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***Carrier v University of Saskatchewan, [2025 SKCA 27](#)***

Caldwell Tholl McCreary, 2025-03-05 (CA25027)

Administrative Law - Duty of Fairness - Breach

Administrative Law - Judicial Review - Appeal

Administrative Law - Judicial Review - Natural Justice/Procedural Fairness

Administrative Law - Judicial Review - Standard of Review - Reasonableness

J.C. sought judicial review of an internal University of Saskatchewan appeal that upheld a decision requiring him to discontinue studies at the university. This followed a complicated chronology involving a successful appeal, discontinuation and then resumption of studies, and ultimately a further direction to discontinue his studies. He appealed the King's Bench dismissal of his appeal to the Saskatchewan Court of Appeal (court) seeking judicial review and mandamus, expungement of his academic record, and damages. Some of the relief sought was sought afresh, not having been raised at King's Bench. Grounds of appeal included that the university had failed to apply its own policies, differential treatment, discrimination, and

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| Civil Procedure - Appeal - Fresh Evidence                                         | failure to accommodate. This was not J.C.'s first time before the Saskatchewan courts.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Civil Procedure - Summary Judgment - Final or Interlocutory Order                 | HELD: Although J.C. had been granted the right to reapply for admission after August 30, 2020 (one of his grounds of relief), he had not done so yet at the time this appeal was heard in 2025. The court concluded firstly that most of the relief sought was not available on judicial review of a University Appeal Board (UAB) decision, even if they had merit. Secondly, the damages and apologies sought by the appellant were not remedies open to the court. Thirdly, the court declined to engage in a broad-ranging public inquiry into a range of issues upon which the appellant felt personally aggrieved. Nor would it engage in a systemic review of the university's academic policies, curriculum, or methods of education delivery. The court instead restricted itself to judicial review of the UAB decision. On this issue, the court ruled as follows: 1) the chambers judge's dismissal of the application for delay was proper, given that this was a discretionary decision and was made based on the appropriate test. 2) Regarding procedural fairness of the academic appeal process, the court applied the standard of correctness and concluded that the appeal had been conducted in a fair and open manner, and that a number of extraneous issues the appellant raised were not properly issues of procedural fairness. 3) The appropriate standard of review of the UAB decision was reasonableness. Applying this standard to the discrete subject matter of the UAB's decision, the appeal failed. 4) The costs award from the court below was an order of a discretionary nature, and the court saw no reason to interfere. 5) Costs were awarded to the successful respondent on appeal in the significantly reduced sum of \$1000. |
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| Family Law - Spousal Support - Non-compensatory                                   | Both parties to a trial decision denying spousal support sought relief from the Court of Appeal (court). The wife sought to bring fresh evidence and to vary the finding on spousal support. The husband sought to bring fresh evidence on appeal. The parties to this application were born in Turkey and emigrated to North America to pursue education and work opportunities, specifically in the field of crop science. The matter appealed from was a King's Bench decision dividing property and ruling on spousal and child support. The primary matter on appeal was the trial                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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### Cases by Name

*Anderson v Anderson*

*Carrier v University of Saskatchewan*

*Chaboyer v Saskatchewan Power  
Corporation*

judge's decision to impute \$60,000 in income to the wife, resulting in no spousal support award. HELD: The husband's fresh evidence application was denied, while the wife's was allowed. The court applied the four criteria applicable to a fresh evidence application to both sets of fresh evidence: due diligence, relevance, credibility and effect on the trial. On this basis the court allowed the wife's fresh evidence as a result of her having suffered from depression when the original trial proceeded. The remedy granted was a new trial on the question of spousal support only. A new trial would in any event enable the husband to lead the fresh evidence he sought to adduce on appeal.

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### ***Chaboyer v Saskatchewan Power Corporation*, [2025 SKCA 31](#)**

Caldwell Kalmakoff Drennan, 2025-03-21 (CA24031)

Administrative Law - Judicial Review - Standard of Review - Appeal

Constitutional Law - Duty to Consult

Indigenous Peoples - Duty to Consult - Accommodation

The appeals in this case concerned the duty of His Majesty the King in right of Saskatchewan to consult with two First Nations regarding the renewed licensing of two decades-old hydroelectric facilities on the Saskatchewan River owned by the respondent. The respondents had applied to the Water Security Agency (WSA) in 2014 to renew its licenses to operate the facilities. Between 2015 and 2018, the respondents consulted with several First Nations and Métis communities, after which the WSA decided to grant the respondent licenses to continue operating the facilities subject to special conditions. The appellants sought to have the decisions judicially reviewed. The application for judicial review was dismissed by the Court of King's Bench.

HELD: The appeals were dismissed. 1) The licensing decisions were not unreasonable. A reasonable decision is one "that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada v Vavilov*, 2019 SCC 65 at para 85). To be considered reasonable, an administrative decision must be transparent, intelligible and justified in the reasons of the decision maker. Reasonableness review starts with the reasons given by the decision maker and focuses on how the decision maker arrived at the outcome of their decision, including the justification offered for it, and not on the conclusion the reviewing court itself would have reached had it stood in the decision maker's shoes. If a decision satisfies the governing criteria, then the reviewing court must defer to it as a reasonable decision but where the decision maker strays

*Conexus Credit Union 2006 v Engen*

*Goertz v Co-operators General Insurance Company*

*Harrison v MacMillan*

*Lombard v Ron S. Maurice Professional Corporation (Maurice Law Barristers & Solicitors)*

*Ludwig Farms Ltd. v Whitecap Resources Inc.*

*R v Wolfe* (determination on admissibility of statements)

*R v Wolfe* (qualification of expert witness)

*Y.F. v B.F.*

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beyond the limits of its delegated authority, the decision will not be reasonable and will be subject to appellate intervention. In this case, the WSA's interpretation of its home regulations was not unreasonable. WSA did not fundamentally misapprehend or fail to account for the evidence before it regarding sediment impoundment and starvation in its review of the respondent's applications or when issuing the licences. In addition, the licence conditions addressed sediment impoundment and, in some measure, were designed to mitigate the effects of sediment starvation, among other effects of the dams and their operations. 2) The WSA incorrectly concluded that the duty to consult was triggered at a low level. The duty to consult arises whenever the federal or a provincial government is contemplating an action that could infringe on an Aboriginal or treaty right. The scope of the duty to consult in relicensing cases varies depending on the extent of the adverse impact of a contemplated government decision. In this case, the duty to consult required in basic terms notice of the decision to be made by the WSA, communication of and consultation about information relevant to that decision, responses to inquiries about the decision-to-be-made, and, where warranted and practicable, accommodation of related concerns. This level of consultation was at a mid-level. 3) The Crown fulfilled its duty to consult. In carrying out its duty to consult, the Crown is not held to a standard of perfection. So long as every reasonable effort is made to inform and to consult, such efforts would suffice. In this case, the record amply established that the respondents made reasonable efforts to inform and consult with interested First Nations and Métis communities and thereby discharged the duty to consult. The appellants had a fair and reasonable opportunity to participate in the consulting process. There were no adverse effects of the relicensing, including historical effects, that were not identified and discussed (to one degree or another) with the respondents and WSA. As a result, it was not unreasonable for the WSA to decide that the Crown's duty to consult had been fulfilled. 4) The Crown fulfilled its duty to accommodate. In this case, the evidence and record supported the finding that WSA imposed accommodation requirements on SaskPower to mitigate the detrimental effects of the dams on treaty rights that had been identified by the appellants and other interested groups. The establishment of the stewardship committee in particular was an example of the balance and compromise required by the duty to consult and the honour of the Crown.

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***Lombard v Ron S. Maurice Professional Corporation (Maurice Law Barristers & Solicitors)*, [2025 SKCA 35](#)**

Jackson Tholl Kalmakoff, 2025-04-04 (CA25035)

Civil Procedure - Summary Judgment - Final or Interlocutory Order  
Statutes - Interpretation - *Limitations Act*  
Torts - Breach of Fiduciary Duty

The respondent had hired the appellant to assist with work on a potential class action. When the appellant ended her employment and set up practice with another firm, the respondent commenced an action against the appellant for breach of fiduciary duty, conversion and conspiracy. The appellant brought a summary judgment application to the Court of King's Bench for dismissal of the claim on the grounds that the claim was statute-barred and had no legal merit. The summary judgment application was dismissed. HELD: The appeal was dismissed. 1) The determination by the Court of King's Bench that the claim was not statute-barred was a final order. The determination of whether an order is final or interlocutory turns on whether the order effectively disposes of the rights of the parties in a final and binding way with respect to a substantive issue. In this case, the chambers judge expressly held at several junctures in the chambers decision that he had made a final determination regarding the limitations issue. He found the claim was not statute-barred such that the trial could proceed in the normal course, and he used language conveying finality. 2) The summary judgment dismissal was an interlocutory one. An order declining summary judgment relates to an intermediate matter at issue in the case, not to the ultimate matter. The chambers decision on this point was therefore interlocutory. 3) The claim was not statute-barred. In this case, the chambers judge did not prolong the limitation period beyond the two-year limit, nor did he invoke the *nunc pro tunc* doctrine to backdate the issuance of the statement of claim. Even if he did, the chambers judge would have been acting within his authority to backdate the local registrar's action of signing, sealing and dating the statement of claim. 4) The chambers judge did not err by not finding that the claim was barred by the release entered into between the parties. Where the chambers judge exercises their fact-finding powers and determines whether there is a genuine issue requiring a trial, this was a question of mixed fact and law. Where there is no extricable error in principle, findings of mixed fact and law should not be overturned absent palpable and overriding error. Unless a judge misdirected themselves or came to a decision that was so clearly wrong that it resulted in an injustice, the decision should not be disturbed. In this case, it could not be said that the chambers judge erred with respect to a purely legal question, applied an incorrect principle of law, committed a palpable or overriding error of fact or of mixed fact and law, or arrived at a clearly wrong decision. There was no basis for appellate intervention. 5) There was no basis for appellate intervention on the merits. The chambers judge reviewed the law and the rules regarding summary judgment. He summarized the affidavit evidence. He decided that there must be a trial of the issue to resolve the matters that were outstanding in the claim. There was no basis in principle, fact, or mixed fact and law that would justify appellate intervention.

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***Ludwig Farms Ltd. v Whitecap Resources Inc.*, [2025 SKCA 37](#)**

Tholl Drennan Bardai, 2025-04-04 (CA25037)

Natural Resources - Surface Rights - Compensation Review  
Surface Rights - Compensation Review Timelines

The appellants were the owners of lands on which surface leases had been granted to the respondent. The dispute between the parties concerned the rent payable by the respondents in connection with 48 surface leases. The appellants had applied to the Surface Rights Arbitration Board (board) for a review of compensation payable under the various leases. However, the board held

that it could not determine the applications because the applications were not filed in the time period contemplated by s. 77 of *The Surface Rights Acquisition and Compensation Act* (Act).

HELD: The appeal was allowed. The three-year interval referenced in s. 77 (b) of the Act was to be calculated from the day on which that section came into force. In interpreting legislation, the words of the statute are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature. Where the consequences of a particular interpretation result in an absurdity, there is a presumption that such interpretation was not what was intended by the Legislature. By contrast, consequences consistent with the purpose and scheme of the legislation are presumed to accord with the Legislature's intention when enacting the legislation. Section 77(b) of the Act stated that, for leases that had not been reviewed since May 19, 1978, the leases will initially be reviewable until November 19, 1981 (being six months after the section came into force), and, thereafter, parties will have a six-month window (between February 19 and August 19) in every third year to seek a review, with the three-year cycle to start on May 19, 1981. Section 77(b) was clearly tied to the date the section came into force.

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***Goertz v Co-operators General Insurance Company*, [2025 SKCA 36](#)**

Kalmakoff McCreary Bardai, 2025-04-04 (CA25036)

Insurance - Policy Limits

Statutes - Interpretation - *Insurance Act*, Section 108, Section 113, Section 128

Statutes - Interpretation - *Limitations Act*, Section 6, Section 11

The appellants owned a number of properties insured by the first respondents under a policy purchased through the second respondents. After a fire at the property in September 2014, a dispute arose between the parties as to the amount payable pursuant to the terms of the policy. The appellants issued a statement of claim against the respondents in January 2020 as they were dissatisfied with the insurance payout. The claim against the respondents was dismissed on the basis of a limitation period. This dismissal formed the subject of the appeal.

HELD: The appeal was dismissed. 1) The chambers judge did not err in finding that the two-year limitation period began to accrue on January 24, 2017. Under Section 6(2) of *The Limitations Act* (Act), there is a rebuttable presumption that a claim is discovered on the day on which the relevant act or omission took place. The presumption may be rebutted if the claimant can show that the statutory criteria outlined in s. 6(1) of the Act were not met until a later date. In this case, the appellants would have been aware of the respondent's determination that the appellants were only entitled to a reduced payout under the terms of their policy of insurance in November 2014. By August 17, 2015, the appellant knew what the respondent was prepared to pay him both in relation to the property loss claim as well as the other claims, being loss of rent and contents. However, the appellant continued to try and debate the amount payable with the respondents rather than bring a claim by August 17, 2017. Even if it could be said that the limitation period was extended by virtue of the debate between the parties, that debate came to a clear and convincing end on August 17, 2015, with the communication of the findings of the respondents. The limitation period for commencement of the claim expired long



before the claim was issued. 2) The chambers judge did not adopt an overly restrictive interpretation of the “payment of a debt” provision in s. 11(1) of the Act. Under s. 11(1) of the Act, a limitation period for the payment of a debt, recovery of property, or in relation to a charge may be extended where an acknowledgement or part payment is made. This language contrasts with s. 6 of the Act, which talks of acts and omissions generally without differentiating between various types of acts or omissions. The statement of claim in the prayer for relief in this case described the claim not as a claim in debt but rather as a claim for damages and declaratory relief. Section 11 was inapplicable, and no error was committed by the chambers judge in reaching that conclusion. 3) The chambers judge correctly applied the principle of promissory estoppel. In this case, the evidence did not establish the existence of any promise being made that was intended to affect the appellant’s legal interests or be acted on. In reaching this conclusion, the chambers judge made no error. 4) The chambers judge made no error in concluding that the respondent complied with its obligations under *The Saskatchewan Insurance Act* (in force at the relevant time). In this case, the respondents provided proof of loss forms to the appellant on multiple occasions. The appellant chose not to complete those forms. It was the completion of the proof of loss form that triggered many of the processes in the Insurance Act, including the appraisal process. The respondent was not required to make an application to compel the appellant to file a proof of loss. There was no error in the conclusion that the respondent had complied with its obligations under the *Insurance Act*. 5) There was no unjust enrichment in the dismissal of the claim. Since the limitation period for the claim had lapsed, the appellants’ claim could not succeed.

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***R v Wolfe*, [2024 SKKB 129](#)**

Morrall, 2024-07-16 (KB24221)

Criminal Law - Evidence - Witness - Expert  
Evidence - Expert Evidence - Basis for Opinion  
Evidence - Expert Witness - Qualifications

Twelve counts of sexual assault were brought against the accused in relation to his performance of duties as a medicine man. A publication ban had been ordered prior to trial under s. 648 of the Criminal Code and was lifted prior to this decision on expert testimony being reported. The Crown brought an application at trial to tender Harvey Thunderchild as an expert on the role and responsibilities of an Indigenous medicine man. The accused opposed the qualification of Mr. Thunderchild as an expert for the purposes of testifying. This application proceeded prior to the commencement of the jury trial. A *voir dire* was held on the expert’s qualifications, with Mr. Thunderchild’s *viva voce* and documentary evidence received in evidence on the issue of qualifications. The Crown sought to tender Mr. Thunderchild as an expert on the role of an elder, the role of a medicine man, and the proper touching involved in doctoring by a medicine man. In direct examination, Mr. Thunderchild testified to his diverse and extensive experience in Indigenous culture. He related his upbringing, background, and Indigenous ways. He indicated his knowledge regarding medicine men came from what he observed during his many attendances as a patient and watching others being doctored. He was able to detail the significance of the various sacred items involved and the duties of the helper. His experience was that it was culturally important not to question a medicine man’s methods; however, he also indicated he was aware of no situation where a medicine

man should be touching a patient except with the use of a fan, whistle, or feather.

HELD: Expert evidence is presumptively inadmissible, subject to the test set out in *R v Mohan*, [1994] 2 SCR 9, which requires the court to apply a four-pronged test. Added to this test is the gatekeeping analysis from *White Burgess Langille Inman v Abbott and Haliburton Co.*, 2015 SCC 23. The court applied this test to the following result. 1) Relevance: there was little doubt that Thunderchild's evidence was logically relevant to the accused's practices as a medicine man and consent issues. 2) Necessity: the court acknowledged and accepted evidence given in a fashion consistent with many first nations' oral storytelling and historical traditions. This evidence was straightforward and the court concluded it was necessary to enable the trier of fact to form the correct judgment about the matter in issue. 3) Absence of an exclusionary rule: There was no exclusionary rule of application here. 4) Special expertise: the court was satisfied that Mr. Thunderchild possessed special or peculiar knowledge through study or experience on the proposed testimony. Specifically, he possessed lived experience rather than formal education or training, and it was about the role of an elder and the role of a medicine man in the Indigenous community. This was considered sufficient to give him special expertise. However, the court was not satisfied that his expertise extended to the proper type of touching involved in doctoring by a medicine man, particularly as he was not a medicine man himself. Given that one of the defences the accused could raise was that he was not touching the private areas of his female patients for a sexual purpose, there was little probative value in putting forward an expert witness who opined that he had never seen a medicine man touch another person while acknowledging he had no understanding of the mechanics of the doctoring. 5) Finally, the trial judge must weigh potential risks against the benefits of admitting the evidence. The potential benefits of his testimony on the nature of touching were outweighed in this case by potential harm to the trial process. Therefore, the court qualified Mr. Thunderchild as an expert in Indigenous culture for the purpose of the jury trial, specifically in the areas of the role of an elder in the Indigenous community and the role of a medicine man in the Indigenous community.

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### ***R v Wolfe*, [2024 SKKB 184](#)**

Morrall, 2024-10-21 (KB24222)

Constitutional Law - *Charter of Rights*, Section 10 - Voluntary Statements

Criminal Law - Admissibility of Statements - Voluntariness of Statements

Criminal Law - *Voir Dire* - Evidence - Admissibility

This decision related to the admissibility of several statements made by an accused facing twelve counts of sexual assault in relation to his performance of duties as a medicine man. A publication ban had been ordered prior to trial under s. 648 of the *Criminal Code* and was lifted prior to this decision on voluntariness. A voir dire was held in the absence of the jury regarding both voluntariness and *Charter* compliance respecting five statements made by the accused to police. All arguments of counsel were made in writing. HELD: There is an overlap in the law applicable to voluntariness and *Charter* compliance of a statement. The confessions rule is a broader exclusionary rule that protects the right to silence at all times, while *Charter* protections only arise on detention. Thus, voluntariness under the broader common law confessions rule is typically addressed first. The court restricted the scope of its



analysis by clarifying that the evidence before it raised no issues of officers' threatening behaviour, oppressive conditions, *quid pro quo* inducements, or police trickery on any of the five statements. 1) Based on the factors not in issue, the court focused on whether the accused possessed a limited degree of cognitive ability to comprehend the conversation and consequence of providing information. After first assessing cognitive ability, the court must determine whether that ability was overborne by state action or inaction. For a number of the statements, the court was able to conclude that the accused's will was not overborne in the circumstances, based on various contextual clues. These included that he showed an understanding of what was being spoken about at many junctures, on a number of occasions corrected or disagreed with statements made by the interviewing officer, and even led the conversation in a different direction at times. The court concluded that his will was intact during all portions of the first three statements, and thus those statements were voluntary under the common law rule, based on a reasonable doubt standard. In the case of the fourth and fifth interviews, when the accused was suffering some minor health issues (long COVID), the court similarly concluded that the accused was acting with a full operating mind and statements were voluntary. Evidence from the previous statements was considered in part in coming to this conclusion as to the accused's personal characteristics. 2) Psychological detention for the purposes of a *Charter* violation occurs when the circumstances are such that a reasonable person would conclude that he was not free to go. This takes into account the circumstances, the nature of police conduct, and characteristics of the individual. The court considered the accused's personal circumstances, including his Indigenous background, the physical set-up around the remaining two statements, and the fact that a simple police caution was given. The court concluded in these circumstances that no psychological detention took place so as to violate the accused's *Charter* rights.

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***Conexus Credit Union 2006 v Engen, 2025 SKKB 29*** (not yet available on CanLII)

Robertson, 2025-02-21 (KB25023)

Civil Procedure - Affidavit Evidence

Foreclosures - Costs - Solicitor and Client Costs

Mortgage - Judicial Sale - Costs

Real Property - Foreclosure - Costs

A judicial sale and award of deficiency judgment had taken place respecting the debtor's property to conclude foreclosure proceedings. The parties now applied for assessment of costs following the conclusion of these protracted proceedings, which continued over several years. Procedural steps included defence of the foreclosure action, successful challenge of summary judgment by the debtor, and the land being sold by judicial sale. There was an order for rectification to correct errors in the mortgage documents followed by an order *nisi* for sale by real estate listing with a minimum sale price of \$585,000. The sale proceeded and was confirmed by the court in the sum of \$655,000. Thereafter, the mortgagee, Conexus Credit Union 2006, filed for deficiency judgment and assessment of costs. The application was unopposed, and leave was granted to file additional materials as there was inadequate information before the court supporting the relief sought. This decision followed from the receipt of that information. HELD: The court ruled on three issues: 1) the proper process for assessment of costs as part of a deficiency judgment following

judicial sale; 2) evidence required in support of such an application; and 3) procedural irregularities as they affected both the disposition and the amount of costs allowed. 1) Recoverable costs are those costs allowed by statute or contract, keeping in mind that the statute prevails over any contractual term. The applicant has the onus to identify and justify all costs claimed. Even where costs are eligible for payment, the court must still consider whether the costs claimed are reasonable. The application for assessment of costs should include materials supporting each claim for costs, which should be affidavit evidence under rule 11-18. Costs must be assessed in order to issue a deficiency judgment, which includes the net deficiency after sale plus court-approved costs. *The Limitation of Civil Rights Act*, RSS 1978, c. L-16 (Act) authorizes recovery of some, but not all, costs in a foreclosure action. Because one of the two mortgages was a purchase money mortgage within the meaning of the Act, it was exempt from execution and the *pro rata* costs related to that judicial sale were not claimable as part of the deficiency judgment. In this instance, the proper approach was to pay the mortgage debt and allowed costs from the sale proceeds. If any surplus remained, then, subject to claims of other creditors, that surplus would be paid to the mortgagor. If a deficiency remained, then that amount must be reduced by the *pro rata* share attributable to the exempt mortgage. That reduced amount was the deficiency judgment. This approach was consistent with the protection afforded by s. 2 of the Act against deficiency judgments for purchase money mortgages. This legislative protection would be thwarted if deficiency judgments were made for cost awards after judicial sale on an exempted mortgage. It could also create a perverse incentive to pursue the remedy of judicial sale rather than foreclosure. Thus, costs were allowed based on the executable mortgage's *pro rata* share of 13.93% of the total deficiency and costs. Claimed costs were allowed as follows: property taxes were allowed. Selling officers' fees were reduced, as were claimed legal fees. Conexus' claimed legal fees, including charges by the selling officer, totaled \$89,498.25. Although the current standard award of legal fees on assessment of costs is \$5,500, this was a complex file that proceeded over several years. The court outlined a number of factors justifying a higher award of costs, including the use of an experienced lawyer as a selling officer, his having worked cooperatively with Conexus counsel to avoid unnecessary costs, and Conexus' largely having acted promptly and properly in the conduct of the action. The mortgagors had contributed significantly to the delays throughout, including failing to cooperate in the judicial sale, resulting in additional delay and costs. Legal fees were reduced for one application made necessary by Conexus' errors in preparing mortgage documents. The court awarded costs of \$60,000 to Conexus for its legal fees and disbursements, an exceptional award based upon exceptional circumstances. Deficiency judgment was therefore calculated comprising the net mortgage balance after deducting the sale proceeds, plus Conexus' legal fees. Applying the prorated calculation of the executable mortgage balance to the purchase money mortgage balance ( $78,237.31 / \$560,705.13 = 13.93\%$ ) to the total debt yielded the total amount for which personal judgment could be obtained. The calculation of the deficiency judgment costs portion was  $\$823,797.35 - \$655,000 = \$168,797.35 \times 13.93\% = \$23,513.47$ . Deficiency judgment for costs was therefore awarded in that amount. 2) On the assessment of costs itself, the court provided guidance on the type of breakdown of costs required on such an application, which had not been provided despite giving the mortgagee leave to return with full particulars in support of its application. The court provided its own summary as a model for counsel to use in the future as part of any application for assessment of costs and deficiency judgment. (3) There were also a number of procedural irregularities in the proceedings which the court addressed with a view to establishing the correct process. Rule 10-47(2) of *The King's Bench Rules* requires that all sale proceeds be paid into court unless a judge directs otherwise. The mortgagee failed to do this on the basis that the proceeds would not be sufficient to pay off all amounts owing to the mortgagee. This was not a proper justification for non-compliance with this rule. Although counsel have increasingly been doing this, the court

noted that this practice makes it difficult for parties to comply with the requirement to apply for assessment of costs within three weeks of sale. Here, it took eight months. This court had previously warned that sanctions may be imposed for such irregular procedure, and the court echoed that concern and warning. Secondly, the court admonished the mortgagee for changing two paragraphs of the prescribed form for the order confirming sale without clearly bringing it to the attention of the authorizing justice. This should be done by describing the change in the written application along with an explanation, underlining any change in the draft order, and verbally telling the presiding justice at the hearing of the application.

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***Harrison v MacMillan*, 2025 SKKB 31** (not yet available on CanLII)

Norbeck, 2025-02-26 (KB25025)

Wills and Estates - Capacity - Undue Influence

Wills and Estates - Proof of Will in Solemn Form

Wills and Estates - Testamentary Capacity

Wills and Estates - Solemn Form - Genuine Issue to be Tried - Undue Influence

Following the death of the testator, W.J.S., his sister, F.H., sought to have his most recent will naming B.J.M. as an executor and beneficiary proven in solemn form under Rule 16-46 of *The King's Bench Rules*, and an order under Rule 16-47 of *The King's Bench Rules* revoking the grant of letters probate dated March 6, 2023, based on that 2022 will. The testator had created two wills, the first in 2018, naming his sister, F.H., as executor and sole beneficiary of his estate. The second will, dated June 3, 2022, named B.J.M. as executor and named B.J.M.'s children as sole beneficiaries of the testator's estate. F.H. challenged the 2022 will based on both lack of capacity and undue influence or coercion. This was based in part on evidence from the testator's former lawyer opining that such undue influence had taken place. The testator and his sister had had no contact throughout their adulthood for almost thirty years. In 1997, they began to have a relationship, which included visits between their homes in Saskatchewan and Manitoba. In 2017 and 2018 the sister had been present to assist with some medical issues the testator was having. She noticed a personality change around 2019 which she described as paranoid and included social avoidance and fear of physical injury. However, she was not in close contact with him between that time and his death in 2022. When she arrived at his home shortly after his death, she noted a number of strange modifications and living conditions in his home. His front door had been sealed, the kitchen window boarded up, and there were three deadbolts on the back door. Pipes had been removed from a sink, the toilet was inoperative, and there were buckets of human waste in the bathroom. B.J.M. testified about being neighbours with the testator from 2012-2015 and friends after that. He testified that he knew nothing of the testator's estate plans. He told the court that the testator had complained to him about his sister and other members of his family who had not made an effort to contact him in recent years. B.J.M. acknowledged that the testator had some strange habits but seemed well aware of the world around him and current events. There was some conflict around F.H.'s moving into the testator's residence after his death, and police were summoned to assist with her

removal. The lawyer who prepared the 2022 will was very experienced in wills and estates and described meeting with the testator alone to prepare and sign the will. There were no outward indications of lack of capacity or undue influence.

HELD: The court applied the two-stage approach to determining whether a trial was necessary to establish testamentary capacity. First, a chambers hearing was held to determine if there was sufficient merit to the challenge of capacity to warrant a trial. If there was sufficient evidence of testamentary capacity, the application should be dismissed, and the grant of probate would remain in full force and effect. A second hearing is only necessary where the person challenging the will presents a genuine issue supported by an evidentiary foundation, or where credibility findings must be made. The court outlined and applied the elements of testamentary capacity as follows: The testator must be sufficiently clear in his understanding and memory to know: 1) the nature and extent of his property, 2) the persons who are the natural objects of his bounty and 3) the testamentary provisions he is making; and furthermore, he must be capable of 4) appreciating these factors in relation to each other, and 5) forming an orderly desire as to the disposition of his property. Evidence of suspicious circumstances, on the other hand, would suffice to defeat the presumption of testamentary capacity. The court disregarded evidence from the testator's former lawyer in its entirety, as there was no evidence of his ability to speak to the testator's capacity at the time of the 2022 will. Although there were irregularities in the testator's home, it did not meet the test of suspicious circumstances so as to defeat testamentary capacity. The sister bore the burden of proving undue influence and had failed to meet that burden, with thin evidence of undue influence or coercion before the court. Evidence of general suspicions is not enough. The courts should not lightly deprive people of the right to make a will, and testamentary capacity may remain despite other loss of abilities. In sum, the evidence that the testator acted strangely between 2019 and 2022 did not demonstrate lack of testamentary capacity. Therefore, the matter was disposed of at the first stage: there was no genuine issue to be tried, and the application was dismissed. Fixed costs of \$1,500 were awarded to B.J.M., payable to him by the sister.

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***Anderson v Anderson*, [2025 SKKB 44](#)**

Brown, 2025-03-17 (KB25039)

Family Law - Child and Spousal Support - Interim

Family Law - Child Support - Spousal Support - Family Property - Interim Order

Family Law - Spousal Support - Interim - Determination of Income

The parties were married in 2013 and had separated by the end of October 2023. They attended family mediation but were unable to resolve their differences. The petitioner sought spousal support and child support. The petitioner also sought an order for ongoing compensatory and non-compensatory spousal support. The respondent did not resist an order for payment of child and spousal support but had views differing from the petitioner's regarding what amount of income should be attributed to him as well as what the petitioner's income should be found to be.

HELD: The respondent was ordered to pay child support in the amount of \$3,797 per month beginning February 1, 2025, and on the first of each month thereafter, and spousal support in the amount of \$5,900 per month beginning February 1, 2025, and on the first of each month thereafter. No retroactive support was ordered. 1) Under the *Divorce Act*, a support order should serve (a) recognition

of economic advantage or disadvantage arising from the marriage or its breakdown; (b) apportionment of the financial burden of child care; (c) relief of economic hardship arising from the breakdown of the marriage, and (d) promotion of the economic self-sufficiency of the spouses. In making an order for spousal support, the court must look at the “condition, means, needs and other circumstances of each spouse”. This balancing act includes, but is not limited to, the length of cohabitation, the functions each spouse performed, and any order, agreement or arrangement relating to support. In this case, the evidence before the court was not sufficient to add amounts to the respondent’s income. The income tax return of the respondent from 2023 was a fair and appropriate measure of his income and reflected his ability to generate income.