Law Society 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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**Subject Index**



***P. Machibroda Engineering Ltd. v Chokani*, 2025 SKCA 125**

Caldwell, 2025-12-11 (CA25125)

Appeal - Leave to Appeal - Procedure
Court of Appeal - Leave to Appeal - Sufficient Merit and Sufficient Importance

The prospective appellants sought leave to appeal against a decision of a Court of King's Bench chambers judge that jointly denied their applications for summary dismissal of the third-party claims brought against them by the respondents.
HELD: Leave to appeal was denied. The grounds of appeal lacked sufficient merit or importance. Where leave to appeal is required, Parliament or the Legislature have signalled to the parties they have had, or will in have, their day in court and a proposed appeal will be allowed only if the prospective appellant raises a genuine question, as the case may be, of law, fact or mixed fact and law that is of general public importance or that could meaningfully affect the proceedings. Fundamentally, this means that an applicant for leave must persuade a judge that there is a substantive reason to be concerned about the correctness of the decision that warrants the granting of leave to appeal. In this case, the prospective appellant's appeal did not raise a sufficiently meaningful doubt about whether the judge erred in dismissing their summary judgment application. The allegations of error in the second prospective appellant's notice of appeal also lacked sufficient merit to weigh decisively in favour of leave being granted. Furthermore, the appellants had not lost a substantive right and even if the appeals were allowed, the larger action would not be at an end. Neither of the proposed appeals would raise a new or controversial or unusual issue of practice and the proposed appeals would not transcend the particular in their implications, since the vast bulk

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of the alleged errors related to the judge's handling of the evidence and what it could establish.



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***Ledingham v Ledingham*, [2026 SKCA 4]**

Caldwell Kalmakoff Kilback, 2026-01-07 (CA26004)

Civil Procedure - Appeal - Standard of Review
Family Law - Division of Family Property - Appeal
Family Law - Division of Family Property - Equalization

The parties in this case separated in 2011 after a five-year marriage. When they went to trial in the Court of King's Bench 13 years later, one of the issues was the value of two jointly held parcels of land near Colgate, Saskatchewan: an 80-acre parcel and a 1.84-acre parcel. At trial, the appellant filed appraisals of both parcels that did not include the value of certain buildings. The appraisal of the 80-acre parcel excluded the value of an older cottage, and the appraisal of the 1.84-acre parcel attributed no value to a mobile home. The trial judge concluded that it was not appropriate to use the appraised values for property division purposes because the appraisals did not account for the effect of the buildings on the land values. The judge ordered that if the parties were unable to agree on the disposition of these lands, they were to be sold with the proceeds divided equally. The appellant appealed this portion of the decision, contending that the judge's determination that the lands had to be sold because it was not appropriate to use the appraised values was based on a misapprehension of the evidence.
HELD: The appeal was allowed. The respondent was ordered to make an equalization payment to the appellant in the amount of $381,929.24 to facilitate division of the parties' non-taxable property. Appeal costs of $1,000 were also awarded to the appellant. (1) The judge erred in finding the evidence was unclear about what structures were on the 80-acre parcel and ordering it to be sold instead of using the appraised value for division purposes. The only structure on the parcel not accounted for in the appraisal was the cottage. The evidence was that the cottage was moved onto the land after the date of application in 2011, which was the date on which the family property was being valued for division. As such, the

cottage was properly excluded from the value of the 80-acre parcel because it was not on that parcel on the valuation date. The judge's finding that the evidence is not clear as to what exact type of structures have been built and his conclusion that the appraised value of that parcel should not be used because unspecified structures were excluded from the land value was a palpable error not supported by the evidence. This error was also overriding because it was determinative of the outcome of the aspect of the decision that was the subject of this appeal. (2) The judge misapprehended the evidence in relation to the 1.84-acre parcel. The mobile home was the only structure on that parcel and the judge accounted for its value in the property division separately from the value of the land. If the judge had appreciated that there were no other structures on the 1.84-acre parcel and not overlooked that he had already accounted for the value of the mobile home, there would have been no basis to order that parcel to be sold to effect the division of its value. The judge's finding that the evidence was unclear about what structures were on the 1.84-acre parcel and his conclusion that the appraised value should not be used because unspecified structures were excluded from the land value was also a palpable and overriding error.

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***Yapi ve Kredi Bankasi Anonim Sirketi v Arslan*, 2026 SKCA 6**

Schwann Kalmakoff Drennan, 2026-01-12 (CA26006)

Civil Procedure - Discontinuance - Non-Party Standing
Civil Procedure - Representative Proceedings - Fraudulent Conveyance Action

In 2013, Sekerbank T.A.S. (Sekerbank), a Turkish bank, commenced a fraudulent conveyance action in Saskatchewan against the respondents. Sekerbank settled with the respondents, who applied to strike the 2013 action on limitation of actions grounds. That application prompted the appellant to apply to be added or substituted as a plaintiff. However, before the joinder application could be heard, the action was discontinued. The appellants applied to the Court of King's Bench for an order setting aside the consent discontinuance, but the application was dismissed. The appellants appealed the discontinuance decision submitting that the judge failed to recognize and give effect to how its joinder application had been undermined by the alleged procedural maneuvering of the respondents.
HELD: The appeal was dismissed. (1) Granting the application would not force litigation.

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Leave to withdraw a discontinuance should not be allowed where there has been prejudice or a limitation period has intervened, unless special circumstances are demonstrated. Such special circumstances include where a plaintiff discontinued the wrong action, or where the defendant breached conditions upon which the discontinuance was given. Special circumstances have also been defined to include cases of inadvertence, mistake or misapprehension of a relevant procedural matter. In this case, the judge's reasons did not reveal any deviation from the legal principles governing applications to set aside a discontinuance. There was no error of law nor any palpable and overriding error in the judge's handling of the evidence or the inferences he drew from it. (2) The judge did not err by ignoring the representative nature of the action and the rights of class members to apply to be substituted as a representative plaintiff. At common law, if a creditor is not a judgment creditor and he wishes to impeach a transaction of his debtor as a fraudulent conveyance, the creditor must bring the action on behalf of himself and all other creditors of the debtor In this case, the judge understood the appellant to argue that the respondent could not discontinue an action brought for the benefit of all of the respondent's purported creditors and, further, that if its application were denied "the court would be deprived of its jurisdiction to decide the appellant's application to be substituted or added as a plaintiff to the 2013 action, and, as a consequence, the appellant's ability to continue the prosecution of the action for the benefit of all of the respondent's creditors would be impossible". Although the judge did not undertake a deep dive into fraudulent conveyance law or the representative nature of those types of actions, there was no doubt that he grasped the essence of Sekerbank's and the second respondent's pleadings and the import of the discontinuance for the appellant and perhaps other, yet unknown, creditors. After considering the evidence and the parties' submissions, he was not persuaded by the appellant's arguments about how the representative nature of the proceedings amounted to a special circumstance or that the second respondent had abused the judicial process sufficiently to justify exercising his discretion to set aside the discontinuance.




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*Standing Buffalo Dakota First Nation v Maurice Law Barristers and Solicitors (Ron S. Maurice Professional Corporation)*, [2026 SKCA 11]

Schwann Tholl Kilback, 2026-01-22 (CA26011)

Appeal Procedure - Interlocutory Appeals - Final Order
Civil Procedure - Appeal - Fresh Evidence
Practice - Production of Documents - Solicitor/Client Privilege

The appellants filed an originating application in the Court of King's Bench on October 19, 2022, in which, as amended, it sought three distinct remedies as against Maurice Law. First, it contested the invoices Maurice Law had rendered for its legal work. Second, it sought to have a contingency agreement set aside. Third, it asked for the possession of files that Maurice Law had retained after the solicitor–client relationship was terminated. An order was made by a Court of King's Bench judge requiring the respondent to transfer the appellant's files to it upon the deposit of a specific sum of money into court, subject to any claim of privilege that may be made by other First Nations in relation to those same files. The respondent released most of the files to the appellant; there remained only 11 groups of documents over which other First Nations had asserted privilege. The appellants argued that the associated files and documents jointly belonged to the appellant and the privilege claimants and, therefore, could not be withheld from it based on a claim of privilege.
HELD: Leave to appeal some of the orders made by the chambers judge was granted, but the appeal was dismissed. (1) Leave to appeal was required. Under Section 8(1) of *The Court of Appeal Act, 2000*, no appeal lies to the Court of Appeal from an interlocutory decision of the Court of King's Bench unless leave to appeal is granted by a judge or the court. Where orders have a terminating effect on an issue or on the exposure of a party, they plainly dispose of the rights of the parties and are appropriately treated as final. Where such orders set the stage for determination on the merits, they do not dispose of the rights of the parties and are appropriately treated as interlocutory. In this case, there were numerous factors pointing in both directions regarding whether the privilege issue was intended to be decided in a final manner or revisited at a later stage of the proceedings. There was also no definitive ruling by the chambers judge on the categorization of the order. As regards the order for costs, they did not dispose of the appellant's rights with respect to a certain or substantive issue. The remainder of the orders involved disclosure from a party to the litigation, procedural rulings, applications to strike certain evidence, and applications to admit certain evidence, which are all interlocutory in nature. (2) Granting leave to appeal *nunc pro tunc* was appropriate. Where leave to appeal is required, the determination as to whether it should be granted is guided by two key considerations: merit and importance. An applicant for leave to appeal bears the onus of establishing that the prospective appeal is of sufficient merit to warrant the attention of the Court of Appeal and of sufficient importance to the proceedings before the court, or to the field of practice or the state of the law, or to the administration of justice generally, to warrant determination by the Court of Appeal. In this case, the group of orders that fell into the category of document production respecting work performed for other First Nations, procedural rulings, applications to strike certain evidence, and applications to admit certain evidence did not bear heavily and potentially prejudicially on the outcome of the matter

and jurisprudence regarding all the issues was well settled. The file and privilege orders satisfied the merit criteria. The order as to costs failed to satisfy the importance test. (3) Dismissal of the fresh evidence application was appropriate. The test for the admission of fresh evidence is as follows: (i) the evidence could not, by the exercise of due diligence, have been obtained for the lower-court hearing; (ii) the evidence is relevant in that it bears upon a decisive or potentially decisive issue; (iii) the evidence is credible in the sense that it is reasonably capable of belief; and (iv) the evidence is such that, if believed, it could have affected the result of the lower-court decision. In this case, the appellants had the information within its control and did not take all reasonable steps to adduce this evidence in the court below. The appellant also submitted that the fresh evidence was only credible for the purpose of the proceeding and it intended to challenge the evidence at the specific claims tribunal. There was nothing in the proposed evidence that bore upon a decisive or potentially decisive issue or could have affected the result in the chambers decision. (4) The chambers judge did not err regarding privilege. In a joint retainer, there is no confidentiality as between all the jointly retaining clients and their counsel, but privilege may be asserted as against the rest of the world. When clients consent to a joint retainer, they implicitly authorize the sharing of confidential information among the parties to that joint retainer. In this case, the chambers judge found that there was a joint retainer that did not include the appellants. There was no indication that the chambers judge disregarded, misapprehended, or failed to consider admissible evidence in finding that the appellants had failed to establish the existence of a joint retainer. The conclusions reached by the chambers judge regarding the entities that were included in the joint retainer were findings of fact and the appellant had not established a palpable and overriding error in those determinations.

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***R v Yildirim*, [2025 SKKB 198]**

Bergbusch, 2025-11-25 (KB25192)

Criminal Law - Admissibility of Evidence - Expert Opinion Evidence
Criminal Law - Evidence - Witness - Expert
Evidence - Expert Evidence - Qualification

The appellant was charged with sexual assault and sexual interference for events that occurred between June 2015 and July 2017. The defence sought to call an expert witness to give opinion evidence at trial.
HELD: The application was granted. The expert witness was qualified, and the prejudicial effect of admitting the evidence did not outweigh its probative value. The decision whether to admit expert evidence involves a two-step inquiry to determine whether the proposed evidence meets the threshold requirements for admissibility. First, the proponent of the evidence must establish the four factors specified in *R v Mohan*, [1994] 2 SCR 9 (logical relevance, necessity, absence of an exclusionary rule, and need for a properly qualified expert). Second, the court balances the potential risks and benefits of admitting the evidence in order to decide whether the potential benefits justify the risks. In this case, witness evidence was a relevant issue. The expert evidence was in

relation to a child complainant whose evidence consisted of a recorded statement, removed in time from the alleged incident, and in-court testimony given many years later, which made the expert evidence necessary. The proposed evidence did not cross the line from testifying about matters relevant to reliability to testifying directly about reliability itself. The expert witness was also an expert on how memories are encoded, stored, and retrieved, traumatic memory, memory distortion, and false memory development. In addition, the expert understood her duty to give fair, objective, and non-partisan assistance to the court. The potential prejudicial effect of the proposed evidence did not outweigh its probative value.

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***Toth, Re (Bankrupt)*, 2025 SKKB 199**

Shalashniy, 2025-11-27 (KB25193)

Bankruptcy - Discharge Application
Bankruptcy and Insolvency - Discharge - Honest but Unfortunate Debtor
Bankruptcy and Insolvency - Discharge - Remedies on Discharge

The applicant was a first-time bankrupt who assigned into bankruptcy on July 3, 2020. The applicant was examined by the official receiver on February 25, 2021, and the examination was adjourned sine die. The applicant failed to attend the continuation of the examination after the trustee referred the case to the superintendent’s debtor compliance referral program following the discovery of his misreported income. He applied for discharge from bankruptcy.
HELD: The application was refused. (1) The applicant was not a “honest but unfortunate debtor”. In determining whether to discharge a bankrupt, the following principles apply: (a) In considering the question of discharge, the court must have regard not only to the interests of the bankrupt and his creditors, but also to the interests of the public. (b) Lawmakers have always recognized the interest that the state has in a debtor being released from the overwhelming pressure of his debts, and that it is undesirable that a citizen should be so weighed down by his debts as to be incapable of performing the ordinary duties of citizenship. (c) One of the objects of the *Bankruptcy and Insolvency Act* (BIA) was to enable an honest debtor, who had been unfortunate in business, to secure a discharge so he might make a new start. (d) The bankruptcy courts should not be converted into a sort of clearing-house for the liquidation of debts irrespective of the circumstances under which they were created. (e) It is incumbent upon the court to guard against laxity in granting discharges so as not to offend against commercial morality. (f) Discharge is not a matter of right. In this case, the available evidence established both unjustifiable extravagance in living and dishonesty by the appellant. The applicant failed to explain many charges in different provinces on the same days, including the nature of the charges and who had access to his credit. The applicant also provided false income and expense information to the trustee without sufficient verification and repeatedly claimed self-employment despite his own tax filings. The applicant also refused to provide pay stubs or other expense reimbursement verification from Costco, after admitting that he did, in fact, have some expense reimbursement. In the circumstances, the applicant was not an honest but unfortunate debtor. (2) Refusing the discharge application was appropriate. In

this case, the applicant's conduct raised significant suspicions that he executed a premeditated plan to simultaneously divest his non-exempt assets, maximize exempt assets, and rack up liabilities knowing he would be seeking relief under the BIA. The applicant also showed contempt and derision for the bankruptcy process at every possible stage, in particular through his lack of disclosure. Based on the applicant's conduct and with an eye to the interests of creditors and the integrity of the bankruptcy system, a refusal of the applicant's discharge was appropriate.

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***Canadian National Railway Company v Edgeley (Town)*, 2025 SKKB 202**

Davis, 2025-12-04 (KB25196)

Civil Procedure - Amendments to Pleadings
Municipal Law - Limitation Period - Discoverability Principle
Practice - Application to Strike - Frivolous and Vexatious/Abuse of Process
Torts - Negligence
Torts - Nuisance

On May 26, 2022, an employee of the defendant was operating a road grader that collided with a train, leading to the employee's death. The collision caused a derailment, damage to multiple rail cars, and a discharge of hazardous materials including fuel, and remediation of the affected area lasted for about a month after the derailment. The plaintiffs filed a claim in June 2023 alleging that the defendants were liable for damages in negligence and nuisance. The defendants applied to strike the claim on the basis that it was time barred. The plaintiff also applied to amend its claim to add causes of action in unjust enrichment and trespass.
HELD: The defendant's application was granted, and the plaintiff's claim was dismissed. (1) The claim was statute-barred and an abuse of process. Rule 7-9(2)(e) of *The King's Bench Rules* permits a judge to strike pleadings that are an abuse of process. The abuse of process doctrine encompasses claims that are statute-barred. For a claim to be struck as an abuse of process, it must be plain and obvious that allowing the action to proceed would amount to an abuse of process. In the context of limitation periods, a claim may not be struck where it is reasonably arguable that the claim was brought within the relevant limitation period. However, if the plaintiff had knowledge of all the facts that would cause the plaintiff's claim to be statute-barred at the time the claim was issued, it would be an abuse of process to permit that claim to proceed. In this case, for the claim to proceed, it must have been filed and served within one year of the claim arising and the claim was plainly statute-barred. The claim for negligence clearly arose on May 26, 2022, and it was not arguable that the claim was not discoverable until some later date. Permitting the claim to proceed would not promote just resolution and would not constitute good stewardship of the court's or the parties' resources. (2) There was no reasonable cause of action in nuisance. A nuisance is a substantial and unreasonable interference with an owner's use or enjoyment of property by someone else. The interference must be substantial in the sense that it is non-trivial. The interference

must be unreasonable in all the circumstances. The substantial and unreasonable criteria mean that claim must be sufficiently serious that it warrants compensation. In this case, while the alleged nuisance involved indirect injury to or interference with the enjoyment of land and entailed a substantial and unreasonable interference with the plaintiff's use and enjoyment of the land, the alleged nuisance originated from the plaintiff's land. While it was at least arguable that that the alleged nuisance gave rise to a continuing cause of action for some time after the collision and discharge occurred, the claim would nonetheless fail because it occurred entirely on the land the plaintiff occupied and did not originate elsewhere. (3) The claim in unjust enrichment was brought outside the limitation period and was destined to fail. The concept of unjust enrichment requires proof of: a) enrichment; b) a corresponding deprivation; and c) the absence of a juristic reason. In this case, while the unjust enrichment claim was at least arguable, the limitation period provided a juristic reason for the alleged deprivation and enrichment. (4) The proposed amendments did not raise a reasonable cause of action in trespass as there was no direct intrusion into the plaintiff's land.

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***Toronto Dominion Bank v Canada Carmatcher Auto Dealer (Regina) Ltd.*, 2025 SKKB 205**

Smith, 2025-12-08 (KB25199)

Creditors and Debtors - *Personal Property Security Act*
Personal Property Security Act - Security Interest - Priorities
Security Interests - Validity - Perfection - Priority - Possession

In November 2024, the Langenburg Group and the applicant entered into a lending agreement whereby the applicant would provide floorplan financing (i.e., money to buy vehicle inventory) in the amount of $15 million. That credit amount was increased to $18 million in April 2025. The applicant perfected its various security interests in the Langenburg Group vehicle inventory by registering a financing statement in the Saskatchewan personal property registry in November 2024. Following a failure in the business arrangement between the respondent and Langenburg Group, vehicle inventory became intertwined between the two groups. The applicant claimed security interest in the inventory while the respondent asserted ownership based on financial contributions made to the Langenburg Group.
HELD: The court ordered that the respondents deliver to the applicant or its authorized agents any of the missing inventory in the respondent's possession. The applicant had a valid and enforceable security interest in the disputed vehicle inventory. As between a wholesale financier and a purchaser in the ordinary course of the debtor's business, such purchaser takes the item purchased, subject to the financer's security interest, unless the transaction falls within one of the recognized exceptions of *The Personal Property Security Act, 1993*. For such exception to apply, the following conditions must exist: (a) there must be a buyer; (b) the goods sold must be goods sold in the ordinary course of the seller's business; and (c) the buyer must not know that the sale violates a prior security agreement. In this case, the money advanced by the respondent group to the Langenburg Group had all the badges of investment in the Langenburg Group's business rather than an ordinary course purchase and sale of vehicles. The

protection that applied to an ordinary course purchase and sale of vehicles did not apply to them.

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***Herold Estate v Sidhu*, 2025 SKKB 209**

Mitchell, 2025-12-16 (KB25203)

Civil Procedure - Pleadings - Application to Strike - No Reasonable Cause of Action
Constitutional Law - *Charter of Rights*, Section 7
Statutes - Interpretation - *Automobile Accident Insurance Act*, Section 40.1

This lawsuit arose out of the catastrophic bus crash on April 6, 2018, involving a chartered bus carrying the Humboldt Broncos hockey team of the Saskatchewan Junior Hockey League; members of its coaching staff, and supporters. The plaintiffs sought to amend their proposed statement of claim and applied for summary judgment against one of the defendants. The government and trucking defendants also applied to strike the plaintiffs' proposed amended statement of claim.
HELD: The plaintiffs' proposed amended statement of claim was struck in its entirety without leave to amend and the action was dismissed. (1) The pleadings failed to disclose a reasonable cause of action. All or part of a pleading may be struck where the pleading: (a) discloses no reasonable claim or defence, as the case may be; (b) is scandalous, frivolous or vexatious; (c) is immaterial, redundant or unnecessarily lengthy; (d) may prejudice or delay the fair trial or hearing the proceedings; or (e) is otherwise an abuse of process of the court. In this case, there was no assertion in the proposed pleading that would remotely suggest that the "life" of any of the named plaintiffs was impaired or imperilled by the statutory bar. There was also a plethora of case law to show that a law prohibiting an individual from commencing an action in tort to recover damages did not engage s. 7 of the *Charter*. The statutory bar in s. 40.1 of *The Automobile Accident Insurance Act* (AAIA) was not inconsistent with the principles of fundamental justice. On this basis, the plaintiffs' challenge to the constitutionality of the AAIA and *The Fatal Accidents Act* wholly lacked merit. (2) The impugned provisions of *The Workers' Compensation Act* (WCA) did not violate s. 15 of the *Charter*. In determining a violation of s. 15 of the *Charter*, a claimant must demonstrate that the impugned law: (a) creates a distinction on enumerated or analogous grounds, on its face or in its impact, and (b) imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating disadvantage. In this case, the family status ground of discrimination was not an analogous ground of distinction. As a result, the constitutional challenge to the WCA was doomed to fail. (3) The deficiencies in the proposed pleading could not be cured by an amendment. In determining an application to amend pleadings, the following principles apply: (i) Leave to amend is a discretionary remedy, but the practice is to allow amendments where it is necessary to determine the issues between the parties and it can be done without injustice to the other side; (ii) There is no injustice to the other side if it can be compensated in costs; (iii) The court's discretion is wide and should be exercised so as to ensure the real issues are dealt with as expeditiously and inexpensively as possible; and (iv) If the amendments are opposed, the court must consider the proposed amendments as if the opposing party had applied to strike the pleadings under rule 7-9(2) of *The King's Bench Act*. In this

case, the deficiencies in the proposed pleading went to the fundamental premise of the action and the proposed pleading could not be repaired or rehabilitated by more precise drafting because its fundamental premise was unprovable.

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***D.S.T., Re,* [2025 SKKB 210]**

Goebel, 2025-12-16 (KB25207)

Child Protection - Permanent Order
Family Law - Child in Need of Protection
Family Law - Child Protection - Permanent Order

The proceeding involved protection concerns concerning four Indigenous children. The Ministry of Social Services (the Ministry) initially became involved with the family in August 2020 due to concerns of alcohol abuse, inadequate supervision and domestic violence. The first child was apprehended and placed in foster care. A few months later, two other children were born but remained in the mother's care with oversight by the Ministry. Less than a year later, the fourth child was born. Due to increased concerns with respect to substance use and neglect, in March 2022, the three infants were apprehended and placed in an emergency group home in Regina. Unfortunately, no progress was made by either parent on a reunification plan and following a series of short-term wardship orders, the Ministry began to engage in permanency planning. The Ministry applied for the court to find all four children in need of protection and to grant long-term wardship orders placing the children in the care of the Ministry until they reached the age of 18.
HELD: The court found that the children were in need of protection and ordered permanent warship with several conditions. (1) The children were in need of protection. Determining that Indigenous children are in need of protection involves a two-step analysis: determining whether the child is in need of protection and if so, determining the appropriate order under s. 37 of *The Child and Family Services Act* (CFSA). In this case, short-term wardship orders granted on April 11, 2023, and March 5, 2024, previously found the children in need of protection and included conditions for the parents to work towards a reunification plan. Protection concerns regarding alcohol/substance use, lack of safe and stable housing, domestic violence and general neglect/inadequate supervision of the children had not been addressed. (2) A permanent wardship order was appropriate in the circumstances. In determining the appropriate child protection order, the court approaches the analysis as follows: (a) The court shall consider the best interests of the child with reference to s. 4 of the CFSA and s. 10 of *An Act Respecting First Nations, Inuit and Métis children, Youth and Families*; (b) The court may consider the recommendations of the child protection officer; (c) The court may consider the recommendations of the Indigenous governing body with which the child is affiliated. The court will then determine whether to return the children to the parents on appropriate terms and conditions or place the child in the custody of a person having sufficient interest in the child for a definite or indefinite period of time, on appropriate terms and conditions, or commit the child to the custody of the Ministry for up to six months, on appropriate terms and conditions. If none of these options are appropriate, the court shall make an

order permanently committing the child to the Ministryon appropriate terms or conditions or order the child placed in the custody of the Ministry until the child is 18 years old, on appropriate terms and conditions. In this case, none of the orders prescribed by s. 37(1) of the CFSA were appropriate, available or in the children's best interests. Each of the children had been in care for more than three years. During this time there has been no meaningful engagement in case planning by either parent or progress made under the conditional short-term wardship orders. The children had had limited contact with their mother and no contact with other family members. Moreover, the Ministry had chosen not to initiate discussions with the foster care providers respecting their interest in caring for the oldest child under a PSI order, making that option unavailable. Having regard to the evidence, governing legislation and best interest factor, it was in the best interests of the children to allow the possibility of an adoption to remain available, with conditions that advanced sibling connections, continuity of care and cultural engagement. It also required those responsible for the children's care to explore whether a culturally appropriate forever home was possible. A permanent order was appropriate.

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***Siwak v Lydale Construction (1983) Co. Ltd.*, 2025 SKKB 211**

Schatz, 2025-12-17 (KB25208)

Practice - Application for Summary Judgment - Disposition Without Trial
Torts - Negligence - Duty of Care

The third-party defendants brought an application for summary dismissal of the third-party claim brought by the defendant which arose from storm damage to a house and attached garage owned by the plaintiffs. The plaintiffs had initially sued their insurer and then filed an amended statement of claim to add the defendant, alleging that the defendant failed to adequately perform the repair work for which it was retained. In 2024, the defendant brought a third-party claim against the third-party defendant alleging that they relied on a report from the latter in preparing a revised cost estimate and the third-party defendant was negligent for failing to identify in the report the full extent of the damage and necessary repairs.
HELD: The summary application was granted and the claim was dismissed. (1) Summary judgment was appropriate in this case. The court may grant summary judgment if: (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or (b) the parties agree to have all or part of the claim determined by summary judgment and the court is satisfied that it is appropriate to grant summary judgment. There will be no genuine issue requiring a trial if a fair and just determination can be made on the merits of the affidavit evidence submitted such that: (a) the judge can make the necessary findings of fact; (b) the judge can apply the law to the facts; and (c) summary judgment is a proportionate, more expeditious and less expensive means to achieve a just result, as opposed to trial. In this case, there was not a great deal of conflict in the evidence before the court and the issue to be determined was a question of law which could be determined at a relatively low cost and quickly as opposed to going to trial. (2) The third-party defendant owed no duty to care to the defendant. In determining whether a duty of care exists, the court first determines whether the harm was a reasonably foreseeable consequence of the defendant's conduct, and whether there was a

relationship of proximity in which the failure to take reasonable care might foreseeably cause loss or harm to the plaintiff. If there is sufficient proximity to ground a *prima facie* duty of care, the court then asks whether there are residual policy concerns outside the parties' relationship that should negate the *prima facie* duty of care. In this case, the third-party defendant was retained by an insurance adjuster for a very limited purpose and produced a report for the adjuster's use exclusively. There was no relationship, contractual or otherwise, between the third-party defendant and defendant. Even if a duty of care were found to exist, the defendant had failed to prove that it relied on the report, or that if it did rely on the report, its reliance was reasonable, particularly given the express disclaimer clause and limitation clause contained in the report.

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***TMI Certified Inc. v Dixon*, 2026 SKKB 13**

Sinclair, 2026-01-15 (KB26008)

Evidence - Settlement Privilege - Exceptions
Procedure - Abuse of Process - Extortion
Procedure - Mandatory Mediation - Sequencing

The plaintiff filed an action in May 2025, alleging, among other things, fraud and breach of contract. In August 2025, former counsel for the plaintiff emailed counsel for the individual defendants indicating the defendants had engaged in fraudulent and deceptive conduct and threatening to initiate regulatory complaints and file a formal complaint with law enforcement. In response, the individual and corporate defendants filed applications seeking to dismiss or stay the action because of the threat.
HELD: The applications were refused. The court, however, awarded solicitor-client costs to the individual defendants and column 3 costs to the corporate defendants. (1) The threat was properly before the court. There are exceptions to settlement privilege. To come within those exceptions, the party proffering settlement communication as evidence must establish that there is a competing public interest that outweighs the public interest in encouraging settlement. Settlement privilege may be overcome where there has been misrepresentation, fraud or undue influence. In this case, the threat indicated that the plaintiff would initiate criminal and regulatory complaints alleging, among other things, fraud. The threat was egregious and improper and as a result, settlement privilege was overcome. (2) The application could proceed in advance of mediation. Before pleadings are closed, there is no prohibition from parties taking steps in the action. In this case, the pleadings were not closed, as no defence has been filed by the individual defendants. As a result, *The King's Bench Act* did not bar the applications. (3) The threat was an abuse of process. Threats of criminal and regulatory complaints, or other illegitimate pressure, taint the proper conduct of litigation. Left unsanctioned, a party making such threats could obtain an unfair advantage in legal proceedings that would bring the administration of justice into disrepute. In this case, the threat went beyond a mere demand letter setting out the potential of a civil claim being advanced if settlement could not be achieved. During a civil proceeding, the plaintiff's counsel sent correspondence threatening criminal or regulatory complaints if her client's settlement demands were not met. Given the extortionate nature of the correspondence, it was

an abuse of process. (4) A dismissal or stay of proceedings was not an appropriate remedy. In determining an appropriate remedy for abuse of process, the following considerations, among others, are applicable: (a) Proceedings can be stayed for abuse of process even if the abuse does not create procedural unfairness. In these cases, a stay is aimed at vindicating the court's integrity and the public's confidence in the legal process in the face of improper conduct; (b) The court's power to grant a stay of proceedings is discretionary; (c) A stay of proceedings is the only remedy to address abuse of process where the abusive conduct has changed the entire landscape of the litigation; (d) The court should consider not only the prejudice to the respondent whose action is sought to be stayed, but whether an applicant would suffer an injustice or prejudice if an action is not stayed given the abusive conduct; (e) Courts should consider alternatives to a stay of proceedings and how those alternatives would balance the competing interests of the applicant and respondent. In this case, given the plaintiff's assurances that it did not plan to act upon the threat, justice would not be served in ending the plaintiff's action. The landscape of the litigation had also not been irretrievably changed by reason of the threat. The prejudice to the plaintiff in staying or dismissing the action was high and the prejudice to the defendants in allowing the action to proceed was also not nearly as significant as suggested by the defendants. There were also alternatives to ordering a stay of proceedings. (5) Awarding solicitor-client costs to the individual defendants was appropriate. Solicitor and client costs are awarded in cases where the conduct of the party against whom they are sought is described variously as scandalous, outrageous or reprehensible. In this case, the conduct by the plaintiff's former counsel was scandalous, outrageous or reprehensible and was issued in the context of the litigation. (6) Awarding costs to the corporate defendants was appropriate. The corporate defendants were indirectly affected by the threat and column 3 costs were properly payable to them.

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***Alliance Seed Corporation v Fournier*, 2026 SKKB 5**

Robertson, 2026-01-07 (KB26004)

Civil Procedure - Default Judgment
Evidence - Admissibility - Affidavit Evidence
Intellectual Property - Plant Breeders' Rights

The University of Saskatchewan's (the second defendant's) Crop Development Centre developed a new variety of durum wheat, which it registered under the name of CDC Verona with certificate number 4101 issued by the Canadian Food Inspection Agency's Plant Breeders' Rights Office. The second defendant, a private individual, licensed Patterson Grain to sell the certified seed, which in turn sub-licensed the plaintiff. The plaintiff brought an action to enforce its exclusive right to sell the certified seed. HELD: Summary judgment was granted in favour of the plaintiff and general damages of $1,175,862.56 were awarded to the plaintiff. Punitive damages of $50,000 were also awarded to the plaintiff. The permanent injunction application was denied. (1) Portions of the affidavit filed by the first defendant were inadmissible. Paragraphs 12, 28, 29, and 34–39 were inadmissible on various grounds including abuse of process by direct contradiction of previous evidence provided by the first defendant or being information not previously disclosed, opinion, argument, hearsay, misleading, and irrelevant. (2) Entering judgment for failure to defend was appropriate. Failure to defend is usually taken as an implied admission of the allegations in the statement of claim. This implied admission may be sufficient to prove the claim or at least establish liability. The court will only refuse to accept this implied admission in exceptional circumstances. In this case, the claim against the first defendant was sufficient to establish his liability and there were no exceptional circumstances requiring further evidence. In addition, adverse inferences could be drawn from the first defendant's failure to file a statement of defence, his failure to respond to undertakings, and his failure to fully respond to evidence supporting the claim filed in support of this application. (3) A permanent injunction was not appropriate in the circumstances. Determining whether to grant a permanent injunction requires answering the following questions: (a) Has the claimant proven that all the elements of a cause of action have been established or threatened? (b) Has the claimant established to the satisfaction of the court that the wrong(s) that have been proven are so likely to occur or recur in the future that it is appropriate for the court to exercise its equitable jurisdiction to grant an injunction? (c) Is there an adequate alternate remedy, other than an injunction, that will provide reasonably sufficient protection against the threat of the continued occurrence of the wrong? (d) If not, are there any applicable equitable discretionary considerations (such as clean hands, *laches*, acquiescence or hardship) affecting the claimant's *prima facie* entitlement to an injunction that would nevertheless justify denying that remedy? (e) If not (or the identified discretionary considerations are not sufficient to justify denial of the remedy), are there any terms that should be imposed on the claimant as a condition of being granted the injunction? (f) In any event, where an injunction has been determined to be justified, what should the scope of its terms be to ensure that only actions or persons are enjoined that are necessary to provide an adequate remedy for the wrong that has been proven or threatened or to effect compliance with its intent? In this case, the other relief granted would be sufficient and there was no indication that the first defendant was continuing or intended to continue to infringe the plant breeders' rights by advertising and selling Verona Seed. (4) General damages of $1,175,862.56 were appropriate. Section 41(1) of the Plant Breeders' Rights Act expressly provides for recovery of all damages that are, by reason of the infringement, sustained by the plaintiff. Section 41(2) authorizes the court to make an order for recovery of damages, and s. 41(2)(b) specifically, for compensation of an aggrieved person. The goal of a damages award is to compensate the plaintiff for the loss it sustained as a consequence of the defendant's unlawful acts, including any loss of trade suffered and any harm to the plaintiff's business or goodwill. In this case, the plaintiff used its best available data for its calculations. However, its claim covered four crop years, which increased the likelihood of crop loss from hazards. (4) An award of punitive damages was warranted. Punitive damages are the exception rather than the rule and are imposed only if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour. In this case, the infringement on plant breeders' rights continued over a period of four years and the first defendant was uncooperative in the litigation process.



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**_R v Ledoux_, [2026 SKPC 1](#)**

Schiefner, 2026-01-09 (PC26001)

Constitutional Law - *Charter of Rights*, Section 10 - Right to Counsel
Constitutional Law - *Charter of Rights*, Section 24(2) - Exclusion of Evidence - Certificate of Analysis
Criminal Law - Motor Vehicle Offences - Care or Control While Impaired - Over .08

The accused, W.S.L., was arrested for impaired operation of a motor vehicle in May 2024. Prior to transport, the officer advised the accused of his *Charter* rights, including his right to counsel, and W.S.L. indicated that he wished to speak with a specific lawyer but was unable to remember his lawyer's full name. At the detachment, the arresting officer called the Legal Aid office in Saskatoon and was put on hold. After waiting on hold for approximately 10 minutes without speaking to anyone, the officer abandoned the call. After hanging up the phone, the officer told W.S.L. that she was unable to speak with anyone at Legal Aid in Saskatoon. The officer then asked the accused if he wanted to speak with a different lawyer. The accused declined. After this, breath samples were obtained and analyzed in accordance with the *Criminal Code*. The certificates of analysis indicated that the accused's blood alcohol content exceeded the prescribed limit. The accused was then charged with impaired operation (through care and control), .08 and breach of a release order (an order prohibiting him from possessing and consuming alcohol). Prior to trial, W.S.L. filed a *Charter* notice alleging that the arresting officer failed to use due diligence in helping him locate his counsel of choice.
HELD: The accused was found guilty of impaired operation of a motor vehicle and breach of a release order. The accused was also found guilty of breaching the terms of a release order. The accused was found not guilty of blood alcohol concentration exceeding the limit prescribed by s 320.1 (b) of the *Criminal Code*. (1) The accused's s.10(b) *Charter* rights were infringed at the police station. Section 10(b) requires the police (a) to inform the detainee of his or her right to retain and instruct counsel without delay and of the existence and availability of Legal Aid and duty counsel; (b) if a detainee has indicated a desire to exercise this right, to provide the detainee with a reasonable opportunity to exercise this right (except in urgent and dangerous circumstances); and(c) to refrain from eliciting evidence from the detainee until he or she has had that reasonable opportunity (again, except in cases of urgency or danger). If detainees elect to exercise their rights to counsel by speaking to specific lawyers, section 10(b) entitles them to a reasonable opportunity to contact their chosen counsel prior to police questioning. If the chosen lawyer is not immediately available, detainees have the right to refuse to speak with other counsel and wait a reasonable amount of time for their lawyer of choice to respond. What amounts to a reasonable period of time will depend on the circumstances and may include factors such as the seriousness of the charge and urgency of the investigation. The police have a duty not only to provide a reasonable opportunity to contact counsel of choice, but to facilitate that contact. In this case, there was no dispute that the accused wanted to exercise his right to counsel by speaking with a specific lawyer and advised the officer that his wife had contact information for his lawyer. However, the accused was not provided with the means of contacting his lawyer of choice on his own. While it was appropriate for the officer to make a call to the office number for Legal Aid in Saskatoon based on the limited information available to her at that point, there was fault in the officer's failure to take additional steps to attempt to identify and locate W.S.L.'s counsel of choice before asking W.S.L. if he wanted to speak with a different lawyer. (2) Exclusion of evidence obtained after the accused arrived at the

RCMP detachment was appropriate. When faced with an application for exclusion under s. 24(2), a court must assess and balance the effect of admitting the evidence on society's confidence in the justice system having regard to: (a) the seriousness of the *Charter*-infringing state conduct (admission may send the message the justice system condones serious state misconduct), (b) the impact of the breach on the *Charter*-protected interests of the accused (admission may send the message that individual rights count for little), (c) society's interest in the adjudication of the case on its merits. The court's role on a s. 24(2) application is to balance the assessments under each of these lines of inquiry to determine whether, considering all the circumstances, admission of the evidence would bring the administration of justice into disrepute. In this case, the officer failed to take proper care in her s.10(b) implementation duties and the impact on the accused's *Charter* rights was considerable. In weighing all the factors and focusing on the overall reputation of the justice system as viewed by a reasonable person, the balance leaned toward exclusion of the evidence obtained after the breach occurred. (3) The remaining evidence provided proof beyond a reasonable doubt that an offence had been committed. In determining impairment, the trier of fact must look to the totality of the evidence, including the accused's conduct and condition, to determine whether the Crown has proven impairment beyond a reasonable doubt. The Crown must also establish that the state of the accused's impairment was sufficient to affect his ability to drive. In the end, the issue is the accused's ability to drive and whether that ability was affected to some degree by the state of the accused's impairment. In the present case, the evidence that W.S.L. had consumed alcohol on May 30, 2024, was overwhelming. He was found sleeping in a motor vehicle with an open can of alcohol in the centre console and a case of beer on the floor adjacent to him. There was also a strong odour of alcohol emanating from his body and on his breath. This evidence, coupled with clear indicia of impairment, led inescapably to the conclusion that W.S.L. had consumed alcohol on May 30, 2024. There was also overwhelming evidence that W.S.L. had become highly impaired because of the alcohol he had consumed. Furthermore, the evidence, when examined as a whole, satisfied the court beyond any doubt that W.S.L.'s state of impairment would have affected his ability to operate a motor vehicle.



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