conviction and prohibition but simply asked if she was “suspended.” This was insufficient to obtain a definitive legal opinion. 2) The officials she spoke to were administrative employees, not legal authorities responsible for interpreting *Criminal Code* driving prohibitions. 3) The accused adopted a “don’t ask, don’t tell” approach, avoiding a direct inquiry about her prohibition status while hoping for a favourable response. Precedents such as *R v Osborne*, [2002] OJ No 3633 (QL) (Ont Ct J), and *R v Eckert,* 2011 ABPC 323, established that an accused who seeks to take advantage of a bureaucratic oversight cannot rely on the defence of officially induced error. The court found that the accused fell into this category. The court concluded that the accused knowingly took advantage of an administrative error and that her belief that she was not suspended was based on wishful thinking rather than reasonable reliance on official advice. The court found the accused guilty as charged, ruling that she was aware of her driving prohibition and could not rely on the defence of officially induced error.

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