CaseMail

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

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***Maharaj v Rosetown (Town)*, 2025 SKCA 19**

Schwann Kalmakoff Drennan, 2025-02-18 (CA25019)

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The appellant appealed from a double costs award following his own successful application for judicial review to the Court of Queen's Bench. The appellant argued that the chambers judge erred by not granting him full indemnification for legal fees and disbursements from his application. The judicial review application resulted in the quashing of two resolutions passed by the council of the Town of Rosetown (town), and the remission of two Code of Ethics harassment complaints under the town's Code of Ethics Bylaw for reconsideration. The appellant was the mayor at the time of the complaints. The chambers judge found that the impugned resolutions did not violate *The*

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Appeal - Administrative Law - Judicial Review - Municipal Bylaws - Procedural Fairness

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Municipalities Act or the town's procedure bylaw. She found that there was no evidence of bad faith on the part of the town in passing the resolutions. However, the chambers judge quashed the resolutions and remitted the two Code of Ethics complaints to the town, because she found that the town used a procedurally unfair process when it failed to provide reasons demonstrating an awareness of the appellant's response to the complaints. In his submissions to the chambers judge, the appellant argued that he should be entitled to full indemnification of his legal costs on the basis that his matters were of public interest, or in the alternative, that s. 2-40(4) of *The Legislation Act* provided for such indemnification. In the further alternative, he argued that he was entitled to solicitor-and-client costs, double costs, or costs on Column 3 of the Queen's Bench Tariff of Costs. In addition, he relied on a formal offer to settle under Rule 4-31 of *The Queen's Bench Rules* which he had made to the town, arguing that the substantive relief he had obtained exceeded the terms he had proposed for settlement. The town argued that the cost had been increased unnecessarily through procedural applications, and that the appellant was not entitled to the benefit of the offer to settle as he had improperly mentioned its existence in the court proceedings. The chambers judge concluded that the appellant was the successful party, but she did not accept that the matters before the court were of such public significance that they merited costs to fully indemnify the appellant. She found that the neither *The Legislation Act* nor *The Municipalities Act* required the town, as a municipal corporation, to indemnify the appellant for the costs of legal proceedings he initiated. She added that an order for solicitor-client costs was not justified under *Siemens v Bawolin*, 2002 SKCA 84. She found that alluding to the existence of an offer to settle, as opposed to disclosing its content, did not breach Rule 4-30(1). She concluded that an award of double costs to the appellant was the appropriate order. The town cross-appealed from the costs order, arguing that the chambers judge disregarded material evidence and argument related to the appellant's litigation conduct and the impact of his allegations of bad faith on the part of town councillors, and asserted that the chambers judge misinterpreted Rule 4-30(1) of *The Queen's Bench Rules* on formal offers to settle in making the costs order. The cross-appeal sought to have the order varied so that parties would bear their own costs. The Court of Appeal (court) determined: 1) whether the chambers judge erred in determining that the appellant was not entitled to full indemnification for his legal costs pursuant to *The Legislation Act*; 2) whether the chambers judge erred in her interpretation of Rule 4-30(1) of *The Queen's Bench Rules* and in her reliance on the appellant's offer to settle; and 3) whether the chambers judge erred by disregarding or failing to consider relevant argument or evidence in making the costs order.
HELD: The court dismissed both the appellant's appeal and the town's cross-appeal. There was no error in the chambers judge's conclusion on costs. The court highlighted the applicable standard of review: a costs award is a discretionary determination, and an appellate court may only intervene if such an award was made arbitrarily or without

Civil Procedure - Guillotine Order - Drop Dead Order - Amending Claim

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Family Law - Child Support - Variation - Change in Circumstances

regard to the applicable legal principles (*McNabb v Cyr*, 2018 SKCA 51). 1) The court found no error in the chambers judge's conclusion that the appellant was not entitled to full indemnification under *The Legislation Act*. The appellant's argument turned on what he said was a broader entitlement to indemnification under s. 2-40 of *The Legislation Act* than that found in *The Municipalities Act*. He argued that in his role as mayor and councillor, he was a "director" or "officer" of the town, which he characterized as a municipal "corporation" under the provisions of s. 2-40 of *The Legislation Act*. He added that he incurred costs in defending a legal proceeding within the meaning of s. 2-40 due to his association with the town, and that the litigation he pursued was done in the best interests of the town. He conceded that s. 2-40(1) used permissive language in its contemplation of indemnification. The town argued that *The Municipalities Act* provided a complete code for the indemnification of legal costs incurred by municipal officers, including the mayor, with a more restrictive indemnity for a mayor or town councillor under s. 355(3). The court noted that s. 2-40 had never been judicially considered, and other provinces did not have similar provisions in their parallel statutes. However, the wording was nearly identical to the indemnification provision in s. 9-25 of *The Business Corporations Act, 2021* (formerly s. 119 of *The Business Corporations Act*). The purpose of such provisions had been previously interpreted in a business context by the court as being "to assure officers and directors that they will be made whole in relation to costs, charges and expenses arising from the defence of actions taken in the good faith pursuit of the corporation's best interests." The court noted that the appeal could be resolved without deciding the question of whether indemnification for members of a municipal council was meant to be exhaustively covered under *The Municipalities Act* and left that question for another day. The court concluded that the appellant was not an "officer or director" within the meaning of s. 2-40 of *The Legislation Act* by virtue of his role as mayor and councillor. Therefore, the right to indemnification under that section did not apply. The court found that the appellant's role as mayor and town councillor could not be viewed as being an officer, director, or person acting in a similar capacity for a corporation, given the definition of director as being "a person charged with the management and control of a corporation" in The Legislation Act. The court pointed to the specific scope of the appellant's duties as mayor and councillor as set out in ss. 92 and 93 of *The Municipalities Act*, adding that the statutorily defined roles of councillors and mayors were not the types of role contemplated by the terms "officer" and "director" as used in *The Legislation Act*. The court also concluded that the appellant was not acting in the capacity of a director. There was no error in the chambers judge denying the applicant's request for indemnification on the basis that he was not acting in "defence" of a proceeding within s. 2-40(4) of *The Legislation Act*. The chambers judge found that the bylaw complaints were not a proceeding filed against the appellant, and that his application for judicial review was not a defence. The court found no error in the chambers judge's conclusion that because the appellant initiated the litigation, he was

Family Law - Custody - Access - Variation

Labour Law - Appeal

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Real Property - Partition

Statutes - Interpretation - *Administration of Estates Act*, Section 14(1), Section 14.1

Statutes - Interpretation - *Automobile Accident Insurance Act*, Section 100(m)

Statutes - Interpretation - *Legislation Act*, Section 2-40

Statutes - Interpretation - *Municipalities Act*, Section 355(3)

Statutes - Interpretation - *Provincial Sales Tax Act*

Statutes - Interpretation - *Revenue and Financial Services Act*

Statutes - Interpretation - *Seizure of Criminal Property Act, 2009*, Section 38.1

not entitled to indemnity. The court added that the appellant could not be seen as having incurred the cost of defending a good faith action he took on behalf of the town, because his actions were undertaken against the town to defend his own interests. Section 2-40 was intended to fill gaps in legislation which did not contemplate or address specific indemnity provisions for statutorily constituted corporations; it was not intended to augment any indemnification gap under *The Municipalities Act*.

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***Direct General Partner Corporation v Canadian Pacific Railway Company*, 2025 SKCA 29**

Kalmakoff McCreary Drennan, 2025-03-11 (CA25029)

Appeal - Civil Procedure - Amendment to Pleadings - Counterclaims
Appeal - Civil Procedure - Summary Judgment Proceedings - Sufficiency of Evidence - Negligence - Assessing Damages

After a transport truck collided with a train at a railroad crossing, Canadian Pacific Railway Company (CPR) sued the driver of the truck and a number of other defendants for damages to CPR’s equipment and property. The defendants filed and served a counterclaim after the two-year limitation period, alleging contributory negligence and seeking damages for the loss of the truck. The chambers judge found that the defendants were negligent and liable to the CPR but declined to decide the issues of contributory negligence and damages because the evidence was too controverted and incomplete. The chambers judge also struck the counterclaim as time-barred. On appeal, the defendants argued that striking the counterclaim was an error. In the cross appeal, CPR argued that the chambers judge erred by declining to determine the admissibility of an affidavit filed by the defendants in response to CPR’s evidence of damages, and when the chambers judge failed to summarily determine the issues of contributory negligence and damages. The Court of Appeal (court) determined: 1) whether the chambers judge erred in finding that the defendants’ counterclaim should be struck; 2) whether the chambers judge erred in failing to determine whether CPR was contributorily negligent and whether the defendants’ affidavit on damages should be struck; and 3) whether it was in the interests of justice for the court to determine those issues rather than remitting the matter to the Court of King’s Bench.
HELD: The court allowed CPR’s cross-appeal and exercised its discretion to resolve the remaining issues summarily. The court granted judgment to CPR. The court found that

Wills and Estates - Appeal

Wills and Estates - Construction of Wills - Ordinary and Natural Meaning of Words - Interpretation

Wills and Estates - Removing Executor - Accounting

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Cases by Name

Baturin v Saskatchewan Government Insurance

Bourgault Industries Ltd. v Graham

Consumers' Co-operative Refineries Limited v Unifor Local 594

Direct General Partner Corporation v Canadian Pacific Railway Company

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

Gas Plus (Sask-Man) Inc. v Saskatchewan (Minister of Finance)

Hipkins v McDonald

Kniaz v Pawliw

Maharaj v Rosetown (Town)

CPR was not contributorily negligent and was entitled to damages in the amount it claimed. The court dismissed the defendants' appeal. While the court found that the chambers judge erred by striking the defendants' counterclaim, this did not matter because CPR was not contributorily negligent. 1) There was no breach of procedural fairness in the chambers judge's hearing of the limitation issue, but the court did find that the chambers judge erred in law when he determined that s. 20 of The Limitations Act did not apply to the defendants' counterclaim. A third-party claim, and by extension a counterclaim, may be considered an amendment to the pleadings. The words "amendment to the pleadings" in s. 20 of the *Saskatchewan Act* have been interpreted by Saskatchewan courts as allowing an entirely new pleading through an amendment. It was an error in law for the chambers judge to determine that the words "an amendment to the pleadings" in s. 20 of *The Limitations Act* excluded the filing of a counterclaim. Saskatchewan jurisprudence considers third-party claims as "a separate, distinct, and independent proceeding grafted onto the original proceedings" (*Winacott Spring Western Star Trucks v Moore Industrial Ltd.*, 2013 SKCA 88 [*Winacott*]). Here, the court extended *Winacott* to the proposition that a counterclaim, not only a third-party claim, is an independent proceeding grafted onto an original proceeding. The court affirmed *Dusterbeck v Beitel*, [1988] 6 WWR 669 (Sask CA) (*Dusterbeck*). In that case, the court agreed that a third-party claim was a new cause of action but determined that the claim should be permitted by the amendment provision of *The Queen's Bench Act* because it arose out of the same occurrence as the original action, and because the proposed third-party claim could properly be described as an amendment to the defendant's counterclaim. Later cases have applied the rule from *Dusterbeck* and have affirmed that it applies to s. 20 of the current *Limitations Act*. Here, the court found no reason why the rule from *Dusterbeck* should not apply to counterclaims. The court held that "when a counterclaim asserts a new cause of action and the counterclaim arises out of the same transaction or occurrence as the original claim, that counterclaim can be allowed as an amendment to the pleadings, notwithstanding the expiry of a limitation period, if the judge is satisfied that no party will suffer actual prejudice as a result." Even though the court came to this conclusion, it still determined that the allegations pleaded in support of CPR's contributory negligence could be summarily dismissed. In the end, the limitation period issue was moot. 2) The court found that the chambers judge erred when he failed to decide whether CPR was contributorily negligent in its operation of the train leading up to the collision. The court determined that there was sufficient evidence to make a summary disposition, and sufficient evidence to interpret the Canadian Rail Operating Rules (CROR) as was necessary to determine the standard of care. The standard of review in an appeal from a decision made in relation to a summary judgment was set out in *Hess v Thomas Estate*, 2019 SKCA 26: absent an error of law, the exercise of powers under the summary judgment rules attracts deference. The chambers judge erred in principle in his treatment of the operating requirements for

R v Goforth

R v Papequash

R v Velasquez

Saskatchewan Power Corporation v International Brotherhood of Electrical Workers, Local 2067

Wassermann v Herold Estate

Watson v Chelak

employees involved in the movement of trains set out in the CROR. The court found that the distinction between whether the CROR was evidence or law was not important. The parties agreed that the CROR was relevant to CPR's standard of care. It was within the chambers judge's authority to take judicial notice of the existence of the relevant version of the CROR and to proceed to interpret it. It was also within the chambers judge's authority to require counsel to file further submissions respecting the correct interpretation of the CROR and its impact on CPR's duty and standard of care. The standard of care required from CPR was assessed by interpreting the CROR along with an assessment of the overall evidence to determine the reasonableness of CPR's actions at common law. The court found that the chambers judge erred by not conducting this analysis. The court also found that the chambers judge erred in law when he did not determine the admissibility of the defendants' affidavit on damages. The court found that the chambers judge could not properly conclude whether there were triable issues on damages without first determining whether the affidavit could be admitted into evidence. The defendants tendered the affidavit in response to CPR's evidence of its alleged loss; it was the primary source of evidence tendered to oppose CPR's assessment of damages. The chambers judge had to determine the admissibility of that evidence to decide whether there actually was a conflict in the evidence and whether the evidence was complete. The court found multiple deficiencies in the defendants' affidavit on damages that rendered it inadmissible. The affidavit contained opinion evidence and conjecture, and did not comply with Rules 5-37 and 5-39 governing the use of expert affidavits in summary judgment proceedings. The court found it was in the interests of justice to rule on the admissibility of the affidavit, rather than remit it to the Court of King's Bench. The affidavit did not constitute a valid expert report because the deponent did not acknowledge or certify that he was aware of and had complied with the obligations set out in subrules 5-37(1) and 5-37(2) to refrain from being an advocate or that the exhibits attached to the affidavit were prepared in conformity with that duty. The court noted that failing to provide this acknowledgment and certification were not issues of technical non-compliance; the purpose of certification was to ensure that the expert was aware of his obligations, and to assure the court it could rely on the expert's opinions. 3) The court found there was no conflicting evidence on the issue of damages that would require a trial. The court noted that it is well established that a respondent to a summary judgment application "cannot respond to the application by saying that the case to be made, either in the pursuit of a claim or defence, will be made in the fullness of time at trial" (*Deren v SaskPower and Saskatchewan Watershed Authority*, 2015 SKQB 366). Parties must put their "best foot forward" on summary judgment applications. The only evidence the defendants filed regarding CPR's damages was the inadmissible affidavit. The court analyzed whether the absence of admissible evidence from the defendants could be considered "conflicting evidence" or "incomplete evidence", which would require the parties to proceed to trial on the damages issue. The court stated that there was a difference between incomplete evidence and conflicting evidence. The court found that CPR met its initial evidentiary burden in relation to damages. The defendants relied, at their peril, on nothing more going to damages than opinion evidence in their inadmissible affidavit. Questions, argument or conjecture in this affidavit could not be considered conflicting evidence or give rise to the conclusion that the evidence was incomplete. After interpreting the CROR and analyzing the facts found by the chambers judge, the court concluded that CPR was not contributorily negligent in the collision, because its conduct did not fall below the standard of care set out in the CROR, nor was there evidence to suggest CPR's actions were unreasonable or inconsistent with the safe and careful operation of the train. To find contributory negligence, the court noted there must be a causal connection between a party's impugned conduct and the injury. The chambers judge's findings of fact were sufficient to demonstrate that CPR complied with its obligations under the CROR. There was no evidence to suggest that any of CPR's actions leading up to the collision were unreasonable or negligent. On a balance of probabilities, the evidence supported that the truck driver's negligence was the sole cause of the collision. Judgment was granted to CPR in the amount it claimed. The court found it could determine CPR's entitlement to damages summarily. The court found that the defendants were liable to CPR in damages, CPR was not contributorily negligent, there was no admissible evidence that conflicted with CPR's evidence on damages, and that the evidentiary record was not incomplete.

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***Saskatchewan Power Corporation v International Brotherhood of Electrical Workers, Local 2067*, 2025 SKCA 33**

Caldwell Schwann Bardai, 2025-03-20 (CA25033)

Administrative Law - Judicial Review - Arbitration
Administrative Law - Judicial Review - Arbitration - Prematurity
Administrative Law - Judicial Review - Arbitration - Restraint
Administrative Law - Judicial Review - Arbitration - Comity

The appellant, Saskatchewan Power Corporation (SaskPower), appealed a decision from the Court of King's Bench that struck its application for judicial review on the grounds of prematurity. The matter arose from a grievance filed by the respondent, the International Brotherhood of Electrical Workers, Local 2067 (the union), regarding vacation pay calculation disputes. Following failed mediation efforts, the grievance proceeded to a bifurcated arbitration hearing, first addressing the merits, with the remedy phase to follow separately. The arbitrator ruled in favour of the union but left the question of remedy open. SaskPower applied for judicial review of the arbitrator's decision before the remedy phase was completed. The union sought to strike the application as

premature, which the chambers judge allowed. SaskPower appealed that decision. The Court of Appeal (court) had to decide whether the chambers judge erred by failing to consider whether the arbitration decision was final, incorrectly weighed the relevant factors in his discretion, and misapplied the doctrine of comity.
HELD: The court dismissed the appeal. The chambers judge did not err in concluding that the arbitrator's decision was not final, in applying the prematurity doctrine, doctrine of restraint, or in disregarding binding precedent (the doctrine of comity). The court reaffirmed the discretionary nature of judicial review and highlighted that courts typically refrain from intervening in administrative proceedings until they are completed, except in exceptional circumstances. SaskPower contended that the arbitrator's decision on liability was final due to the bifurcation process and that judicial review should have proceeded. The Court dismissed this argument, observing that the arbitration had not been completed, and that bifurcation does not automatically render a decision final. The arbitrator explicitly reserved jurisdiction over the remedy phase, and unresolved issues remained. Additionally, SaskPower claimed that the chambers judge erred in not concluding that the situation of the matter was an exceptional circumstance warranting judicial review of the arbitration award. The court applied a deferential standard to the chambers judge's assessment, reviewing for palpable and overriding error. The judge's decision considered the lengthy delay already experienced, the importance of using the same arbitrator for consistency and efficiency (particularly in light of the arbitrator's possible retirement), and the fact that SaskPower could still seek judicial review after the final award. The court found no legal or factual errors in this reasoning. SaskPower claimed the chambers judge failed to apply the doctrine of comity by not following precedents where judicial review was permitted mid-proceeding after bifurcation. The court distinguished these cases on their facts and emphasized that neither case established a binding rule that bifurcation makes interim decisions final or automatically triggers a right to judicial review. The court upheld the chambers judge's decision to strike SaskPower's application for judicial review as premature.

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***Kniaz v Pawliw*, 2025 SKCA 32**

Tholl Drennan Bardai, 2025-03-19 (CA25032)

Civil Procedure - Privilege
Family Law - Child Support - Variation - Change in Circumstances
Family Law - Custody - Access - Variation

The parties got married in 2004 and separated in 2013 with two teenaged children. An initial parenting judgment was made in February 2017, and a follow-up judgment was made in July 2017. Upon the respondent's application, the February 2017 judgment was varied in several respects by another decision of the Court of King's Bench in 2022, the most significant being a change from shared parenting to the children residing primarily with the respondent. The appellant appealed the variation decision, contending that the trial judge erred in finding that a material change of circumstances had occurred. He further asserted that the judge erred by misapprehending or not considering material evidence, by placing undue weight on a report regarding the older child's wishes, by permitting privileged communications from mediation to be tendered as evidence at the trial, and by ignoring factors relevant to the children's best interests.
HELD: The appeal was dismissed. (1) The trial judge did not fail to consider or misapprehend material evidence. With regards to

the older child's admittedly unusual use of a specific percentage of time that he wished to spend with each parent, the trial judge found that it was entirely possible that he had heard it from either parent and took this into account when determining how she would view all the evidence that touched on the older child's wishes. The trial judge was also acutely aware of the evidence regarding the nature of the children's hockey abilities and the high level at which he was able to play the game. Sufficient evidence was also tendered about a trip the respondent had taken to Mexico to permit the permit the trial judge to take account of it when analyzing the children's best interests, and it was considered in her overall analysis of the children's best interests. The trial judge did not overlook or misapprehend the evidence regarding the respondent's interference with the appellant's parenting time. (2) The trial judge did not err in her treatment of the wishes of the children. The trial judge was aware of the limitations regarding the wishes of a child and did not treat the expressed wishes of the children as anything other than one factor among many when considering their best interests. (3) The trial judge did not err by admitting privileged mediation communication. Documents created in a mediation session (other than a finalized settlement agreement), the discussions at mediation, and any unaccepted settlement offers are privileged and cannot be tendered into evidence in a trial unless all parties waive their privilege. However, email communication made outside of a mediation session that is copied to a mediator does not automatically create a privileged document. In this case, nothing had been brought to the court's attention from the content of the emails that would give rise to privilege. There were no proposals for settlement. There were no recitations of what was discussed during mediation. The mediators were not responding to the emails or facilitating a discussion using that method of communication. The emails were not created for the purposes of mediation; they were simply documents that existed outside the mediation process but were used within it. (4) The trial judge did not err by finding that there was a material change in circumstances. To vary an existing parenting order or judgment, the party seeking such a variation must establish a material change affecting the child's circumstances. To satisfy the threshold, the child's current circumstances must be a distinct departure from what the court could reasonably have anticipated when the existing parenting order was granted, and the child's circumstances must have altered in a fundamental way since the granting of the extant parenting order. In this case, the combination of factors found by the trial judge in deciding that there was a material change in circumstances was sufficient for her to have found that one had occurred. There was no room for appellate interference.

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Hipkins v McDonald**, [2025 SKCA 34]**

Leurer Tholl McCreary, 2025-03-28 (CA25034)

Contract - Sale of Real Estate
Real Property - Partition
Wills and Estates - Appeal
Wills and Estates - Construction of Wills - Ordinary and Natural Meaning of Words - Interpretation
Wills and Estates - Trusts - Division of Assets

The appellant, one of three siblings, appealed a Court of King's Bench decision that allowed the respondent, another sibling, to purchase her one-third interest in a family cabin located on leased Crown land in Greenwater Lake Provincial Park. The cabin was originally owned by the parties' late mother, who expressed in her will a "wish and desire" that her children jointly own the

property as joint tenants. Because government policy allowed only two names on a lease, a contract was signed in 2019 by the appellant, the respondent, and the estate beneficiaries of the deceased third sibling, allocating a one-third interest to the appellant and a two-thirds interest to the respondent, half of which was held in trust for the deceased sibling's children. Disagreements later arose over the shared use and management of the property, and both parties sought court orders for the right to buy out the other's interest. The Court of Appeal (court) had to decide whether the chambers judge erred by concluding that the deceased sibling's children (the grandchildren) had an interest in the property and determining that the respondent should be allowed to purchase the appellant's interest.
HELD: The appeal was dismissed. The court upheld the chambers judge's conclusions on ownership and the order for sale. The court applied the standard of palpable and overriding error (see paras 43-45 of the decision for the law on this issue in the context of wills and contracts and para 77 regarding judges' discretion). The court first examined the interpretation of the mother's will. The language expressing a "wish and desire" for joint tenancy was precatory, not mandatory, and did not impose a binding obligation on the executors to transfer the property to the children as joint tenants. The court affirmed the chambers judge's conclusion that the property was to be divided as part of the residue of the estate, and the contract signed in 2019 was valid and enforceable. The alleged "common mistake" that underlined the appellant's attempt to void the contract did not exist because the testator's will did not mandate a different result. Additionally, the appellant had received independent legal advice before signing the contract, and estoppel by convention also prevented her from denying its validity. Regarding the order for sale, the court accepted the chambers judge's finding that the partition of the property was unworkable due to family conflict and logistical challenges. The judge appropriately exercised discretion under the applicable partition statutes to order a sale of the appellant's one-third interest to the respondent (see paras 71 and 73). The court emphasized that the respondent, holding a two-thirds interest, including one-third in trust, had standing to bring the application. The judge's findings on the parties' financial contributions, historical use, and attempts at cooperation were reasonable, and no error was found in her decision to give greater weight to majority ownership and practical resolution.

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***R v Velasquez*, 2025 SKKB 25** (not yet available on CanLII)

Zerr, 2025-02-13 (KB25021)

Constitutional Law - Charter of Rights, Section 8 - Search and Seizure - Search Warrant
Constitutional Law - Charter of Rights, Section 24(2) - Exclusion of Evidence

The accused pled not guilty to trafficking fentanyl, possession of fentanyl for the purpose of trafficking, and three weapons offences. She sought to exclude evidence under s. 24(2) of the Charter, and alleged that her s. 8 Charter right to be secure from unreasonable search and seizure had been breached. Here, the court considered the accused's arguments that three judicial authorizations were insufficiently grounded: 1) a tracker warrant; 2) a residence/vehicle search warrant; and 3) a cell phone search warrant.
HELD: All three informations to obtain (ITOs) contained evidence that might reasonably be believed on the basis of which the corresponding authorizations could have issued. 1) The court found that the confidential source information from six informants

constituted evidence that might reasonably be believed, and that evidence was therefore properly available for the authorizing judge to rely upon. The court was also satisfied that the tracker ITO contained evidence that might reasonably be believed on the basis of which the tracker warrant could have issued. The accused had the onus to prove on a balance of probabilities that there was insufficient evidence that might reasonably be believed on the basis of which it could have issued. The court was satisfied that there was ample evidence to ground a reasonable suspicion that the accused had committed or would commit the enumerated offences. The court also determined whether there were reasonable grounds to suspect that tracking the accused's vehicle would assist in the investigation. Because most of the evidence in the tracker ITO was attributed to confidential source information, the court determined whether the information relied upon by police to justify a warrantless search was compelling, credible, and corroborated, in the totality of the circumstances (*R v Debot*, [1989] 2 SCR 1140, and incorporated into Garofoli for warrant review). In this case, the tracker ITO included information sourced to six confidential informants, all of whom told their handlers that the accused sold fentanyl. Five out of six informants said that the accused drove a white SUV, one specified that it was a newer model, another specified that it was an Acadia. One specified the price and weight of the fentanyl sold by the accused, and that she delivered it in a newer model white SUV when requested by text. The accused argued that the confidential source information was insufficiently detailed to rule out the possibility it was the product of rumor and gossip and/or boilerplate paraphrasing. The accused focused on blanket statements by informants that the accused "sells fentanyl" and "has guns" to argue that reliable informants would have greater detail about pricing, packaging, amounts, appearance, and method of delivery. The court was not concerned about the issue of paraphrasing, because there was nuance and variation in the way the source information was presented in the ITO. Each informant provided specific details about the accused, and the court was satisfied that the information was compelling. The court scrutinized the informants, as opposed to their information, when making a credibility assessment. The court noted that one informant was solely motivated by judicial consideration, and another was partially motivated by judicial consideration, so outstanding charges may have motivated these informants to provide unreliable information. The statement repeated in the ITO that each informant's information had "been corroborated through police database checks, other source information, and police investigations" was too vague to serve as evidence that might reasonably be believed. The court found that the credibility of the six confidential informants varied from substantially credible to moderately so, and that any shortcomings in credibility were made up by the compelling nature of the information and the degree of corroboration across informants. 2) The court was satisfied that the residence/vehicle ITO contained evidence that might reasonably be believed on the basis of which the residence/vehicle warrant could have issued. The court was satisfied that there was evidence that might reasonably be believed on the basis of which the authorizing judge could conclude that fentanyl, anything containing fentanyl, offence-related property, or evidence of a drug offence would be found in the accused's residence. Two of the informants said that the accused had large amounts of fentanyl, one informant named the accused's supplier, and all of the short-duration meets observed by officers occurred within a relatively short time of the accused leaving her residence. 3) The accused conceded that if the court concluded that the residence/vehicle warrant was properly issued, the cellphone ITO would be as well.

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***Bourgault Industries Ltd. v Graham*, 2025 SKKB 26** (not yet available on CanLII)

Morrall, 2025-02-14 (KB25022)

Civil Procedure - Guillotine Order - Drop Dead Order - Amending Claim
Civil Procedure - *King's Bench Rules*, Rule 1-6, Rule 13-7

In an earlier decision, the court made a "guillotine" order in which the plaintiffs were ordered to amend their claim pertaining to the tort of civil conspiracy and disgorgement of profits within 30 days. Non-compliance would result in paragraphs being struck from the original claim. The plaintiffs served a "draft" amended claim on the defendants within 30 days, but did not file it with the court. Instead, the plaintiffs filed a more complete amended claim with the court after the deadline. Here, the defendants/applicants argued that to comply with the initial order, the plaintiffs should have filed one properly amended claim with the court within the timeline to complete the process to fully amend pleadings under *The King's Bench Rules*. They argued that non-compliance should result in the paragraphs being struck. They added that it would be proportional to bifurcate future proceedings so that a trial on the issue of disgorgement would only occur if the plaintiffs established liability for their conspiracy claim. The plaintiffs argued that the draft order was compliant with *The King's Bench Rules* and that the defendants were not prejudiced, but even if there were technical non-compliance, Rules 1-6 and 13-7 could cure it. The court determined: 1) whether the plaintiffs contravened the court's order to amend their pleadings within 30 days; 2) if so, should the application of Rule 1-6 and/or Rule 13-7 apply to remedy any contravention; 3) if the amended claim filed with the court was not struck, should specified allegations within the claim be struck; 4) whether the issues should be bifurcated in future proceedings; and 5) whether costs should issue.
HELD: The court found that while there was procedural non-compliance with the court's order, the imperfect compliance did not result in prejudice to the defendants and could be punished with costs. 1) The court found that the plaintiffs contravened the 30-day order set out in the court's original decision. The court found that the draft version served on the defendants was compliant enough to meet the minimum substantive requirements of an amended pleading under Rule 3-73, but because it was not filed with the court within the required timeframe, there was procedural non-compliance with Rule 3-73. 2) Rule 1-6 was not available to cure contraventions of, or non-compliance with, substantive or statutory law. The court noted that this case involved an arbitrary time limit that the court imposed in a court order that had no relationship to any statutory or substantive law, so Rule 1-6(5) did not bar a review. While there was imperfect compliance, the court stated that this was not a situation where the requirements of the order were completely ignored. The court found that it was in the interests of justice to cure the filing defect, and that there would be no irreparable harm to the defendants. The court deemed that the clean amended claim was filed in compliance with the court's orders and cured the defect. The court found that missteps should be punished with costs or other remedies less serious than a denial of a defense or allegation absent compelling circumstances. 3) The court dismissed the application to strike, finding that it was meritless. 4) The court dismissed the application to bifurcate the proceedings. The jurisprudence sets out factors for a court to consider when determining whether bifurcation is appropriate. Here, the only affidavit evidence from the defendants to justify bifurcation was to allege that their disclosure obligations would be "burdensome." The court understood that there would be difficulties for the defendants in fulfilling their disclosure obligations, but was not convinced that it could determine a bifurcation application at this early stage given the state of the evidence. 5) The court found it was appropriate to impose costs for the contravention of the guillotine order. The court imposed $2,000 in costs to be paid to the defendants within 30 days. The court

ordered $1,000 in costs payable to the plaintiffs for the successful defence of the defendant's applications to strike amendments to the claim, and to bifurcate the issues.

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***Watson v Chelak*, 2025 SKKB 30**

Bergbusch, 2025-02-24 (KB25024)

Statutes - Interpretation - *Administration of Estates Act*, Section 14(1), Section 14.1
Wills and Estates - Removing Executor - Accounting

The applicants sought orders removing the respondent as executor of the estate of their grandmother, an order compelling the respondent to provide an accounting, and an order appointing the applicants as co-administrators of the estate. The respondent was the applicants' uncle. The respondent failed to apply for letters probate for his mother's estate for over 22 years. During that time, he took profits from estate farmland, allowed estate property to deteriorate, and failed to provide an accounting of the estate to its beneficiaries or file income tax returns. The applicants relied upon ss. 14(1) and 14.1 of *The Administration of Estates Act* (the Act) in support of their application to remove the respondent as executor of the estate. The applicants pointed to s. 17 of the Act for authority of the court to appoint administrators of the estate, as well as the court's inherent jurisdiction to remove an executor as set out in *Sinclair v Sinclair*, 2013 SKCA 123. The court determined: 1) whether the executor should be removed; 2) whether the executor should be ordered to provide an accounting; and 3) whether the applicants should be appointed co-administrators of the estate and authorized to apply for letters of administration.
HELD: The court granted the application to remove the respondent as executor of the estate, required the respondent to provide an accounting of the estate to the beneficiaries within 90 days, and appointed the applicants as co-administrators, authorizing them to apply for letters of administration. The court found the applicants had standing to bring the application. 1) The court ordered that the executor be removed, finding that his removal was in the best interests of the beneficiaries. The respondent failed to administer the estate in a reasonable and prudent manner and failed to discharge his duties as executor in accordance with the duty of care and of good faith set out in *The Trustee Act, 2009*. His failure to apply for a grant of probate for over two decades after his mother's death was unjustifiable. The court found that the respondent was not entitled to assume what the deceased's testamentary intentions were without consulting the other beneficiaries or obtaining a ruling from the court. 2) The court ordered the respondent to provide an accounting to the beneficiaries within 30 days under s. 55(2) of *The Trustee Act, 2009*. The applicants were entitled to request an accounting given that the testator died in 2002, her estate had not been probated, the respondent had distributed some property of the estate, he had received income from renting estate property, and because the respondent had not provided a proper accounting to date. 3) After considering all the circumstances, the court concluded that the applicants should be appointed co-administrators of the estate. The court ordered that the applicants recover their costs of the application on a solicitor-client basis, with 50 percent of those costs to be borne by the estate and 50 percent by the respondent personally, to be recovered to the extent possible from his share of the estate. The respondent was not entitled to reimbursement by the estate for his costs of responding to this application.

***Consumers' Co-operative Refineries Limited v Unifor Local 594*, 2025 SKKB 34**

Danyliuk, 2025-03-05 (KB25034)

Labour Law - Appeal
Labour Law - Arbitrator's Decision
Labour Law - Arbitration - Judicial Review - Standard of Review
Labour Law - COVID-19
Labour Law - Public Health

The applicant, a refinery operator in Regina, terminated two employees in January 2022 for refusing to comply with its COVID-19 vaccination and testing policy. The policy gave employees the option to either provide proof of vaccination or undergo twice-weekly rapid testing at no cost to them. Despite multiple warnings and escalating disciplinary measures, the two employees refused to comply. Their union did not challenge the reasonableness of the policy itself but grieved the dismissals as unjust. An arbitrator upheld the grievances, concluding the dismissals were unreasonable. The applicant sought judicial review of that arbitration decision. The court had to decide whether the arbitrator's decision was unreasonable and should be quashed, and whether the grievances should be dismissed without remitting the matter back to the arbitrator.
HELD: The court allowed the judicial review and quashed the arbitrator's decision. The grievances were dismissed and costs awarded to the applicant. The court applied the reasonableness standard of review and emphasized that judicial review must consider whether a decision is justified, transparent, and intelligible and whether it falls within a range of acceptable outcomes defensible in law and fact. The arbitrator's reasons did not meet this standard. The court found the arbitrator improperly shifted the focus from the employees' conduct to questioning the policy itself, even though the union never challenged its validity. The court noted the policy was flexible, not requiring vaccination but offering a minimally intrusive testing alternative (COVID-19 rapid test kits). The employees' refusal to comply with either option, despite numerous warnings and opportunities, provided just cause for discipline under the framework established in *William Scott & Co. v C.F.A.W., Local P-162* (1976), [1977] 1 Can LRBR 1 (BC LRB) (*William Scott*). The arbitrator failed to apply this well-established framework and did not explain the departure from it, rendering the decision unreasonable (see also *Poulos v Treasury Board (Regional Development Corporation)*, 2022 CanLII 37635 (NB LA); and *Canadian Union of Public Employees, Local 9 v City of Moose Jaw*, 2023 CanLII 127020 (Sask LA) for arbitrations decisions about COVID-19, as referenced by the court in this case). The court further found that the arbitrator gave insufficient weight to the seriousness of the employees' conduct, their lack of remorse, and the employer's extensive use of progressive discipline. The arbitrator also improperly relied on post-termination developments, such as the lifting of public health restrictions, which were not known at the time of the dismissals. This was contrary to the Supreme Court's guidance in *Cie minière Québec Cartier v Quebec (Grievances arbitrator)*, [1995] 2 SCR 1095, and the Saskatchewan Court of Appeal's in *Haghir v University Appeal Board*, 2019 SKCA 13, which limits the use of post-termination evidence to determining the reasonableness of a decision at the time it was made. The court emphasized that arbitrators who depart from standard arbitral approaches, such as the *William Scott* test, must provide a clear justification; here, the arbitrator did not provide any justification (see *P&H Milling Group v UFCW Local 1400*, 2023 SKCA 14). Given the clarity of the facts, the history of warnings and discipline, the union's acceptance of the policy, and the

employees' continued refusal to comply, the court found there was no useful purpose in remitting the matter to the arbitrator. The termination was clearly justified. The court concluded that reinstating employees who deliberately defied a lawful and reasonable policy would undermine workplace safety, especially in the context of a public health crisis. The application for judicial review was granted, the arbitration decision was quashed, the grievances were dismissed, and costs were awarded to the applicant.

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***Baturin v Saskatchewan Government Insurance*, 2025 SKKB 35**

Smith, 2025-03-06 (KB25035)

Automobile Accident Insurance Act - Income Replacement Benefits
Automobile Accident Insurance - Appeal
Automobile Insurance - Statutory Conditions
Statutes - Interpretation - *Automobile Accident Insurance Act*, Section 100(m)

The applicant was seriously injured in a motor vehicle accident on October 9, 2014, and applied for income replacement benefits (IRB) under *The Automobile Accident Insurance Act* (AAIA). While he initially received full IRB for 180 days post-accident, the respondent, Saskatchewan Government Insurance (SGI), later determined that the applicant's employment met the definition of "seasonal employment" under section 100(m) of the AAIA. This classification significantly reduced his entitlement to ongoing benefits. The applicant disputed SGI's classification and sought judicial review of its decision, arguing that his employment was not seasonal and that he should be entitled to higher IRB as a permanently employed worker. The court had to decide whether SGI erred in classifying the applicant's employment as "seasonal employment" under section 100(m) of the AAIA, and whether a broader, more purposive interpretation of the legislation should apply in assessing whether the applicant would have worked for at least 12 months but for the accident.
HELD: The court overturned SGI's decision and ordered a re-evaluation of the applicant's IRB because his employment did not fall within the statutory definition of seasonal employment. Under section 100(m) of the AAIA, "seasonal employment" refers to recurring employment with anticipated periods of unemployment over a 12-month span. The court reviewed the applicant's work history, including his role as a project manager for a law office's renovation in Saskatoon, and found that while his prior employment history reflected intermittent, gig-based work, his role with Turning Stone Developments Inc. had no planned or anticipated gaps in employment and would have continued for over 12 months had the accident not occurred. The court emphasized that statutory interpretation should follow the modern approach as codified in section 2-10 of *The Legislation Act*, which requires that statutes be read in their full context and in light of their purpose. The court accepted the applicant's submission that ambiguities in the AAIA should be resolved in favour of the claimant. The court also rejected SGI's argument that a retrospective assessment alone should apply in interpreting "a 12-month period" under section 100(m). Instead, the court held that the appropriate approach was to consider both the applicant's employment history and whether, but for the accident, his work on the renovation would have extended past the 12-month threshold. SGI's concern that a ruling in the applicant's favour would result in overcompensation was not found to be a valid reason to depart from proper interpretive principles. The court concluded that the appropriate interpretation of the

12-month period in section 100(m) should take a liberal, purposive view that includes prospective employment, not just retrospective assessment. Accordingly, SGI's decision was overturned, and it was ordered to re-evaluate the applicant's IRB entitlements based on this ruling.

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***Wassermann v Herold Estate*, [2025 SKKB 40]**

Mitchell, 2025-03-13 (KB25037)

Civil Procedure - Costs
Civil Procedure - Costs - Enhanced Costs
Civil Procedure - Costs - Solicitor and Client Costs

This application arose following the successful appeal by the Herold Estate applicants against a decision to temporarily stay their independent lawsuit related to the 2018 Humboldt Broncos bus crash. The stay had been granted in favour of a related putative class action, which included many of the same defendants and potential class members. The Court of Appeal later reversed the stay, concluding the original decision failed to consider the applicants' right to proceed with their individual action and the absence of demonstrated prejudice to the class action. The Herold Estate applicants sought solicitor and client costs for the stay proceedings, claiming the opposing counsel's conduct warranted exceptional cost sanctions. The court had to decide whether solicitor and client costs should be awarded to the Herold Estate applicants for the earlier stay application proceedings, whether a lesser cost award should be granted, whether those costs should be personally paid by opposing counsel, and whether the respondents should receive costs for peripheral applications they successfully defended.
HELD: The court denied solicitor and client costs but awarded the Herold Estate applicants a sum of $7,500 in enhanced party-and-party costs. The court declined to hold opposing counsel personally liable for costs or to grant any costs to the Wassermann action respondents. The court reiterated that solicitor and client costs are exceptional and typically awarded only when the opposing party's conduct is scandalous, outrageous, or reprehensible (see *Siemens v Bawolin*, 2002 SKCA 84 at para 118). The court found that while the stay application caused delay and frustration, it was not pursued in bad faith and did not meet the high threshold required to justify solicitor and client costs. Instead of solicitor and client costs, the court held that enhanced costs were warranted due to the complexity and importance of the issues, the effort required to respond to the stay application, and the unique factual and legal context surrounding the tragic incident. The court relied on Rule 11-1 of The King's Bench Rules and exercised its discretion to award $7,500 in costs, above the default Column 1 tariff rate (see *1348623 Alberta Ltd. v Choubal*, 2016 SKQB 200, for a list of factors the court considers in the application of Rule 11-1 and award of costs). Furthermore, the court rejected the argument that opposing counsel should personally bear the costs (see *Young v Young*, [1993] 4 SCR 3, reaffirmed in *Patel v Saskatchewan Health Authority*, 2021 SKCA 115). The court did not find any evidence of serious dereliction of duty or improper conduct, noting that zealous advocacy on behalf of a client, even if controversial or unwelcome, is not grounds for personal liability. The court also dismissed the Wassermann action respondents' request for costs incurred in defending two preliminary applications, finding they were peripheral to the main issue and that awarding such costs would further escalate tensions among the parties. No costs were awarded for the present application, as success was divided.

***R v Papequash*, 2025 SKKB 43**

Robertson, 2025-03-14 (KB25038)

Criminal Law - Assault
Criminal Law - Evidence - Credibility
Criminal Law - Evidence - Reliability
Criminal Law - Evidence - Prior Inconsistent Statements

The accused was tried on four charges related to two alleged domestic incidents. The charges included two counts of assault and two counts of choking, suffocating, or strangling while committing an assault, contrary to ss. 266 and 267(c) of the *Criminal Code*. The complainant was in a relationship with the accused and they resided together following the accused's release on parole. The complainant made a statement to police on April 8, 2024, implicating the accused in both incidents but later recanted that statement, both in a subsequent police statement and at trial. The court admitted the April 8 statement for the truth of its contents. The trial focused heavily on whether the complainant's recanted statement could be relied upon to support convictions. The court had to decide whether the evidence established, beyond a reasonable doubt, that the accused committed assaults against the complainant, whether the accused acted in self-defence in either incident, and whether the complainant had consented to the use of force.

HELD: The court found the accused guilty on count 1 (suffocating while committing assault) and count 2 (assault) and not guilty on counts 3 and 4. The court applied the legal principles for assessing prior inconsistent statements (as the April 8 statement initially implicated the accused) under *R v B.(K.G.)*, [1993] 1 SCR 740 and *R v Bradshaw*, 2017 SCC 35, finding that the complainant's initial statement had sufficient indicia of reliability, including video recording, cautioning, and availability for cross-examination. The necessity requirement was also met due to the recantation. In assessing credibility and reliability, the court considered inconsistencies in the complainant's testimony in light of corroborating physical evidence and witness observations. The complainant's April 8 statement was detailed, consistent, and supported by text messages and physical evidence of bruising seen by coworkers. For the second incident, the court found that while there was initially mutual pushing, the accused's subsequent act of pinning the complainant to the floor and forcefully pressing on her chest was non-consensual and caused difficulty breathing. The court determined this constituted both assault under s. 266 and suffocation under s. 267(c), without requiring specific intent to suffocate (see *R v Leary*, 2024 BCSC 2103: the *actus reus* is sufficient to constitute this offence). Furthermore, the court rejected the accused's self-defence argument under s. 34 of the *Criminal Code*, noting that even if the initial force used was reasonable, continuing to hold the complainant down after she was already on the floor was not. The court also found that the complainant did not consent to the use of force. Concerning the April 6 incident, the court found the complainant's evidence too inconsistent and unsupported by other witnesses or physical evidence. Given the changes in her statements and the absence of corroborating evidence, the court was left with reasonable doubt and acquitted the accused on those counts (counts 3 and 4). The accused was convicted of assault and suffocation from the March 25 incident and acquitted of the charges related to the April 6 incident.

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***Gas Plus (Sask-Man) Inc. v Saskatchewan (Minister of Finance)*, 2025 SKKB 39**

Crooks, 2025-03-12 (KB25036)

Administrative Law - Judicial Review - Board of Revenue Commissioners - Appeal
Appeal - Taxation - Provincial Sales Tax
Statutes - Interpretation - *Provincial Sales Tax Act*
Statutes - Interpretation - *Revenue and Financial Services Act*

The appellant operated a gas station and had an informal arrangement with another company to operate the location jointly. While the appellant handled gas sales, the other company operated a convenience store on-site. Under their handshake agreement, credit and debit card sales for fuel and confectionery items were processed through the appellant's point-of-sale terminals. The appellant received the funds, retained amounts for fuel sales, and passed the proceeds from confectionery sales (including PST) to the convenience store operator. The Ministry of Finance later determined that provincial sales tax (PST) collected on the confectionery sales had not been remitted, and after recovering a small portion from the now-defunct convenience store operator, issued a Notice of Assessment against the appellant. The appellant appealed to the Board of Revenue Commissioners (board), which upheld the assessment. The appellant then appealed to the Court of King's Bench, arguing it was not responsible for remitting PST on sales it merely facilitated. The court had to decide whether the board erred in concluding that the appellant was a "collector" under the applicable legislation, whether there was a shared obligation to remit PST between the appellant and the other and whether transferring the funds to the other business discharged the appellant's liability.
HELD: The appeal was dismissed. The court found no palpable and overriding error in the board's decision that the appellant met the definition of a "collector" under *The Revenue and Financial Services Act* (RFSA) and a "vendor" under *The Provincial Sales Tax Act*. The appellant's role in processing electronic sales of both fuel and confectionery products fell within those definitions. The court rejected the appellant's argument that it was merely a facilitator akin to a payment management service provider like Moneris (a payment processor business) and emphasized that the appellant held the proceeds from confectionery sales in its account before transferring them. The court concluded that the appellant, having received the PST collected through its point-of-sale system, had a statutory obligation to remit it. The court also upheld the board's finding that there was a shared obligation between the appellant and the convenience store operator. The RFSA does not limit liability to a single collector, and payment from one collector to another does not extinguish the obligation to remit the tax to the Crown. The court emphasized that the statutory trust created by the RFSA is intended to protect tax revenue and remains intact unless the tax is remitted to the Ministry of Finance. The appeal was dismissed, and the Ministry was awarded $5,000 in costs.

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Director under The Seizure of Criminal Property Act, 2009 v Laframboise (not yet available on CanLII)

Klatt, 2025-03-20 (KB25040)

Criminal Law - Proceeds of Unlawful Activity- Seizure of Criminal Property
Evidence - Expert Witness - Qualifications
Evidence - Opinion Evidence - Expert Witness - Lay Evidence
Statutes - Interpretation - *Seizure of Criminal Property Act, 2009*, Section 38.1

The director applied under *The Seizure of Criminal Property Act, 2009* (the Act) for an order forfeiting $10,230 in cash seized from the defendant to the Crown, alleging the money was either the proceeds or an instrument of unlawful activity (drug trafficking). The forfeiture application was based on affidavits from the director and an RCMP officer. The defendant brought a preliminary application to strike portions of these affidavits, arguing that they contained inadmissible hearsay, speculation, irrelevant content, or unqualified opinion evidence. The forfeiture application was deferred pending the outcome of this evidentiary challenge. The court had to decide whether the affidavits submitted in support of the forfeiture application contained inadmissible hearsay, speculation, irrelevant content, or expert opinion offered without proper qualification, and whether such portions should be struck before the forfeiture application could proceed.
HELD: The court dismissed the application to strike the affidavits in most respects but found that several portions of the RCMP officer's affidavit were inadmissible as unqualified opinion evidence and ordered those parts struck. Under s. 38.1 of the Act, evidence based on information and belief is explicitly admissible, relaxing the general evidentiary rules regarding hearsay. The court held that both the director and the officer were permitted to rely on third-party sources and police reports, including surveillance, informants, and public records, to form the evidentiary basis for the forfeiture application. Concerning the officer's affidavit, the court confirmed that while factual observations and the officer's description of police reports and surveillance were admissible, many of his conclusions and inferences, especially those suggesting the meaning of coded language, street slang, or asserting that certain observations were "indicative of drug trafficking," were inadmissible without the officer being properly qualified as an expert. The court was required to assess whether it is more likely than not that the property is connected to unlawful activity based on the commonsense view of the situation and the totality of the circumstances and evidence; a police officer's belief about factors and indications of illegal activities (i.e., their opinion) is not the issue (See *The Director Under The Seizure of Criminal Property Act, 2009 v Kotyk*, 2013 SKCA 140; and paras 46 to 52 of the decision for the summary of the law on this issue). The court reiterated that the standard of proof in such applications is a balance of probabilities, and while it is reduced compared to criminal trials, the rules of evidence remain in effect. The court struck nine specific portions of the officer's affidavit where he drew unqualified expert conclusions about the indicia of drug trafficking or interpreted drug-related slang. However, the court emphasized that the remainder of the affidavit remained admissible and could form the basis for assessing the forfeiture application.

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***R v Goforth*, 2025 SKPC 8** (not yet available on CanLII)

Agnew, 2025-02-27 (PC25007)

Criminal Law - Evidence - Admissibility
Criminal Law - Evidence - Credibility

The defendant was charged with sexual assault. The defence filed an application with respect to the admissibility of a variety of text messages exchanges between the defendant and the complainant, as well as certain online posts. The defence argued that the text messages provide necessary context to the relationship between the complainant and the applicant. The defence also used the text messages to attack the credibility of the complainant.
HELD: The text messages were admissible with respect to the credibility of the complainant but inadmissible to show the context of the relationship between the complainant and defendant. (1) Admitting the evidence to determine context would perpetuate one of the "twin myths" prohibited in sexual assault trials. Context and relationship evidence in a sexual assault trial carry a significant risk of surreptitiously bringing in a reasoning process suggesting that because of the context in which actions took place, it was more likely that the complainant was consenting to the acts which formed the basis of the charge. This is one of the twin myths prohibited by the court in sexual assault trials. The defendant's application in this case invoked twin-myth reasoning and there was no balancing of factors that could save it. (2) The evidence was relevant to the credibility of the complainant. For evidence to be admissible in the context of the credibility of a complainant, the following criteria apply: (a) the evidence must not be used to support one of the twin myths; (b) it must be relevant to an issue at trial: (c) it must be related to specific instances; (d) its significant probative value should not be substantially outweighed by the danger of prejudice to the proper administration of justice. In this case, the sexual content evidence was relevant to the argument that the statements in the texts contradicted other statements made by the complainant. The texts were also relevant to the complainant's credibility and the defence provided the specific texts. The danger of prejudice to the proper administration of justice was also low.

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