



The Law Society of Saskatchewan Library's online newsletter
highlighting recent case digests from all levels of Saskatchewan Court.
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Courts and Judges - Judicial Intervention

Criminal Law - Apprehension of Bias

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Trial - Conduct of Trial - Duties of Judge

The appellant, an inmate at a federal penitentiary, was convicted of second-degree murder under section 229(a)(ii) of the *Criminal Code* for killing his cellmate. The appellant admitted to the killing but argued that he acted in self-defence or, alternatively, that he was provoked. The trial judge rejected these defences and sentenced the appellant to life imprisonment with no parole eligibility for 16 years. On appeal, the appellant argued that the trial judge's interventions during the trial created an appearance of bias and that the judge misapprehended key evidence, leading to a miscarriage of justice. The court had to decide whether the trial judge's interventions compromised trial fairness, creating a reasonable apprehension of bias, and whether the

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trial judge misapprehended key pieces of evidence in a way that materially affected the outcome of the trial.

HELD: The court dismissed the appeal, finding that the trial judge's interventions did not compromise trial fairness and that any misapprehensions of evidence were not material enough to constitute a miscarriage of justice. A miscarriage of justice occurs if the judge's conduct creates a serious appearance of unfairness that would undermine public confidence in the administration of justice (see: *R v Kahsai*, 2023 SCC 20). The standard of review in such matters is the standard of correctness because trial fairness and reasonable apprehension of bias are questions of law. The court acknowledged that the trial judge actively participated in questioning witnesses, including the forensic pathologist, and raised clarifying questions regarding expert evidence. However, the court emphasized that trial judges have a duty to ensure clarity in testimony and case management (see: *R v Samaniego*, 2022 SCC 9). The court found that while some of the trial judge's interventions were pointed, they were primarily aimed at clarifying complex evidence and did not amount to judicial misconduct. The court also noted that the defence had sufficient opportunity to respond to any concerns raised by the judge. The court concluded that, when assessed holistically, the trial judge's interventions did not create an appearance of bias nor interfere with the appellant's right to make full answer and defence. There was no evidence that the judge took an adversarial role against the appellant; therefore, this ground of appeal failed. The appellant further argued that the trial judge made critical errors in assessing the evidence, including findings related to the forensic pathologist's testimony on the cause of death and the ambient light in the prison cell, which was relevant to the appellant's self-defence claim and the credibility of a correctional officer's testimony about hearing noises from the cell. The court applied the test from *R v Lohrer*, 2004 SCC 80, which requires an appellant to demonstrate that the trial judge made a significant error in understanding or applying the evidence that was central to the matter. The court found that while there may have been minor inconsistencies in how the trial judge assessed certain details, these did not rise to the level of material misapprehensions that would have changed the trial outcome. The trial judge thoroughly considered the key issue of whether the appellant acted in self-defence, and the trial judge provided extensive reasons for rejecting the appellant's claim. The court held that the appellant's arguments amounted to a disagreement with the trial judge's credibility findings rather than proof of a material misapprehension of evidence. Given the substantial evidence supporting the conviction, the court found no miscarriage of justice. The court dismissed the appeal.

Boyd v Dreher, [2025 SKCA 11](#)

Real Property - Foreclosure - Order *Nisi*

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The appellant and respondent cohabited for 14 years before separating in 2022. Following the separation, the respondent commenced a family law proceeding in 2024 and sought interim relief, including decision-making authority for their children, child support, and spousal support. The chambers judge granted the respondent primary care of the elder child, adjusted the shared parenting schedule for the younger child, and ordered the appellant to pay spousal support. The appellant appealed the decision, arguing that the new parenting arrangement was unworkable and that the chambers judge erred in determining his income for spousal support calculations, failing to consider the respondent's new partner's financial contributions, and misapplying the Spousal Support Advisory Guidelines (SSAG). The Court of Appeal (court) had to decide whether the chambers judge erred by altering the shared parenting schedule of the younger child and whether the chambers judge erred in determining the quantum of spousal support by using an incorrect income figure for the appellant, failing to consider the financial contributions of the respondent's new partner, and misapplying the Spousal Support Advisory Guidelines (SSAG).

HELD: The court dismissed the appeal, affirming that the parenting order and spousal support determination were reasonable and within the chambers judge's discretion. The appellant argued that the revised parenting schedule made it impossible for him to exercise his share of parenting time due to his 12-hour shifts. He claimed the issues stemming from this arrangement effectively reduced his parenting time and altered the status quo. The court rejected this argument, emphasizing that not every adjustment to parenting time constitutes a change to the status quo. The court reaffirmed that minor schedule modifications do not equate to a fundamental change in a child's primary residence or decision-making authority. The court also noted that the appellant had failed to provide evidence that securing childcare arrangements was impossible. The

Cases by Name

Armstrong v M.J.A. Developments Inc.

Boyd v Dreher

Brehon v WestJet Airlines Ltd.

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J.I.J.A. v Saskatchewan (Director of Vital Statistics)

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Sawatzky v Prince Albert Golf and Curling Club Inc.

Tobin Lake Farms Ltd. v Viterra Canada Inc.

chambers judge correctly prioritized the best interests of the child and did not err in adjusting the schedule. The appellant challenged the interim spousal support order on three grounds: income calculation based on the cohabitation agreement, lack of consideration of the respondent's new partner's income, and the chambers judge's miscalculation of support amount. The appellant argued that the chambers judge should have limited his income to his employment earnings, as stipulated in the parties' cohabitation agreement. The court rejected this argument, noting that the agreement was being challenged on the basis that the respondent signed it under duress and without knowledge of the appellant's financial settlement from a prior accident. The court applied the *Miglin* framework (*Miglin v Miglin*, 2003 SCC 24), which is a two-stage analysis undertaken when a spousal support claim is made in the face of a pre-existing interspousal agreement, holding that at the interim stage, the chambers judge was entitled to use the appellant's actual earnings. Further, the appellant contended that the chambers judge erred in not considering the financial contributions of the respondent's new partner, with whom she had been cohabiting for three months. The court rejected this argument, holding that financial support from a new partner is only relevant when there is clear evidence of a commitment to shared expenses (see: paragraph 53 of the decision). The short duration of the respondent's new relationship did not establish any financial interdependence that would justify a reduction in spousal support. The appellant also argued that the chambers judge erred by accepting the respondent's calculations over his own and using an incorrect formula. The court disagreed, holding that the judge had discretion in selecting reasonable calculations within the SSAG framework. The court emphasized that interim spousal support determinations do not require exact precision but must aim for a fair division of family income until trial (see: *Potzus v Potzus*, 2017 SKCA 15). The appeal was dismissed in its entirety. The court upheld the adjusted parenting schedule and affirmed the interim spousal support award, ruling that the chambers judge had appropriately considered the best interests of the child and applied the relevant legal principles to determine spousal support.

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***Armstrong v M.J.A. Developments Inc.*, [2025 SKCA 12](#)**

Jackson McCreary Bardai, 2025-01-30 (CA25012)

Real Property - Judicial Sale

Real Property - Foreclosure - Order *Nisi*

Real Property - Sale

The appellant and the respondent, M.J.A. Developments Inc. (MJA), had a dispute regarding a purchase agreement for a residential property. The appellant entered into an agreement for sale with MJA in 2009 to purchase a property for \$230,000, payable in instalments. MJA retained ownership until full payment was made. The appellant paid a substantial portion of the purchase price but ultimately defaulted on the remaining balance. A new agreement was signed in 2015, setting out a revised payment structure. MJA later sought to cancel the agreement due to the appellant's failure to pay the outstanding balance. The Court of King's Bench (chambers judge) granted MJA's request, cancelling the agreement and giving the appellant a three-month redemption period to pay the outstanding amount owed. If he failed to pay, he would forfeit all previously paid amounts and lose his claim to the property. The appellant appealed, arguing that MJA had breached the contract by placing an unauthorized mortgage from TD Bank on the property and that he should be entitled to relief from forfeiture. The court had to decide whether the chambers judge overlooked or misapprehended the appellant's argument regarding the TD Bank mortgage on the property and whether the chambers judge narrowed the appellant's available remedies, allowing him to avoid forfeiting his equity in the property.

HELD: The appeal was allowed in part. The Court of Appeal (court) set aside the order *nisi* to cancel the agreement and remitted the matter to the chambers judge to determine whether a judicial sale would be an appropriate remedy. The court found that while the chambers judge acknowledged the appellant's knowledge of the mortgage, she did not explicitly rule on whether MJA's actions constituted a breach of contract. However, the court held that even if a breach had occurred, it did not preclude MJA from enforcing the 2015 agreement and recovering the outstanding balance. The court emphasized that the appellant's financial difficulties were not caused solely by the TD Bank mortgage but also by his inability to obtain financing. The central issue on appeal was whether the chambers judge improperly restricted her discretion by granting only a redemption period rather than considering alternative remedies. The court held that relief from forfeiture typically involves allowing a reasonable period to pay the outstanding balance, but in this case, a judicial sale may have been a more equitable solution. The court noted that the appellant had paid a substantial amount toward the purchase price, and complete forfeiture would be an excessively harsh outcome. The court further emphasized that *The Land Contracts (Actions) Act* and *The King's Bench Rules* grant broad discretion to provide equitable relief, including ordering a sale of the property rather than forcing the appellant to forfeit all payments. The court concluded that the chambers judge did not consider all available remedies and therefore committed an error of law. Rather than impose its own remedy, the court remitted the matter to the same chambers judge for further consideration of whether a judicial sale would be appropriate. The judge was instructed to hear further arguments, receive any necessary evidence (such as an appraisal of the property), and determine whether a sale would allow the appellant to recover his equity while ensuring MJA was paid what it was owed.

***Melville (City) v Keller*, [2025 SKCA 14](#)**

Jackson Caldwell Kalmakoff, 2025-02-05 (CA25014)

Municipal Law - Appeal

Real Property - Easements - Registration

Real Property - *Land Titles Act*

The City of Melville (the city) appealed a decision from the Court of King's Bench, arguing that it had an easement over a piece of land since 1963. The city relied on a caveat registered in 1963, which referred to an unregistered easement agreement between the previous landowners and the city. However, the city could not produce the original written document that created the easement. The chambers judge ruled against the city, finding that the evidence was insufficient to establish the existence of an easement. The city appealed, arguing that the chambers judge misapplied legal principles, including the doctrine of indefeasibility under *The Land Titles Act, 2000*, and erred in refusing to declare that an easement existed. The city also appealed the costs order imposed against it. The Court of Appeal (court) had to decide whether the chambers judge erred in finding that the city failed to prove the existence of an easement; whether the city was entitled to declaratory relief under s. 109 of *The Land Titles Act, 2000*; whether the doctrine of indefeasibility prevented the respondent, J.K., from acquiring the land free of the claimed easement; and whether the costs order against the city should be overturned.

HELD: The court dismissed the city's appeal, upholding the chambers judge's ruling that the city failed to establish the existence and terms of the easement. The court also upheld the costs order, awarding \$4,000 in costs in favour of the respondent. The city sought a declaration that an easement had existed over the southeast quarter since 1963. However, the city could not provide a written document confirming the easement's terms. The court noted that without clear evidence defining the scope and terms of the easement, the chambers judge had no basis to declare its existence. The city argued that the court should grant a declaration under s. 109 of *The Land Titles Act, 2000*, confirming that the caveat registered in 1963 reflected a valid easement. The court rejected this argument, finding that the lack of clear terms or boundaries of the alleged easement made such a declaration impossible. The court emphasized that land titles law requires certainty to maintain an orderly system of land ownership. Allowing a vague and undefined easement to be recognized could cause legal uncertainty and disrupt landowners' rights. The court dismissed the appeal against the costs order and ordered fixed costs against the city.

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***Sawatzky v Prince Albert Golf and Curling Club Inc.*, [2025 SKCA 16](#)**

Jackson Schwann Tholl, 2025-02-12 (CA25016)

Civil Procedure - Amendments to Pleadings

Tort Law - Defamation - Libel and Slander - Requirements

Torts - Defamation

The appellant was employed as the general manager of the respondent club for approximately four years before being terminated without cause in 2020. Following his dismissal, he filed a lawsuit against the respondents, alleging wrongful dismissal and defamation. The defamation claim was based on allegations that the respondents falsely implied that he had stolen money from the club, and that these defamatory statements were republished by third parties, further damaging his reputation. The respondents applied under Rule 7-9(2)(a) of *The King's Bench Rules* to strike portions of the appellant's statement of claim, arguing that certain allegations disclosed no reasonable cause of action. The chambers judge struck several paragraphs from the claim, effectively removing one of the respondents from the lawsuit and limiting the defamation claim against the club. The appellant appealed, arguing that the chambers judge misapplied the legal principles governing defamation and the personal liability of corporate officers. The Court of Appeal (court) had to decide whether the chambers judge erred by striking portions of the appellant's claim and whether the appellant should be granted leave to amend his statement of claim.

HELD: The appeal was allowed in part. The court reinstated the republication claim and granted the appellant leave to amend his pleadings regarding the personal liability of one of the respondents. The court reaffirmed that a defamation claim requires proof that: 1) the words in question were defamatory; 2) they referred to the appellant; and 3) they were published to at least one third party (see: *Grant v Torstar Corp.*, 2009 SCC 61). Every repetition of a defamatory statement is treated as a separate cause of action, and the original publisher can be held liable for republication if: 1) they authorized or intended the republication; 2) the recipient had a duty to repeat it; or 3) republication was a natural and probable result of the original statement (see: *Breeden v Black*, 2012 SCC 19). The chambers judge had struck the republication claim, concluding that the pleadings failed to establish a link between the respondents' statements and third-party repetitions. However, the court found that the judge failed to consider the appellant's response to a demand for particulars, which contained allegations that board members repeated defamatory statements. The court reinstated the republication claim by applying the modern approach to defamation pleadings (see: *Hope v Gourlay*, 2015 SKCA 27 and *Wilson v Saskatchewan Water Security Agency*, 2023 SKCA 16). Regarding the personal liability of corporate officers, the court summarized the law: corporate officers could be personally liable for tortious conduct even if they were acting within their corporate role (see: *Montreal Trust Co. of Canada v ScotiaMcLeod Inc.* (1995), 129 DLR (4th) 711 (WL) (Ont CA)). However, to establish personal liability, a plaintiff must plead specific facts showing that the officer's actions were tortious and distinct from corporate acts. The chambers judge struck the claim against one of the respondents, finding that the pleadings did not distinguish his alleged personal actions from those taken as a corporate officer. The court agreed that the pleadings were deficient but held that the appellant should be allowed to amend his claim. The court noted that plaintiffs should generally be allowed to amend their pleadings unless it is clear that no viable claim exists (see: *Yashcheshen v Teva Canada Ltd.*, 2022 SKCA 49). Since the appellant's core defamation claim was still proceeding, the court granted him leave to amend his statement of claim to clarify the personal liability allegations. The court reinstated the appellant's republication claim and granted him leave to amend his pleadings regarding the personal liability of one of the respondents. However, the dismissal of other portions of the claim was upheld.

***R v Young*, [2025 SKKB 15](#)**

Morrall, 2025-01-24 (KB25013)

Criminal Law - Defences - Self-Defence

Criminal Law - Defences - Intoxication

Criminal Law - Second-Degree Murder - Specific Intent

Statutes - Interpretation - *Criminal Code*, Section 235(1)

The accused was charged with second degree murder. A friend of the accused saw the victim on the accused's couch during a morning visit and called 911. The accused testified in his defence. He said that he arrived at a party in the evening and left at 10:00 pm. Before he left, he saw the victim get into a scuffle with the host. When the accused got home, he heard the victim come up the steps and try to open the door. The accused let him in, but the victim hit the accused on the head with an iron weight-lifting bar and kicked him in the ribs. The accused testified that when he hit back, the victim fell to the couch, immobilised. The accused said the victim still had a pulse, so he put a blanket on the victim and left him on the couch until his friend arrived at 10:00 am and called the police. The accused claimed he saw two other people trying to break into his home and hurt the victim as he was being arrested. One witness testified that the day after the victim was found, the accused told her he "piped" the victim. Another witness testified that the accused drunkenly told her "I'll fucking kill you too" two weeks after the incident. DNA evidence established that blood found on a pipe wrench in the accused's home belonged to the victim. Testimony from a doctor with a specialty in forensic pathology established that the cause of death was blunt force trauma to the head. Defence counsel argued that the accused's version of the events raised a reasonable doubt as to whether the accused acted in self-defence. Defence counsel added that the accused demonstrated a lack of intent to murder the victim; the accused stated he only wanted to immobilise the victim, and once he had done so, showed some care towards the victim by covering him with a blanket. The Crown argued that there was no doubt that the victim was killed by the accused, and argued that the killing was not the result of provocation or in self-defence. The Crown argued that the accused's account was unreliable; his version of the assault in his sworn statement was vastly different from his version on the witness stand. The accused had no visible injuries, which did not accord with a valid self-defence claim, and was contrary to his own testimony that he was violently attacked by the victim. The court determined the following issues: 1) whether there was an air of reality to the defence of intoxication; 2) whether there was an air of reality to the accused's assertion of self-defence; 3) whether the Crown proved all elements of second degree murder beyond a reasonable doubt; 4) whether the accused should be found guilty of manslaughter given his mental health and other factors affecting intent; and 5) whether the defence of provocation applied.

HELD: The court found the accused guilty of second-degree murder. The accused could not assert self-defence because the extent of the beating was not consistent with self-defence in the circumstances. 1) While not asserted by the defence, the court reviewed the defence of intoxication. The court concluded that there was no air of reality relating to the specific defence of intoxication as it applied to intent in this matter, because the evidence only pointed to mild intoxication of the accused. 2) The court found that there was an air of reality to the assertion of self-defence in these circumstances but ultimately held that the accused's beating of the victim was unreasonable in the circumstances. The court cited *R v Khill*, 2021 SCC 37 for an analysis of self-defence as set out in s. 34 of the *Criminal Code*. The same three basic components arise in all cases of self-defence: i) the accused must reasonably believe that force or a threat of force is being used against them or someone else; ii) the subjective purpose for responding to the

threat must be to protect oneself or others; and iii) the accused's act must be reasonable in the circumstances. The court then considered this defence in determining whether the Crown had proven that the accused committed second-degree murder beyond a reasonable doubt. 3) Under s. 229(a) of the *Criminal Code*, the Crown had to prove three elements to establish second-degree murder: i) that the accused caused the death of the victim; ii) that the accused caused the victim's death unlawfully; and iii) that the accused had the requisite state of mind for murder. In determining intent, the court considered the cumulative effects of the entirety of the evidence, and whether that evidence was sufficient to cast a reasonable doubt on whether the accused had the intent to commit murder. The court also mentioned the location and severity of the victim's injuries and inferences that could be drawn about intent. The more severe the injuries caused by the accused and the more force required to inflict them, the stronger the inference that he intended to kill the victim or cause serious injury (*R v Rodgerson*, 2015 SCC 38). The court first determined whether the Crown proved the element of causation beyond a reasonable doubt. The accused's testimony was that he only hit the victim once or twice and that the victim was alive when the accused was arrested. The court found as a fact that the victim's blood was located on the wrench found in the accused's home, and found that there were no injuries caused to the victim's body during transport or any other step in the process up to the autopsy. The court also found that the accused's belief that the victim had a weight bar at the party to be unbelievable. The court found that the victim had a short verbal argument with the host at the party, but that the victim was generally in a happy mood at the party and not injured. The court found the witness's recollection of the accused stating that he "piped" the victim the day after the incident to be accurate and factual. The court also accepted another witness's evidence that the accused drunkenly told her "I'll fucking kill you too" two weeks after the incident. The court had "absolutely no doubt" that the victim caused every single one of the victim's recent injuries. The court found that no one other than RCMP officers, the coroner or ambulance personnel attended the accused's residence. The court found that the accused had to have known that he had inflicted substantial injuries upon the victim, given the pool of blood that had accumulated on the couch and testimony that witnesses noticed blood on the victim's face even after being there only briefly. The court found beyond a reasonable doubt that the accused caused the victim's death. In considering self-defence, the court noted that there was no completely reliable direct evidence as to what triggered the altercation, if anything. However, the court was not convinced beyond a reasonable doubt that the accused did not believe that force was threatened or being used against him. The court found that the Crown did not prove beyond a reasonable doubt that the accused's subjective purpose was not self-defence. However, the court found that the accused's response to the victim was completely unreasonable and disproportional to the threat given that the victim was unarmed and there was no reliable evidence of provoking behaviour. After considering the relevant factors in s. 34(2), the court concluded that the accused's beating of the victim was unreasonable in the circumstances. The accused could not avail himself of the defence of self-defence, and the court held that the accused unlawfully caused the death of the victim. The court found that the accused had the requisite state of mind for murder. The Crown had to prove either: a) that the accused meant to cause the victim's death; or b) that the accused meant to cause the victim bodily harm that he knew was likely to cause death and was reckless whether death ensued or not. The court found that the Crown proved the second state of mind. That he did not engage in any further medical checks on the victim led the court to the rational inference that the accused deliberately did not want to know anything about the victim's health. Hitting someone in the head with a broken monkey wrench was likely to cause death. None of his after-the-fact conduct could mitigate the clear inference that at the time of the attack, the accused meant to cause the victim bodily harm that he knew was likely to cause the victim's death, and the accused was reckless whether death ensued or not. 4) The court examined other decisions in which evidence of mental health issues was applied to intent. Here, the court found that there was very little evidence from which one could draw an inference that the accused experienced mental health concerns at the time of the incident. 5) The court considered the defence of provocation in s. 232 but found that this defence was not applicable to the accused. The court cited *R v Wolfe*, 2021 SKCA 39 for the two elements of the defence of provocation: i) an objective element requiring provoking conduct of such a nature

that it is sufficient to deprive the ordinary person of the power of self-control; and ii) a subjective element requiring the accused to act upon that insult before there is time for the accused's passion to cool. The court found that there was an air of reality to the provocation defence, but that an ordinary person would not be deprived of the power of self-control in these circumstances. There was no evidence of any recent heightened tension between the victim and accused.

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***BTB Mortgage Investment Corporation v Harpham*, [2025 SKKB 16](#)**

Danyliuk, 2025-01-27 (KB25016)

Foreclosure - Costs

Mortgages - Foreclosure - Judicial Sale

The plaintiff applied for a deficiency judgment and for the assessment of the costs of the action. The sole issue was the propriety of the mortgagee's addition of certain out-of-pocket costs to the mortgage account.

HELD: The application for costs was denied. The claim for disbursements was not properly verified by affidavit despite the plaintiffs' having had more than one chance to do so. Secondly, pre-leave costs were to have been dealt with at the leave stage and no pre-leave costs were awarded when leave was granted. There was also no mention of property management fees incurred in the affidavit filed in support of the application for order for sale by judicial listing, which set out amounts owed under the terms of the two mortgages granted by the mortgagors. The claim for property management costs was also not strong in this case.

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***J.I.J.A. v Saskatchewan (Director of Vital Statistics)*, [2025 SKKB 17](#)**

Wildeman, 2025-01-28 (KB25014)

Civil Procedure - Jurisdiction

Statutes - Interpretation - *Children's Law Act, 2020*, Section 64(3)

The court determined whether it had legislative authority to make a declaration of parentage when the child in question was over the age of 18. The applicant applied for an order declaring the name of his biological father and an order that the Director of Vital Statistics and Health Registries amend the applicant's statement of live birth to state his biological father's name. The applicant had previously applied for the same relief under ss. 64(3) of *The Children's Law Act, 2020* (CLA), but the application was dismissed due to deficiencies in the materials and the chambers judge noting a jurisdiction issue to make a parentage order when the child was over 18, based on the definition of "child" in the CLA.

HELD: The court granted the application for a declaratory order of parentage. The court found that it had jurisdiction to determine whether the person was or was not, in law, the parent of the applicant pursuant to Part 7 of the CLA, even in the circumstance where the applicant was over 18. The court ordered that the matter be dealt with in the Family Law Division instead of the General Division. Section 64 of the CLA permits any person with sufficient interest to apply to the court for a declaratory order on parentage. When considering the entire context of Part 7 of the CLA, the court found that its authority to make a parentage order was not circumscribed by the age of the child at the time the declaration was sought. The court was satisfied on a balance of probabilities that the person was, in law, the applicant's parent pursuant to ss. 64(3) of the CLA, and granted the application for a declaratory order of parentage. There was no need for the court to direct the registrar to change the birth certificate; providing a copy of the declaratory order would be sufficient for the registrar to amend the statement of live birth.

***Tobin Lake Farms Ltd. v Viterra Canada Inc.*, [2025 SKPC 2](#)**

Robinson, 2025-01-13 (PC25002)

Agriculture - Contract Law

Contract Law - Breach - Damages

Contracts - Agriculture

Contracts - Duty of Honest Contractual Performance

Small Claims - Breach of Contract

The plaintiff, Tobin Lake Farms Ltd. (Tobin Lake), sued the defendant, Viterra Canada Inc. (Viterra), for money owed under a grain purchase agreement in 2021. Tobin Lake had contracted to sell Synergy malt barley to Viterra for \$470.78 per metric ton. However, Viterra paid only the feed barley price of \$361.42 per metric ton, claiming that the barley did not meet the required 95% germination rate. Tobin Lake claimed the difference in price for 292.167 metric tons, totalling \$32,068.25. Viterra defended the claim by arguing that the barley did not meet malt quality specifications due to its germination rate falling below 95%. It also asserted that Tobin Lake's claim was barred under *The Limitations Act*, alleging that the statement of claim was filed too late. The court had to decide whether: 1) *The Limitations Act* barred the plaintiff's claim; 2) the barley delivered by the plaintiff met the contractual germination requirements for malt barley; and 3) the defendant breached its duty of honesty in contractual performance. HELD: The court ruled in favour of Tobin Lake Farms Ltd., awarding \$30,000 in damages (the maximum under small claims jurisdiction), plus pre-judgment interest and costs. Viterra argued that the claim was barred under *The Limitations Act*, which imposes a two-year limitation period. The court determined that the limitation period began when Tobin Lake received its cheque from Viterra on February 10 or 11, 2022, confirming the shortfall in payment. Since Tobin Lake commenced its claim on January 15, 2024, the claim was within the limitation period. The key issue was whether the barley met the minimum 95% germination rate required for malt barley under the contract. The evidence showed that Tobin Lake's barley initially tested at 99% germination in September 2021 but declined over time. By December 2021, Viterra's quality control lab tested a composite sample of the delivered barley and found an 85% germination rate. However, independent tests conducted by an independent company, SGS, on individual truckload samples yielded an average germination rate of 90%. The court found that the composite sample did not represent the

entire barley shipment, and the individual truckload results were more reliable. Viterra told Tobin Lake that the barley needed a 95% germination rate to be accepted as malt barley. However, Viterra knew (from the barley test results and years of experience as a grain buyer) that Tobin Lake's barley was unlikely to maintain such a high germination rate over time. Despite this, Viterra led Tobin Lake to believe that they would receive the malt barley price, causing them to miss other potential sales opportunities. The court found that Viterra had acted dishonestly in its dealings with Tobin Lake. Referencing *Bhasin v Hrynew*, 2014 SCC 71, and *C.M. Callow Inc. v Zollinger*, 2020 SCC 45, the court emphasized that contractual parties must act honestly and not mislead each other. The court concluded that Viterra breached its duty of honest contractual performance, resulting in Tobin Lake's financial loss.

***Brehon v WestJet Airlines Ltd.*, [2025 SKPC 6](#)**

Martinez, 2025-01-21 (PC25004)

Regulations - Interpretation - *Air Passenger Protection Regulations*

Transportation - *Air Passenger Protection Regulations* - Flight Delays

The plaintiffs were a group of friends who went on a snowboarding getaway to Big White Ski Resort, near the city of Kelowna, British Columbia, in March 2023. On their return trip home, the plaintiffs suffered delays to two of their flights and returned to Saskatoon between 16 and 20 hours later than originally planned. The plaintiffs alleged that operational decisions within the defendant's control caused the delay of their flight and the defendant was required to compensate them.

HELD: The claim was dismissed. The proximate cause of the flight disruption that led to the plaintiffs' very late return to Saskatoon was required for safety purposes. Under s. 11 of the *Air Passenger Protection Regulations*, SOR/2019-150, when a flight delay is within the carrier's control but is required for safety purposes, the carrier is not required to compensate an inconvenienced passenger. In this case. The delay of Flight 3418 for 2 hours and 42 minutes was required for the flight's safety.