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of Saskatchewan

Case Mail

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

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R v S.S., **2025 SKCA 97**

Jackson Bardai Kilback, 2025-10-02 (CA25097)

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The appellant was convicted in February 2024 of sexual assault and attempted choking (strangulation) with intent to commit sexual assault. The appellant alleged that his conviction should be overturned on the basis that his cross examination of the complainant was unfairly restricted by the trial judge and that his s. 11(b) *Charter* right to be tried within a reasonable time was breached. He also appealed the sentence imposed on the basis that he was denied the right to challenge the complainant on her victim impact statement (VIS).
HELD: The appeal was dismissed. (1) The trial judge did not err in finding that the trial delay did not violate the appellant's s. 11(b) *Charter* rights. In *R v Jordan*, 2016 SCC 27, the Supreme Court established an 18-month ceiling beyond which delay is presumptively unreasonable for matters proceeding in Provincial Court. Periods of delay for which the

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defence is responsible will generally be deducted from the overall calculation. In this case, an adjournment for a period of 170 days was at the request of the defence. At the time the defence made this choice, they were aware of the content of the statement and had indicated that they were ready to proceed if the complainant testified in the conventional manner. The defence was likewise aware of the short redaction being proposed by the Crown and had been given an option that would address their concern about not receiving enough notice, but the defence was not prepared that day to proceed in the manner proposed. It was open to the trial judge to find that the delay resulting from the adjournment was caused by the defence and that the appellant's *Charter* right to be tried within a reasonable time had not been breached. (2) The trial judge did not err in limiting the cross-examination of the complainant. In proceedings in respect of certain enumerated offences, s. 276(1) of the *Criminal Code* categorically bars the admission of evidence that the complainant has engaged in sexual activity to support an inference that the activity, by reason of its sexual nature, makes it more likely that the complainant consented to the sexual activity that forms the subject matter for the charge or makes the complainant less worthy of belief. Evidence of the complainant's prior sexual activity adduced by or on behalf of the accused is presumptively inadmissible. For that evidence to be admitted, it must be shown that the sexual activity evidence is being adduced for purposes other than the impermissible purposes identified in s. 276(1), is relevant to an issue at trial, relates to specific instances of sexual activity, and has significant probative value that is not substantially outweighed by its prejudicial effect. In this case, the evidence sought to be adduced was not within the complainant's knowledge. The complainant was asked about rumours of her promiscuity circulating at her high school, which had no relevance to the charges facing the appellant and were aimed at introducing into evidence unfounded allegations concerning the complainant's sexual history. The trial judge did not err in curtailing this line of questioning. (3) The trial judge did not err in not permitting the defence to challenge the complainant's VIS. Under s. 724(3) of the *Criminal Code*, where there is a dispute with respect to any fact that is relevant to the determination of a sentence, the court is required to request that evidence be adduced to prove the existence of the fact unless the court is satisfied that sufficient evidence was adduced at the trial. The party wishing to rely on a relevant fact, including a fact in a pre-sentence report, has the burden of proving it. Either party is entitled to cross-examine any witness called by the other party and if the court is satisfied on a balance of probabilities of the existence of a disputed fact, may rely on it in determining sentence. In this case, the fact that the complainant was subject to more than one traumatic experience that contributed to the harm described in her VIS and that of her mother was not in dispute. The trial judge was made aware of this fact and the Crown stipulated it. Therefore, no evidence was required to establish this fact, and it was not an error to deny the request to file a certified copy of the information respecting the alleged sexual assault committed by another person.

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***R v Liu*, [2025 SKCA 98]**

Leurer Drennan Kilback, 2025-10-02 (CA25098)

Criminal Law - Evidence - Admissibility
Criminal Law - Evidence - Witness - Expert Witness
Evidence - Expert Witness - Qualification - *Mohan* Criteria

Following a trial in Provincial Court, the appellant was convicted of three offences contrary to the *Cannabis Act*: (a) unlawfully possessing more than 30 grams of dried cannabis in a public place contrary to s. 8(1)(a); (b) possessing cannabis for the purpose of distribution contrary to s. 9(2); and (c) possessing cannabis for the purpose of sale contrary to s. 10(2). He was also convicted of possessing unstamped cannabis product contrary to s. 158.11 of the *Excise Act, 2001* (*Excise Act*). The appellant appealed from the convictions for possessing cannabis for the purpose of distribution and sale (distribution and sale counts) and possessing unstamped cannabis product, contending that the trial judge erred in admitting certain expert opinion evidence, which compromised his ability to make full answer and defence, and that the reasons for conviction on the *Excise Act* count were insufficient and linked to an error in law.
HELD: The appeal was allowed in part. The appellant's sentence on the possession count was also set aside, and he was sentenced to a conditional discharge of 12 months. The appellant's appeal respecting the distribution and sale counts was allowed and his convictions were quashed. His conviction on the *Excise Act* count was upheld. (1) The trial judge erred by admitting the expert opinion evidence. To admit expert opinion, the Crown is required to establish the qualifications of the expert and the trial judge is required to determine the nature and scope of the proposed expert evidence. After determining the boundaries of the proposed expert opinion, the trial judge is to determine whether the

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Criminal Law - Sentencing - Domestic Violence

Criminal Law - Sentencing - *Gladue* Factors

Criminal Law - Sentencing - Sentencing Principles

Criminal Law - Sentencing - Sexual Assault

Criminal Law - Sexual Assault - Sentencing

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proposed evidence satisfies the four *Mohan* criteria (i.e., relevance; necessity; absence of an exclusionary rule; and a properly qualified expert. See *R v Mohan*, [1994] 2 SCR 9). The trial judge is also to perform a gatekeeper role and consider whether the benefits of admitting the evidence outweigh the potential risks in doing so. In this case, the trial judge did not conduct a voir dire to consider the qualifications of the expert witness and qualified the expert witness based on evidence that was not accessible to the appellant in a practical way. The process followed by the trial judge also deprived the appellant of any real notice of the Crown's intent to elicit expert testimony on the key issue in the trial. The appellant was deprived of his ability to question the expert on his qualifications and the trial judge failed to consider if the proposed testimony met the four-part *Mohan* test. The trial judge also failed to properly scrutinize the expert opinion on the ultimate issue of whether the appellant possessed the cannabis for the purpose of distribution and sale. The trial judge further denied the appellant the right to cross-examine the expert witness on a key area of his testimony, and one that the judge relied on to convict. These were all errors in law and principle warranting appellate intervention. The errors resulted in a miscarriage of justice. (2) The trial judge did not err in law or provide insufficient reasons on the *Excise Act* count conviction. Given the uncontested facts that the appellant grew the cannabis, and that he did so without being a licensee and without paying excise tax, there was no error in law underlying the *Excise Act* count conviction that would warrant appellate intervention. The reasons given by the trial judge revealed the basis upon which the trial judge found that the appellant was not a cannabis licensee and had possession of a cannabis product, as those facts were admitted and satisfied the elements of the offence. Counsel for the appellant did not suggest that he had difficulty formulating grounds of appeal because of the reasons for judgment. (3) The sentence for the possession count was demonstrably unfit. A sentence will be demonstrably unfit if it is not proportionate. In this case, the facts found by the trial judge respecting the immigration consequences for the appellant and his lack of a prior criminal record meant that the sentence plainly departed from what was proportionate. The trial judge did not conduct a proportionality analysis or make findings as to the gravity of any of the offences, including the possession count, or the degree of the appellant's responsibility in committing them. (4) A conditional discharge on the possession count was an appropriate sentence. In this case, the appellant had no previous criminal background, and a discharge was in his best interests. A discharge also adequately denounced his conduct, having regard to the gravity of the offence, the shifting legal and societal attitudes towards cannabis possession, and the associated public confidence in the administration of justice and enforcement of laws. It also acknowledged the collateral immigration consequences involved with the possession conviction and the fact that the appellant had served the term of imprisonment that had been imposed by the trial judge before his appeal was heard.

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***R v Patron*, 2025 SKCA 99**

Tholl Bardai Kilback, 2025-10-03 (CA25099)

Criminal Law - Probation - Breach of Probation - Appeal
Criminal Law - Breach of Undertaking - Keep the Peace/Good Behaviour
Self-Represented Litigant - Pseudolegal Argument

The appellant appealed against his conviction and sentence for breach of probation. He argued that the probation order was invalid. The appellant was initially convicted of wilful promotion of hatred against an identifiable group, contrary to s. 319(2) of the *Criminal Code*. He was sentenced to a period of incarceration followed by one year of probation, which included the mandatory condition that he keep the peace and be of good behaviour. The appellant's conviction and sentence were affirmed on appeal. While on probation, the appellant was charged with falsely representing himself to be a peace officer, criminal harassment, and breaching the probation condition that he keep the peace. He was convicted of the first two charges in King's Bench (upheld on appeal). The breach of probation charge was tried after in Provincial Court because it was an absolute jurisdiction offence. The Crown tendered a certified copy of the probation order, certified copies of the certificates of convictions for the first two convictions, witness testimony and video recordings of the appellant identifying himself as a police officer and verbally and aggressively confronting a woman on the street because her skin colour differed from that of the child in her care. The trial judge convicted the appellant of breaching the keep the peace condition of his probation order and sentenced him to 45 days of incarceration concurrent to the sentence he received in the Court of King's Bench for the other two offences. The trial judge found that the appellant understood that he was subject to a probation order but believed that the court did not have lawful authority over him. The trial judge was satisfied

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that the appellant committed the *actus reus* for breach of probation, and that none of his pseudolegal arguments amounted to a reasonable excuse under section 733.1 of the *Code*. HELD: The Court of Appeal dismissed the appellant's conviction appeal and denied leave to appeal his sentence. The appellant did not assert any grounds or arguments about errors in principle or the fitness of his sentence, so leave to apply from his sentence was denied. There was no error in the trial judge's conclusion that the probation order was valid and in effect when the appellant was convicted of the other two criminal offences, he intentionally violated a term of the probation order, and he had no reasonable excuse for the breach.

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***R v Lerat*, 2025 SKCA 106**

Jackson Tholl Kilback, 2025-10-15 (CA25106)

Ineffective Representation - Miscarriage of Justice - Appeal

The appellant and another accused were jointly charged with unlawful possession of methamphetamine for the purpose of trafficking, unlawful possession of hydromorphone, and unlawful possession of cocaine. Each testified that the other was guilty of the offences. The appellant was found guilty of possessing meth for the purpose of trafficking and of simple possession of hydromorphone. He was sentenced to three years' imprisonment, less pre-sentence credit. The other accused was convicted of simple possession of cocaine, acquitted of the trafficking charge, and sentenced to time served. The background facts involved officers investigating a possible early-morning break-in when they spotted a parked car in front of the residence of interest. They spoke with the driver (the other accused) who was arrested on outstanding warrants. The appellant was a passenger in the front seat. After a search, police found a large amount of methamphetamine and packaging material, hydromorphone pills, and crack cocaine in the car. The appellant gave a statement to police shortly after the arrest. He denied owning any of the drugs in the car and said that he bought the five hydromorphone pills from a friend for pain control after knee surgery. The other accused testified first at trial. He stated that the appellant pre-arranged the location and time of the meeting, the purpose of which was to purchase meth from the appellant. He

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S-I Management Limited v Saskatoon (City)

Viterra Canada Inc. v Tobin Lake Farms Ltd.

Yashcheshen v Saskatchewan Government Insurance

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added that when the appellant arrived, the appellant got into the front seat and had a black bag with him. When the appellant testified, he denied that the reason for the meeting was to conclude a drug sale but did not give any other reason or purpose for the meeting. The appellant appealed his conviction and sentence. He argued that he was not sufficiently prepared to testify because trial counsel did not review the appellant's police statement with him prior to trial. He argued that this resulted in a miscarriage of justice. He applied to adduce fresh affidavit evidence. For his appeal on sentence, the appellant argued that the judge erred in principle by failing to address his *Gladue* factors.
HELD: The Court of Appeal (court) rejected the fresh evidence application and dismissed the conviction appeal. The court granted leave to appeal the sentence but dismissed it. 1) The appellant did not meet the burden to show he was prejudiced by his counsel's performance at trial. There was no reasonable possibility that the result would have been different had the appellant reviewed his statement before he testified. The court concluded that even if trial counsel did not review the police statement with the appellant prior to testifying, there had been no miscarriage of justice. The process was not unfair, and the reliability of the verdict was not compromised. When addressing the ground of ineffective representation of counsel, the court is to determine the effect of the alleged defect on the verdict before assessing counsel's performance (*R v Stettner*, 2024 SKCA 101). A court must be satisfied that there was a miscarriage of justice before measuring trial counsel's performance against a standard of reasonableness. If the appellate court concludes there is no reasonable possibility that the verdict would have been different, it will not assess counsel's performance, and any fresh evidence will be rejected. The court did note that counsel's failure to review a police statement with an accused could constitute a serious act of incompetence, which could compromise the reliability of a verdict. In the circumstances here, the trial judge noted that the Crown had a compelling case without the testimony of each accused. 2) The court found no error in principle in the trial judge's sentence. The trial judge determined that the appellant was a mid-level trafficker of meth. He found that a fit sentence was three years and that a conditional sentence order was not appropriate. The trial judge reviewed the appellant's circumstances, including those related to *Gladue*, and made a factual determination that they did not have any impact on his moral culpability.

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***R v Merasty*, [2025 SKCA 109]**

Tholl Bardai Kilback, 2025-10-31 (CA25109)

Criminal Law - Appeal - Crown
Criminal Law - Assault - Assault Causing Bodily Harm - Acquittal - Appeal
Statutes - Interpretation - *Criminal Code*, "Bodily Harm"

A trial judge convicted the appellant of common assault and acquitted him of assault causing bodily harm. The Crown appealed the acquittal, arguing the trial judge misapplied the definition of bodily harm. The trial judge found that the accused punched the victim, knocked the victim unconscious, and left the victim with a one-inch head laceration and significant bleeding before taking a bicycle. The judge held these injuries did not prove “bodily harm” because there was no further evidence about how they affected the victim’s health or comfort beyond being transient or trifling. The court had to decide whether the trial judge erred in applying the definition of bodily harm to the facts of this case.
HELD: The court allowed the Crown’s appeal, set aside the conviction for common assault, substituted a conviction for assault causing bodily harm, and sent the matter back to the trial judge for sentencing. The court explained that “bodily harm” has a low threshold (see: *R v Androsoff*, 2023 SKCA 42). It means any hurt or injury that interferes with health or comfort and is more than merely transient or trifling. A court can infer bodily harm from obvious effects like unconsciousness, cuts and bruises, and medical or expert evidence is not required. On the facts of the matter, the Court of Appeal found that the victim losing consciousness and having a laceration with bleeding clearly exceeded the transient or trifling line and met the definition of bodily harm.

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***Reaney v E. Bourassa & Sons Ltd.*, [2025 SKCA 117]**

Schwann Tholl Kilback, 2025-10-14 (CA25117)

Civil Procedure - Dismissal - Delay
Civil Procedure - Prejudice - Want of Prosecution - Delay
Practice - Dismissal for Want of Prosecution - Delay Caused by Counsel

In 2001, the appellant sustained injuries from a crane accident and filed a claim against the respondent. For the next 19 years, he took no substantive steps to advance the case. In January 2025, a chambers judge dismissed the action for delay under Rule 4-44 of *The King's Bench Rules* after noting the respondent had contacted the appellant 26 times with little or no response. The appellant appealed the dismissal of the claim, arguing that the chambers judge misapplied the relevant legal test for delay and dismissal of a claim. The Court of Appeal (court) had to decide whether the chambers judge erred in applying the legal principles for dismissing a case for delay.

HELD: The court dismissed the appeal. The court accepted that the delay was inordinate and held that the chambers judge made no palpable and overriding error in finding it inexcusable. The three-part test for delay comes from *International Capital Corporation v Robinson Twigg & Ketilson*, 2010 SKCA 48, and the factors to be considered are whether the inordinate delay was excusable, whether the interests of justice favoured letting the case proceed despite the delay, and whether the judge should have used case management tools instead of dismissal. The court stated that relying on a former lawyer did not excuse the appellant's inaction because the plaintiff remained responsible for advancing the claim. On the interests of justice analysis, the court upheld the judge's weighing of prejudice to the respondent and stated that the record lacked timely medical evidence linking the injuries to the accident, the appellant had a prior back surgery raising causation issues, a key company owner had died, and witnesses would have to recall events from 24 years before. The court rejected the idea that dismissal for delay requires "severe" prejudice and confirmed that not filing a defence did not show the respondent accepted dormancy. The case did not raise a public interest issue that would justify proceeding. Dismissal under rule 4-44 is within the judge's discretion, and the chambers judge applied the test and their discretion correctly. The court awarded the respondent $1,000 in costs.

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***R v Daniels*, 2025 SKKB 153**

Currie, 2025-09-18 (KB25148)

Municipal Law - Bylaw - Offences - Sentencing - Appeal
Municipal Law - Bylaw - Zoning
Municipal Law - Bylaws - Enforcement
Municipal Law - Offences - Conviction Appeal
Municipal Law - Powers of Municipality - Prosecution
Municipal Law - Zoning Bylaw - Development Permit

The appellants (the individual and the individual's corporation) operated a short-term rental from a residential property in the RM of Corman Park. Neighbours complained of traffic, parking, trespass, and noise. The zoning bylaw of the municipality required a development permit for any "development," which included a material change in the use of a property. The justice of the peace (JP) found that moving from a single-family home to a commercial rental operation materially changed the use, requiring a permit, which

the appellants did not obtain. The JP convicted both the corporation (as owner and operator) and the individual (as a directing mind who personally marketed and contracted for rentals) and treated the contravention as a continuing offence from 2018 to 2021. The JP imposed fines and surcharges and issued an order to stop the offending use. The appellants appealed the decision of the JP to the Court of King's Bench.
HELD: The court dismissed the appeal. The court held that the rental operation materially changed the use of the property within the bylaw's definition of "development," so a development permit was required. The municipality had powers to bring those charges against the appellants, as s. 243 of *The Planning and Development Act, 2007* (PDA), as applied to this matter, states that no person shall contravene the bylaw of the municipality by failing to obtain the relevant permits. The appellant's single-family residence, converted to a rental operation, was not a permitted use under the municipality's zoning bylaw. The change of use from residential to short-term rental purposes constituted a material change that required a development permit. The appellants also argued that an amendment to the zoning bylaw effective in January 2022 should have retroactive effect pursuant to s. 53 of the PDA, allowing them to take advantage of a "Tourist Homes" provision that permitted discretionary use. However, as the Crown prosecutor argued and the court accepted, that policy did not apply to the appellants' zoning district. The appellants also relied on the defence of due diligence, alleging that the zoning bylaw's language was ambiguous and vague. The court found that the bylaw was clear, and the appellants did not prove due diligence as they did not take the reasonable steps to ensure compliance with the bylaw. The court upheld the convictions of both appellants, finding that the corporation committed the offence as the owner and operator, and the individual committed it as a principal on the basis of his own actions in marketing and contracting. The record before the JP and the court supported a continuing-offence finding over the charged period. On the issue of sentencing, the court found that the JP applied the proper principles to regulatory offences, considered proportionality and the company's financial means, and set fines that were more than merely a "cost of doing business," yet still proportionate. The fines were not demonstrably unfit.

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R v M.J.S., **2025 SKKB 154**

Klatt, 2025-09-19 (KB25149)

Criminal Law - Assault - Sexual Assault
Criminal Law - Sentencing - Domestic Violence
Criminal Law - Sentencing - *Gladue* Factors

The accused was convicted of one count of sexual assault, one count of public mischief and four counts of common assault for offences against his former spouse, whom he subjected to various forms of abuse between 2019 and 2023.
HELD: The accused was sentenced to 2,188 days' incarceration and other ancillary orders including DNA sample collection, lifetime

and 10-year firearm prohibitions, a 20-year registration under the *Sex Offender Information Registration Act*, and a no-contact order with the victim during incarceration. (1) The accused committed a major sexual assault. What constitutes a "major sexual assault" is fact specific, requiring an assessment of all the circumstances. A major sexual assault is not defined solely by whether it involved penetration or an incapacitated victim alone. Relevant circumstances include the physical and psychological harm to the victim, the nature of the assault(s), and the nature of the relationship between the victim and the offender. In this case, the victim was vulnerable. The nature of the relationship between her and the accused rendered her unable to resist or fight back. (2) The offences were grave and the accused had high moral culpability. Offence gravity is defined by: (i) the nature and comparative seriousness of the offence; (ii) the circumstances surrounding its commission; and (iii) the harm caused by it. The wrongfulness and harmfulness of the sexual assault will also bear on the assessment of an offender's degree of moral culpability. In this case, the accused's actions were cruel and contemplated and his assault was a gross intrusion into the victim's sexual integrity and autonomy. While the sexual assault occurred on one night, it was part of a pattern of abuse that pervaded the relationship between the accused and the victim. Considering the accused's personal circumstances, the *Gladue* factors identified in this case did not have any significant bearing on the accused's moral culpability.

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Mustaan v The Islamic Association of Saskatchewan (Saskatoon) Inc., **2025 SKKB 178**

Gerecke, 2025-10-21 (KB25173)

Corporate Law - *Non-profit Corporations Act*
Corporation Law - Oppression Remedy
Courts and Judges - Duty to Assist Self-Represented Litigants
Non-Profit Corporations Act - Oppression Remedy
Practice - Application to Strike - Frivolous and Vexatious/Abuse of Process
Practice - Pleadings - Statement of Claim - Application to Strike - No Reasonable Cause of Action

The Islamic Association of Saskatchewan (Saskatoon) Inc. (IAS) operates a mosque in Saskatoon. The applicant filed an originating application (which was amended twice by direction of the court) asking the court to take control of the association's governance and finances; declare the 2025 Annual General Meeting (AGM) invalid; appoint an independent administrator; reopen and police membership and voting; chair future AGMs; compel broad financial disclosure and a forensic audit; bar use of association funds for legal fees, and restrain bylaw changes. The association applied to strike the application under Rule 7-9(2) of *The King's Bench Rules*. The court had to decide whether the originating application disclosed a reasonable cause of action and pleaded material facts, and whether to strike the application or grant leave to amend.

HELD: Subject to a 30-day amendment period, the court struck the originating application for failing to disclose a reasonable cause of action but gave the applicant one final chance to amend the application to properly plead an oppression claim under s. 18-4 of *The Non-profit Corporations Act, 2022* (NPCA) with supporting material facts tied to the remedies sought. The court struck out the claim against all individual respondents (directors and committee chairs) without leave to amend. On an interim basis, the court dismissed the respondent's request to strike the whole proceeding as scandalous, vexatious, or an abuse of process, without prejudice, allowing a future application if needed. The court also provided guidance for self-represented litigants: the court will assist with procedure but cannot craft their case, argumentative affidavits are improper, parties must not try to relitigate earlier IAS decisions, and excessive or unnecessary filings may attract consequences. The applicant relied on various provisions of the NPCA; however, the court observed that those provisions did not provide a legal basis for the applicant's requests. The court observed that the applicant's relief would translate to the court's intervention in the operations, governance, and financial management of the IAS, something the court did not have authority to do. Rule 7-9(2) allows the court to strike a claim where it does not disclose a reasonable cause of action, and it is plain and obvious that the claim is doomed to fail (see: *Sawatzky v Prince Albert Golf and Curling Club Inc.*, 2025 SKCA 16 at para 26; *GHC Swift Current Realty Inc. v BACZ Engineering (2004) Ltd.*, 2022 SKCA 38). The court identified that only references to s. 18-4 of the NPCA could establish a cause of action related to this matter. That section allows complainants to apply for an order of the court when the corporation's activities or affairs have been conducted in a manner that results in oppression, unfair prejudice, or disregard of the interests of any member of the corporation. Therefore, the court allowed the applicant to cure the deficiencies of his claim for an oppression remedy within 30 days. Further, the court struck the claim against the committee chairs because they lacked corporate authority, and no allegations were made against those individuals, and also struck out the application against the individual directors for failing to plead sufficient material facts connecting them to the applicant's claims.

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***Edenwold (Rural Municipality) v Doe*, 2025 SKKB 179**

Davis, 2025-10-23 (KB25174)

Banks and Banking - Mistake of Fact Repayment
Banks and Banking - *Norwich* Orders
Banks and Banking - Online Fraud
Torts - Misrepresentation - Fraudulent

The municipality fell victim to a business email compromise and mistakenly sent $497,613.28 by e-transfer to a fraudster. The emails that triggered the transfer differed from past communications and urged an emergency transfer of funds. The receiving

bank (BMO) froze part of the funds. The municipality asked the court to declare that it owned the funds, to order the bank to return them, and to issue a *Norwich* order requiring disclosure of account information to facilitate tracing of any remaining funds.
HELD: The court granted a declaration order that the municipality owned the funds and ordered the bank to return the money it still held. The court applied the mistake-of-fact repayment rule from *B.M.P. Global Distribution Inc. v Bank of Nova Scotia*, 2009 SCC 15. The municipality was the rightful owner of the funds, as no other party had a superior claim, and the municipality made the transfer of funds under mistaken facts, believing it was paying the legitimate person for legitimate reasons. The court also granted a *Norwich* order requiring the bank to disclose the account holder's identity and where any of the funds were moved next. A *Norwich* order compels a party against whom the plaintiff does not have a cause of action to disclose information or documents in their possession. These orders are frequently used in cases involving online fraud. A summary of the relevant legal test for a *Norwich* order is seen in *Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34 at para 31. The court also held that the *Personal Information Protection and Electronic Documents Act* permitted disclosure when a court ordered it, and that such an order did not breach bank privacy obligations. The court limited the *Norwich* order to BMO and declined to bind unknown institutions without notice. The judge remained seized to handle targeted future *Norwich* applications if the tracing led to other institutions.

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***Viterra Canada Inc. v Tobin Lake Farms Ltd.*, 2025 SKKB 180**

Turcotte, 2025-10-24 (KB25175)

Limitation of Actions - Discoverability Principle
Limitations - *Limitations Act*
Practice - Pleadings - Statement of Claim - Application to Strike - Statute-barred - Limitation Period

This was an appeal from small claims court. The respondent sold seven truckloads of barley to the appellant under a grain purchase agreement. There was a dispute between the parties regarding the price of the products and the applicable limitation period. The appellant claimed that the respondent paid a lower price, alleging that the product was of lower feed barley quality than malt barley. The respondent also alleged the claim was statute-barred.
HELD: The court allowed the appeal and dismissed the claim as statute-barred. The discovery of the claim occurred when the appellant informed the respondent that it would rely on an independent laboratory test to assess the quality of the barley and pay only the feed price. On that date, the respondent knew or ought to have known the essential facts, as set out in s. 6(1) of *The Limitations Act* (Act), that a loss had occurred, the appellant's act caused it, the appellant took an adverse position, and a proceeding was an appropriate way to seek a remedy. The presumption in s. 6(2) of the Act and the burden in s. 18 supported that conclusion. The small claims judge made a palpable and overriding error by speculating that later laboratory testing, or the date the

cheque arrived, controlled the discovery date. The court held that later tests did not postpone the start date. Once the appellant communicated its final position, the time began to run. Because the respondent filed its action on January 15, 2024, the two-year limitation period had expired, and s. 19 of the Act barred the proceeding. The court set aside the small claims judgment and awarded costs to the appellant.

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Bernier Millwork Ltd. v HVR Construction Ltd**, [2025 SKKB 181]**

Turcotte, 2025-10-27 (KB25181)

Civil Procedure - Application to Set Aside Default Judgment
Construction Law - Builders' Liens
Contract - Nature of Agreement - Terms of Agreement

The claims underlying the dispute between the parties related to the construction of a new home for the defendant on land owned by Peterson Acres Inc. in the RM of Round Hill, Saskatchewan. The first defendant built a home and engaged the plaintiffs to supply certain cabinetry, custom countertops, millwork and some plumbing fixtures to the project in the fall of 2022, which the first defendant installed in the home. Around November 2022, the second defendant identified deficiencies in the home. The first defendant stopped working in November 2022 and had failed to pay the plaintiffs. The first defendant subsequently commenced a claim against the second defendant seeking payment for the balance owing for the construction of the home. The second defendant thereafter approached the plaintiff directly to complete the remediation work but failed to make payments, and the plaintiff registered a claim of lien against the land upon which the home was built. The second defendant applied to set aside the default judgment. HELD: The noting for default was set aside, and the second defendant was directed to serve and file a statement of defence and counterclaim within 20 days. (1) The defendant had an arguable defence to the claim. In setting aside a default judgment and permitting a defendant to subsequently serve and file a statement of defence, the following principles apply: (a) The application should be brought as soon as possible after the judgment comes to the knowledge of the defendant. If there is delay in bringing the application, that delay must be satisfactorily explained. (b) Mere delay will not, in and of itself, defeat the application, unless the delay is wilful or the plaintiff will suffer irreparable harm. (c) The applicant's affidavit must disclose an arguable defence or that there is a *bona fide* question to be decided. (d) The court is required to consider all of the circumstances, and whether there is a strong reason to deny a defendant his or her day in court when he or she can demonstrate an arguable defence to the claim and delay has not caused the plaintiff irreparable harm. In this case, the defendant's conduct did not reach the level of wilful default and provided a satisfactory explanation to support the setting aside of the noting for default. The defendant also provided affidavit evidence that supported the existence of a defence on the merits or presented a *bona fide* question to be decided.

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S-I Management Limited v Saskatoon (City), **2025 SKKB 182**

Elson, 2025-10-28 (KB25177)

Civil Procedure - Class Actions - Certification
Civil Procedure - Class Actions - Common Issues
Constitutional Law - *Charter of Rights* - Equality Rights

This putative class action arose from the introduction of the licencing and regulatory framework by which transportation network companies were now permitted to operate in the city of Saskatoon (city). The city enacted bylaws, first on December 17, 2018, and then on September 30, 2019, that changed the landscape for the licencing and regulation of vehicles-for-hire. The plaintiffs argued that the city's actions had created separate schemes for vehicle-for-hire services that denied class members' constitutional rights to equality and equality before the law. The plaintiff also argued that the separate schemes have significantly diminished the value of the class members' licences, resulting in a form of *de facto* expropriation.
HELD: The application for certification was dismissed. The criteria for certification were not satisfied. A court shall certify an action as a class action if the court is satisfied that: (a) the pleadings disclose a cause of action; (b) there is an identifiable class; (c) the claims of the class members raise common issues, whether or not the common issues predominate over other issues affecting individual members; (d) a class action would be the preferable procedure for the resolution of the common issues; and (e) there is a person willing to be appointed as a representative plaintiff who: (i) would fairly and adequately represent the interests of the class; (ii) has produced a plan for the class action that sets out a workable method of advancing the action on behalf of the class and of notifying class members of the action; and (iii) does not have, on the common issues, an interest in conflict with the interests of other class members. In this case, the proposed definition of the class satisfied the identifiable class criterion. The proposed question also raised common issues, and the action would be the preferable procedure for the resolution of the common issues. There was no substantial dispute about the plaintiff serving as a suitable representative for the class. However, neither of the claims in the plaintiff's amended statement of claim disclosed causes of action under s. 15(1) of the *Charter* and the plaintiff's claim did not disclose any reasonable cause of action for *de facto* expropriation.

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Keystone Enterprises Real Estate Ltd. v Canada (Attorney General), **2025 SKKB 183**

Crooks, 2025-10-29 (KB25178)

Business Corporations Act - Remedies - Rectification
Corporate Law - Director's Resolution - Capital Dividends

In this case, an accounting error resulted in the payment of capital dividends in excess of the balance of the plaintiff's capital dividend account (CDA), resulting in significant tax consequences. The applicant sought rectification of a director's resolution which authorized the capital dividend to reflect the correct balance of the CDA.
HELD: The application was dismissed. The conditions for rectification were not met. A party seeking rectification must show: (a) there was a prior agreement whose terms are definite and ascertainable; (b) the agreement was still in effect at the time the instrument for which the parties seek rectification was executed; (c) the instrument fails to accurately record the prior agreement; and (d) the instrument, if rectified, would carry out the parties' prior agreement. In this case, the agreement recorded precisely what was intended and the terms of the director's resolution were definite and ascertainable. The discovery of the adverse tax liability arose from the erroneous calculation, not from the inaccurate recording of the agreement. The applicants were asking the court to undo the error in the accountant's calculation only because of the unintended tax consequences, which was not an appropriate basis for rectification.

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Meng v Wang, **2025 SKKB 184**

Smith, 2025-10-29 (KB25182)

Civil Procedure - Certificate of Pending Litigation
Civil Procedure - Preservation Order
Fraud and Misrepresentation - Fraudulent Conveyances

The defendants in this case sought to vacate the certificate of pending litigation filed by the plaintiffs. The plaintiffs also filed an application to continue the interim preservation order applicable to the property.
HELD: The plaintiffs' application was granted. It was not equitable to vacate the certificate of pending litigation. Under s. 9-3 of *The King's Bench Act*, a judge may make an order vacating a certificate of pending litigation: (a) if the plaintiff or other party at whose

instance the certificate was issued does not proceed with the action or matter in good faith; (b) if the plaintiff's claim is not solely to recover land or an interest in land, but to recover money or money's worth: (i) that is chargeable on or payable out of land or some interest in land; or (ii) for the payment of which the plaintiff claims that the land or the interest in land ought to be subjected; (c) if the plaintiff claims land or an interest in land and, in the alternative, damages or compensation in money or money's worth; or (d) on any other ground that the judge considers appropriate. In this case, all the equities rested on the side of the plaintiffs. The evidence warranted the continuation of the preservation order. A court may grant a preservation order if the court is satisfied that a successful action would result in an order declaring a conveyance of property by the defendant void as a fraudulent conveyance or fraudulent preference. The court may also grant a preservation order if the court is satisfied that if the same were not granted, the enforcement of a judgment or order against the defendant or transferee would be likely to be partially or totally ineffective as a result of disposition of the property unless such disposition was for: (i) meeting reasonable living expenses of the defendant and dependants of the defendant; (ii) carrying on the business of the defendant in the ordinary course; or (iii) acquiring income to pay the expenses of defending or responding to the action. In this case, the evidence pointed to a concerted effort by the defendants to thwart the plaintiffs' enforcement efforts. The evidence unquestionably demonstrated that enforcement of the plaintiffs' judgment would be partially or totally ineffective if a preservation order were not granted and there was nothing to suggest that any transfer of the property would be necessary: (i) to meet the reasonable living expenses of the defendants, (ii) in carrying on business in the ordinary course, or (iii) for acquiring income to pay the expenses of defending or responding to the claim.

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R v Miller**, [2025 SKKB 185]**

Danyliuk, 2025-10-30 (KB25179)

Criminal Law - Assault - Sexual Assault
Criminal Law - Sentencing - Sentencing Principles
Criminal Law - Sentencing - Sexual Assault
Criminal Law - Sexual Assault - Sentencing

The court convicted the accused of sexual assault after finding that he performed sexual activity on the complainant while she slept in her own bedroom after a night of drinking. The accused was an invited guest in the home. Text messages he sent afterward contained admissions. A pre-sentence report described limited insight and no remorse, noted a low assessed risk but an attitude problem, and recorded a history of difficulty accepting the end of relationships and that he had a pattern of inappropriate behaviour towards women. The accused asked for a conditional sentence based on his work history, community support, and alleged caregiving responsibilities, but he provided no concrete evidence of exceptional collateral consequences. The court had to

decide the appropriate sentence for the accused.
HELD: The court imposed 30 months of incarceration, with no remand credit, and ancillary orders such as a DNA test, firearms prohibition and sex offender registration orders. Aggravating factors included that the assault occurred while the complainant slept, that it was after alcohol consumption, that the assault happened in the victim's own home with a breach of trust as an invited guest, and that the accused did not stop when told to. The court found psychological harm to be a significant factor as well. Mitigating factors, such as work history and community letters, carried little weight; the accused's lack of responsibility and absence of remorse further reduced the mitigation. The court rejected a conditional sentence as unfit and found no exceptional collateral consequences supported by evidence.

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***Yashcheshen v Saskatchewan Government Insurance*, 2025 SKKB 186**

Robertson, 2025-10-30 (KB25176)

Civil Procedure - Costs - Appeal
Civil Procedure - Costs - Enforcement
Civil Procedure - *King's Bench Rules*, Rule 9-33 - Recording of Proceedings

The plaintiff asked the court to grant leave to appeal a costs award from a court decision in August 2025, to stay enforcement of that costs award while appeals were underway, and to let the plaintiff make an audio recording of a chambers hearing. Several related appeals were already pending in the Court of Appeal.
HELD: The court dismissed all applications and ordered the plaintiff to pay $500 in costs to the opposing party, Saskatchewan Government Insurance. (1) The court held that s. 6-14(b) of *The King's Bench Act* did not apply because the proposed appeal was not "as to costs only," given the related appeals already before the Court of Appeal. Alternatively, the court stated that, if leave had been required, it would have refused it because the proposed grounds lacked merit: the earlier costs decision had considered financial hardship and chosen column 2 costs rather than column 3. That decision also explained the second counsel and disbursement costs rulings and provided adequate reasons. (2) The court declined to stay enforcement of the costs award and noted the plaintiff could seek a stay from the Court of Appeal. (3) The court refused permission to record the chambers hearing. Section 29 of *The Evidence Act* governs official court recordings, not third-party recordings, and rules 9-33 and 9-34 of *The King's Bench Rules* prohibit party recordings of chambers and restrict access to any court audio.

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***McIlduff v University of Saskatchewan*, 2025 SKKB 187**

Elson, 2025-10-31 (KB25183)

Administrative Law - Procedural Fairness
Administrative Law - Standard of Review - Reasonableness
Statutes - Interpretation - *University of Saskatchewan Act, 1995*, Section 6(1)(a), Section 60, Section 61(1)(p), Section 61(1)(q), Section 61(1)(u)

This application for judicial review followed from decisions taken pursuant to an academic research policy at the respondent, the University of Saskatchewan. In September 2022, a complaint was filed pursuant to the policy, asserting that the applicant had plagiarized, without attribution, certain passages from a colleague's published works. In keeping with the policy's procedures, the complaint was addressed by a tribunal, described as the hearing board, specifically established to conduct hearings into alleged breaches of the policy. In a written decision incorporated in its formal report, the hearing board found that the applicant breached the policy by committing plagiarism and misrepresentation. After an unsuccessful attempt to appeal that decision, the applicant filed for judicial review from the decisions of both the hearing board and the office holder who dismissed her appeal. Summarily described, the asserted grounds for the application included multiple breaches of procedural fairness, errors of law, errors of mixed fact and law, and unreasonableness.
HELD: The application was allowed and the hearing board's decision was set aside. There was no evidence of a lack of procedural fairness. At the outset, s. 4.0 h of the Procedures for Addressing Allegations of Breaches of the Responsible Conduct of Research Policy expressly authorized the hearing board to decide what evidence it would hear and/or accept. As such, its procedures were not governed by the rules of evidence and, as beneficial as it might have been to seek out evidence other than what the parties provided, there was no obligation on the hearing board to do so. The hearing board's authority to govern its process – and admit or reject evidence as it saw fit – weighed against finding a breach of procedural fairness. The decision of the hearing board was not reasonable. In determining whether a decision is reasonable, the reviewing court is required to answer two questions; that is, whether the decision bears the hallmarks of reasonableness –justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision. In this case, the hearing board did not make any specific factual determinations about what the applicant presented or used as her own. Instead, the hearing board's decision revealed only a general description of the material in question, without any reference to the precise material alleged to have been plagiarized. Further, it did not make any factual determination as to whether the applicant formally required permission to present or use the work in question. In the context of the culture that the hearing board acknowledged as existing at the lab where the applicant worked, this was not an insignificant issue. The hearing board did not make any specific factual determinations about the essential elements of the allegation of misrepresentation as defined in the policy.

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***R v Bone*, [2025 SKPC 26]**

Agnew, 2025-09-26 (PC25025)

Criminal Law - Disclosure - Demand for Particulars
Criminal Law - Procedure - Disclosure
Evidence - Privacy Rights - Witness Information

The accused was charged with impaired driving and having a blood-alcohol level over the legal limit after driving. The Crown had disclosed to defence a copy of the video from the body-worn camera of one of the investigating officers, but aspects of the video were redacted. The defence sought to obtain a copy of the unredacted video.
HELD: The Crown was ordered to provide an unredacted version of certain portions of the video. Other redacted portions were not required to be disclosed. The Crown's obligation under *R v Stinchcombe*, [1991] 3 SCR 326 is to disclose all relevant information, save that which is privileged or plainly irrelevant. If the Crown does not disclose information on the basis that it is not relevant, the onus is on it to show irrelevance. In this case, the pages that the investigating officer wrote on during the investigation of the accused prior to calling the complainant and the cell phone screen after the investigating officer reached the information pertaining to the accused's investigation were to be disclosed.

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***R v Riley*, [2025 SKPC 27]**

Schiefner, 2025-10-03 (PC25026)

Constitutional Law - *Charter of Rights* - Arbitrary Detention
Constitutional Law - *Charter*, Section 24(2) - Exclusion of Evidence
Criminal Law - Search and Seizure - Search Incidental to Arrest

The accused was arrested in September 2024 and charged with several offences, the most serious of which was unauthorized possession of a firearm. The accused claimed that his arrest was the result of an unlawful detention when an officer began having a conversation with him and a woman with whom he was walking. The accused argued that the actions of the officer breached his *Charter* rights and he sought to exclude all evidence obtained following his encounter with that officer. In the alternative, the accused argued that there was no reason to search the duffle bag he was carrying because he was only being arrested for a simple curfew breach.

HELD: The application was dismissed. (1) The applicant was not a credible witness. In assessing issues of credibility for *Charter* applications, the burden of proof is on the accused, and the onus is the balance of probabilities. In determining the accuracy of evidence, a number of factors can be used, including: (a) the overall likelihood or plausibility of the evidence; (b) the presence of independent supporting evidence; (c) consistency of a witness's evidence with verifiably surrounding events; (d) the internal consistency of the evidence; and (e) the demeanor of the witness and the balance of his/her evidence. In this case, the applicant's evidence changed in the telling and he omitted important facts. (2) The applicant was not arbitrarily detained. Whether a particular encounter with police is merely a conversation or has become a *de facto* detention depends on the court's evaluation of the following factors: the circumstances of the encounter; the nature of the police conduct; and the characteristics of the individual. In this case, while it was possible for the accused's companion to feel she was being singled out for an investigation, a reasonable person standing in the accused's shoes would not have felt the degree of psychological compulsion necessary to establish detention at the time. (3) The search of the accused was lawfully conducted. A search incidental to arrest may be conducted for the following purposes: ensuring the safety of the police and public, the protection of evidence from destruction at the hands of the arrestee or others, and the discovery of evidence which can be used at the arrestee's trial. The restriction that the search must be "truly incidental" to the arrest means that the police must be attempting to achieve some valid purpose connected to the arrest. Whether such an objective exists will depend on what the police were looking for and why. The search must not be conducted in an abusive fashion and in particular, the use of physical or psychological constraint should be proportionate to the objectives sought and the other circumstances of the situation. In this case, there was an outstanding warrant for the accused's arrest for a breach of the curfew conditions of his release order. The accused was also uncooperative when he was arrested, and he was carrying a bag that was both large and heavy. Further, the officer understood that the accused had a prior history involving firearms and explosives. Simply put, the constellation of facts known to the officer after arresting the accused provided clear and compelling justification for the officer's decision to look inside the duffle bag to rule out the presence of firearms and/or explosive substances before transporting the accused's property to the detachment.

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