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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***R v Croswell*, 2025 SKCA 111**

Kalmakoff McCreary Drennan, 2025-11-03 (CA25111)

Criminal Law - Assault - Aggravated Assault - Appeal
Criminal Law - Evidence - Recognition Evidence
Criminal Law - Evidence - Reliability

The appellant had been convicted of assault for an incident where the victim was stabbed several times in a violent attack during a gathering at the victim's cousin's home. The central issue at the trial was the reliability of the victim's evidence and, specifically, the reliability of his identification of the appellant as one of his assailants and the person who stabbed him. The appellant appealed the conviction on the ground that the judge erred in law by failing to apply the requisite standard of scrutiny to the victim's identification evidence.
HELD: The appeal was dismissed. The judge did not fail to apply the requisite standard of scrutiny to the identification evidence, nor was his reliability finding erroneous. Where the Crown's case relies on identification evidence, a judge must carefully scrutinize that evidence and must be alive to any significant factors which may affect its credibility or its reliability. In judge-alone cases, when a court of appeal will intervene depends on a variety of factors: (i) whether the trial judge can be taken to have instructed himself or herself regarding the frailties of eyewitness testimony and the need to test its reliability; (ii) the extent to which the trial judge has reviewed the evidence with such an instruction in mind; (iii) the extent to which proof of the Crown's case depends on the eyewitness's testimony or, in other words, the presence or absence of other evidence that can be considered in determining whether a court of appeal should intervene; (iv) the nature of the eyewitness observation including such matters as whether the eyewitness had previously known the accused and the length and quality of the observation; and

(v) whether there is other evidence which may tend to make the evidence unreliable, i.e., the witness's evidence has been strengthened by inappropriate police or other procedures between the time of the eyewitness observation and the time of testimony. In this case, the judge’s reasons show that he reviewed all the evidence, weighed it, and addressed the impact of the whole of the evidence before making his findings, providing reasons for making the findings he did. He was entitled to accept all, some, or none of the victim’s evidence. Ultimately, and after a considered analysis, he accepted some of it – and he provided his reasons for doing so. Finally, the judge’s reasons demonstrated that he did consider the reliability of the identification evidence. The appellant failed to establish that the judge’s reliability finding respecting the identification evidence was based on palpable and overriding error, or that it resulted from a failure to properly apply the legal principles that govern the assessment of identification evidence.

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***R v Rahimi*, 2025 SKCA 122**

Leurer McCreary Bardai, 2025-12-01 (CA25122)

Criminal Law - *Controlled ru s and u stances Act* - Possession for the Purpose of Trafficking - Cocaine - Conviction - Appeal

The appellant appealed against his conviction for possession of cocaine for the purposes of trafficking. The appellant and a woman had been under surveillance by police officers for several days. Police saw the appellant remove a cardboard box from a Chevrolet Equinox parked in the driveway and then take it into the house. The Equinox was registered to a company operated by the woman. Later that morning, police saw the appellant drive away in the Equinox and return a few minutes later. On his return, the woman was sitting in a Land Rover registered in her name. Then the appellant and woman went inside the house, and the appellant came out with a cardboard box, which he put in the Land Rover. He drove away by himself in the Land Rover. He was stopped and arrested by police minutes later. The box in the back was unsealed, and inside were 11 plastic bags containing what was found to be cocaine valued between $14,000 and $33,000. Also in the box was phenacetin, used to increase cocaine’s weight, and items used to reduce the packaged bulk of cocaine and eliminate its smell. The appellant had two cellphones and $5,000 in cash. Later in the day, the woman was pulled over in the Equinox, but she was later released without any charges being laid. An officer testifying for the Crown was permitted to provide opinion evidence on the methods of packaging, Employment Law - Wrongful Dismissal - Damages - Appeal

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pricing, distribution, trafficking, possession and use of cocaine. She testified that the quantity and packaging of the cocaine found in the Land Rover was consistent with an upper-level dealer. The appellant testified the $5,000 in cash was from the sale of a 2004 Dodge Ram and 2006 Nissan Maxima. The judge noted that the story changed in cross-examination, with the model year of the Dodge Ram changing without explanation, and the appellant asserting on cross that the money was from the sale of only one vehicle. The appellant admitted that the box contained cocaine and that he had placed it in the back of the Land Rover and driven away. The trial judge found it implausible that the appellant was a blind courier, and noted that the amount, value, and packaging of the cocaine, packaging found in the box, the money in the appellant's pocket, the presence of two cell phones, and the presence of a buffing agent for cocaine to increase the sale weight were circumstances affecting the appellant's knowledge of the contents of the box and whether he possessed the cocaine for the purposes of trafficking. The trial judge concluded that the appellant placed the cocaine in the Land Rover, knew that the box contained cocaine, and that he possessed the cocaine for the purpose of trafficking. The Court of Appeal (court) determined whether the judge erred: 1) in his application of the principles set out in *W.(D.)*; 2) by inferring that the essential elements of possession were proven based simply on the fact that the appellant was in control of the vehicle in which the drugs were found; and 3) in his conclusion that "the only reasonable inference to be drawn from the circumstances" was that the appellant placed the cocaine in the vehicle, knew the box contained cocaine, and that he possessed the cocaine for the purpose of trafficking.

HELD: The Court of Appeal (court) dismissed the appeal. 1) The court did not agree that the judge erred in his analysis under *W.(D.)*. The judge concluded that the appellant's guilt had been established beyond a reasonable doubt based on his overall assessment of the evidence and not just on his disbelief of the appellant's testimony. While the judge did not go through the three steps of *W.(D.)*, the court noted that he was not required to do so. The judgment demonstrated that the judge considered each of the three steps in *W.(D.)*. The appellant's evidence did not contradict the testimony of the Crown's witnesses. The appellant agreed that he had control of the box he placed in the Land Rover; police witnesses testified to the same. The material issues determined at trial were whether the only reasonable inference was that the appellant was aware of the drugs in the box he possessed and controlled, and whether there were enough drugs seized to conclude that they were possessed for the purpose of trafficking. The judge provided reasons for rejecting the key parts of the appellant's testimony. 2) The judge did not treat the appellant's mere control of the vehicle as conclusive proof that he was also in possession of the cocaine found inside. The court found that the judge's reasons showed that he considered the value and quantity of the cocaine in the box as one of the reasons for finding that the appellant was aware of the box's contents. The Crown did

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not argue that the appellant must have known of the cocaine because of its value. The judge found that the Crown had proven beyond a reasonable doubt that the box the appellant placed in the Land Rover contained cocaine valued at $14,000 to $33,000. This finding of fact was unchallenged by the appellant. The Crown argued at trial that it would be unlikely that an owner would entrust a valuable quantity of drugs to the care of someone who was unaware of its nature and referred to case law in support of this argument. 3) The court reviewed the judgment to find it was not unreasonable for the trial judge to have concluded that the evidence as a whole excluded all reasonable alternatives to guilt. The judge did not rely solely on the quantity and value of the cocaine found in the Land Rover; he considered the way the cocaine was packaged as supporting the inference that the owner of the drugs would not have left them in the custody of someone who did not know that they were in the box. The judge provided several reasons for not believing the appellant's explanation for the cash found in the car. The appellant changed the details of the sale of the vehicles on the stand, did not know specific details about the buyers of the cars, and had contradictory explanations for whether there were bills of sale.

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***Corey v Friesen*, [2025 SKCA 124]**

Leurer Caldwell Drennan, 2025-12-09 (CA25124)

Civil Procedure - Appeal - Application to Dismiss for Want of Prosecution
Civil Procedure - *King's Bench Rules*, Rule 4-44(a) - Application to Strike for Delay

The plaintiff (appellant) was injured in 2018 when he was struck by a manhole cover that a driver drove over. He sought compensation for his personal injuries from the driver and the city. He alleged both that the city did not properly maintain the manhole and that the vehicle operator should have taken evasive action to avoid driving over the displaced manhole cover. He only discovered the name of the driver in 2020 and amended his statement of claim to specifically name the defendant. Statements of defence were not filed, and mediation had not taken place. In 2023, the appellant changed lawyers. The new lawyer told the defendants that the appellant would pursue his claim, but that he was awaiting a functional capacity evaluation for SGI income replacement benefits. In 2024, each defendant applied for orders to dismiss the action. The city also applied for an order under s. 7-1(3)(b) of *The King's Bench Act* (KBA) exempting them from the mandatory mediation requirement. The appellant opposed both applications because statements of defence had not been filed and the parties had not attended mediation. He added that the action should not be dismissed for want of prosecution because the litigation had been reasonably delayed by his no-fault claim against SGI. The appellant's action was dismissed against the defendants for want of prosecution. The judge found that there had been inordinate delay and that the delay was not excusable, and that it was not in the interests of justice to allow the action to proceed to trial despite the delay. On appeal, the appellant argued that the action should not have been dismissed because the defendants did not serve their statements of defence. The court considered: 1) whether the judge erred in finding that mediation requirement in s. 7-1(2) of the KBA applied; and 2) whether the judge erred in ordering the action be dismissed for delay.

HELD: The Court of Appeal (court) allowed the appeal and set aside the order dismissing the appellant's action. The court substituted in its place an order dismissing the defendants' applications, with costs to the appellant. The court found that the judge erred in principle by failing to consider the full implications of defendants' failure to deliver their statements of defence. 1) The judge did not err in finding that s. 7-1(2) did not operate to bar the defendants' applications. This was due to pleadings not having closed, not because the applications raised a threshold issue. There was no obligation for the defendants to attend mediation, because the statements of defence had not been filed. The mediation requirement in s. 7-1(2) does not apply until after the close of pleadings. 2) The judge erred in dismissing the action for want of prosecution because the test was not met in the circumstances of this case. Under rule 4-44(a) of *The King's Bench Rules*, if delay occurs in an action, the court may dismiss all or part of a civil action "if the Court is satisfied that the delay is inordinate and inexcusable and that it is not in the interests of justice that the claim proceed". Because no statements of defence were filed, it was unknown if the liability of the defendants was put into issue. The judge erred in principle by not fully considering the effects of the non-delivery of the statements of defence. The court did note, however, that this judgment did not decide that a statement of defence was a requirement for a defendant to be able to move to dismiss a claim for delay. The judge was right to be concerned about the delay in the action.

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***Nakihimba v Zawryucka*, [2026 SKCA 26]**

Tholl Kalmakoff Kilback, 2026-02-18 (CA26026)

Civil Procedure - Pleadings - Statement of Claim - Application to Strike - Appeal
Courts and Judges - Duty to Assist Self-Represented Litigants
Employment Law - Wrongful Dismissal - Damages - Appeal

Practice - Application to Strike - Frivolous and Vexatious/Abuse of Process

The self-represented appellant appealed the decision of the Court of King's Bench to strike his amended statement of claim as disclosing no reasonable cause of action and being scandalous, frivolous, vexatious, and an abuse of process (see: 2025 SKKB 66). He had worked for the respondent employer briefly in December 2022 and failed to return to work on January 3, 2023. The respondent dismissed him on January 16, 2023. The appellant applied to be paid his outstanding wages through the Employment Standards branch of the Ministry of Labour Relations and Workplace Safety and was paid $300. He then made a complaint to the Saskatchewan Human Rights Commission alleging discrimination on the employer's part, and this complaint was dismissed. The appellant then filed his statement of claim at King's Bench. The respondent applied to strike his claim and the appellant was permitted to amend it. In the amended statement of claim, the appellant sought various forms of relief, including $400,000 in punitive damages. The respondent again applied to strike the claim and the King's Bench judge (judge) struck it.
HELD: The Court of Appeal (court) upheld the judge's decision and dismissed the appeal, addressing six issues raised by the appellant in his notice of appeal. 1) The judge did not err by failing to strike portions of the individual respondent, D.Z.'s, affidavit that the appellant found objectionable. The impugned paragraphs reflected D.Z.'s personal knowledge of the relevant facts. That they contradicted parts of the appellant's claim did not make them inadmissible. 2) The judge had made no palpable and overriding factual error. The appellant argued that the judge had ignored an exhibit to his affidavit showing that he had sent a text to D.Z. The court found that it was possible to accept the appellant had sent the text and simultaneously accept that D.Z. had not received it. Even if the court were to accept that the judge had erred on this point, the appellant had not shown how a different finding would have led to a different outcome. 3) While the court noted respectfully that it found the judge had erred in finding that the statement of claim constituted a collateral attack on the Employment Standards decision and was therefore an abuse of process. The court found it was not "plain and obvious" that the appellant's claim was an abuse of process; although the appellant had already engaged the statutory process for resolving unpaid wage disputes under *The Saskatchewan Employment Act*, he had advanced other causes of action, including a common law wrongful dismissal claim. However, the judge had not erred in striking the claim as scandalous, frivolous, vexatious, and disclosing no reasonable cause of action. The appellant levelled claims of bad faith and misconduct against the respondent without evidence to support the allegations, which was scandalous. The judge properly struck the appellant's claims against D.Z. as there were no facts pled to establish that D.Z. was personally liable. The claim was frivolous in that it advanced claims which were groundless and could not succeed. The appellant sought damages of over $490,000 after having worked for 19 hours at $16 per hour. Just because the claim was excessive was not enough to consider it vexatious; however, the judge found that many of the damages claimed were not compensable as they did not result from his loss of employment. This made the claim vexatious. 4) The appellant argued that the judge's reasons were insufficient as he "failed to delineate between the different damages I claimed and how those damages can be proven". The judge's decision, however, was whether to strike the appellant's claim, so it was not necessary to explain why the relief requested by the appellant had been refused. 5) The judge was not biased against the appellant because he was self-represented, and his agreement with the respondents did not establish such bias. Indeed, the judge explicitly addressed the appellant's self-represented status and confirmed that he was afforded some leniency, but also emphasized that it is the responsibility of all litigants to familiarize themselves with and follow the rules of court. 6) The appellant argued that the judge erred in ordering him to pay costs, but the court found no error in the costs order. There was no basis upon which to make a *Sanderson* order as requested by the appellant, and the opposing lawyer had not engaged in "sharp practice" that would warrant a personal award of costs.

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***M.M. v B.R.*, 2025 SKKB 188**

Sinclair, 2025-11-04 (KB25187)

Children's Law Act, 2020 - Children's Habitual Residence - Extraprovincial Orders
Courts - Jurisdiction - *Parens Patriae*
Family Law - Jurisdiction - Foreign Orders

The mother relocated from the United Arab Emirates (UAE) to Saskatchewan with her three children without the consent or knowledge of the father or his family in 2024. The mother and father were living in the UAE, but neither were citizens of the country. There was uncontroverted evidence that the mother was subjected to family violence throughout the relationship. The father was imprisoned in the UAE after assaulting a police officer, and he was later deported to Great Britain in 2020. The father had not had in-person contact with the children since December 2020. Under the laws of the UAE and stated explicitly in the parenting order from the UAE, the father had decision-making authority over the children even though he had been deported. After the father was deported, the paternal grandparents sought custody of the children. The mother was granted custody of the children, with the grandparents were granted contact with the children on weekends. A court order in the UAE gave the paternal grandparents weekly contact with the children. The mother used her children's UK passports to relocate to Saskatchewan without advising the paternal grandparents. The grandparents brought a criminal complaint in the UAE against the mother for removing the children from the jurisdiction. The mother was sentenced in absentia to six months of incarceration and was ordered to be deported. The mother commenced a petition in the Court of King's Bench seeking sole decision-making and primary care of the children. The father phoned the maternal grandfather and threatened to kill him. The paternal grandmother brought an application seeking a declaration that the Court of King's Bench did not have jurisdiction to determine parenting issues. The court determined the following issues: 1) whether the court had jurisdiction to make an order for parenting time and decision-making under *The Children's Law Act, 2020* (CLA 2020); 2) whether the paternal grandmother satisfied s. 24 of the CLA 2020 to recognize the extraprovincial parenting order; 3) if the paternal grandmother satisfied the prerequisites, whether the court should refuse to recognize the parenting order under s. 24(6) of the CLA 2020; 4) whether the court should enforce the extraprovincial order under s. 25 of the CLA 2020; and 5) whether the court should use its *parens patriae* jurisdiction to make a parenting order.
HELD: The court held that recognizing the UAE order would be manifestly contrary to public policy. The court refused to enforce the UAE order under s. 25 of the CLA 2020. This was despite the court's finding that it did not have jurisdiction to make a parenting order under s. 8 of the CLA 2020 due to the children not being habitually resident in Saskatchewan. The court used its *parens patriae* jurisdiction to make interim parenting orders and granted sole responsibility for all decision-making to the mother. 1) The court did not have jurisdiction to make the order for parenting time and decision-making under s. 8 of the CLA 2020 because the children's habitual residence was the UAE. Under s. 6, the court has jurisdiction if the child is habitually resident in Saskatchewan as of the date of the application for the order, or the child's habitual residence cannot be determined, and the child is physically present in Saskatchewan. The court cited *K.A.D. v K.M.M.*, 2024 SKKB 197 for the hybrid approach to be used when determining the child's habitual residence, which requires the court to consider the entirety of the child's situation. When the petition brought the issue of

parenting before the court, the children had been in Saskatchewan for mere months and had resided in the UAE their entire lives. 2) All of the prerequisites to recognize an extraprovincial parenting order under s. 24 were met. The UAE is not a signatory to the Convention on the Civil Aspects of International Child Abduction. Therefore, the court's decision of whether to recognize the UAE decision and to order the return of the children was governed by the provisions of s. 24 of the CLA 2020. 3) Although the prerequisites of s. 24 of the CLA 2020 were met, the court refused to recognize the UAE parenting order because it was manifestly contrary to public policy in Saskatchewan under s.24(6)(d) of the CLA 2020. This was because there was a serious risk that the mother would be subject to control and abuse in the UAE which would continue to cause harm to the children, and that removing the children from Saskatchewan to facilitate contact with the paternal grandparents would harm the children by not recognizing the mother's views and role as the sole parental caregiver. The court found that in determining whether recognizing an extraprovincial parenting order was contrary to public policy under s. 24(6)(d) of the CLA 2020, the court may consider whether recognizing the extraprovincial order would expose a child to a serious risk of harm. The UAE is not a signatory to the Hague Convention, so the court was not assured that the best interests of the children would govern all issues in the way that they would be in a signatory country. The onus was on the party resisting the return of the child to their habitual residence to establish a serious risk of harm. The court cited *Dunmore v Mehralian*, 2025 SCC 20 as support for the principle that evidence of family violence was relevant in determining whether a court should exercise jurisdiction over a child in circumstances involving serious risk of harm. A pattern of escalating abuse and threats against the mother and her family were found to create an intolerable situation for the children, even where the child was not directly subject to the abuse. Here, the mother was subject to significant, undisputed abuse in the UAE by the father. Even though the father had been deported from the UAE, the court found that there was a serious risk of harm if the court recognized the UAE decision and returned the children to the UAE. The UAE decision expressly stated that the father's guardianship over the children was not extinguished by his deportation. 4) The court would not enforce the extraprovincial order under s. 25 of the CLA 2020, having found it to be manifestly contrary to public policy. 5) The court used its *parens patriae* jurisdiction to make an interim parenting order to grant the mother sole responsibility for making all decisions about the children's personal well-being, in addition to an interim order that the children reside primarily with her. *Parens patriae* jurisdiction allows the court to make decisions to protect those who cannot care for themselves, including children (*Re Eve*, [1986] 2 SCR 388). The court found that this case fell into an uncontemplated situation where it was necessary to fill a legislative gap. The court was prepared to hear the parties' positions on the issue of contact between the paternal grandparents and the children, should the parties be unable to resolve that issue.

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***Anhui Huaxing Chemical Industry Co., Ltd. v Agracity Crop & Nutrition Ltd.*, 2025 SKKB 190**

Clackson, 2025-11-05 (KB25188)

Business Corporations Act - Oppression Remedy
Creditors and Debtors - Preservation Order
Statutes - Interpretation - *Business Corporations Act, 2021*, Section 18-4
Statutes - Interpretation - *Enforcement of Money Judgments Act*, Section 5(5)

The plaintiff supplied glyphosate herbicide to the defendant for resale. In 2023, the plaintiff commenced an action against the defendant for failing to pay its accounts totalling $6,721,700 USD plus contractual interest at 0.8 percent per month. The plaintiff applied: 1) to amend its statement of claim; 2) for a preservation order under s. 5 of *The Enforcement of Money Judgments Act* (EMJA); and 3) in the alternative, the plaintiff sought an injunction similar that found under s. 18-4 of *The Business Corporations Act, 2021* (BCA).

HELD: The court dismissed the plaintiff's application to add defendants, to obtain a preservation order under the EMJA, and to obtain an interim injunction. 1) The application to add the parties as defendants was denied. When determining whether to amend pleadings, including whether to add parties to the action, courts consider whether the amendment will enable to court to decide the true points in dispute requiring adjudication, whether the amendment is a proper pleading, and whether material prejudice may be caused to other parties by the amendments that cannot be mitigated by an award of costs or an adjournment. There were no factual allegations in the proposed claim implicating any of the proposed defendants or corporate defendants to prevent the plaintiffs from recovering their alleged debt. The court found that the proposed defendants were neither proper nor necessary parties to the plaintiff's action against the defendant. 2) The court denied the plaintiff's application for a preservation order. The plaintiff failed to establish that enforcement was likely to be partially or wholly ineffective. To obtain a preservation order under s. 5 of the EMJA, the party seeking a preservation order must satisfy the court that its lawsuit constitutes a recognized cause of action and is not groundless. The party must also prove the components under s. 5(5)(b) of the EMJA on a balance of probabilities: a) it is likely that the enforcement of a judgment or order will be partially or totally ineffective if an order is not granted; b) that ineffectiveness will result from damage to, disposition, dissipation, destruction, or concealment of, or any dealing with property; c) that ineffectiveness will not result from a disposition of property for a purpose set out in section 5(5)(b)(i), (ii), or (iii); and d) the court must be satisfied on balance that the applicant will not delay in moving the action to conclusion (*Lawless v Avalerion Corp.*, 2021 SKQB 185). If the evidence before the court is insufficient to establish the conditions in s. 5(5) on a balance of probabilities, the application must be denied. If the evidence establishes the conditions on balance, then the defendant may offer evidence to convince the court that the evidence is insufficient to establish one or more of the three conditions. The court noted that there was no basis upon which to conclude that the enforcement of the plaintiff's money judgment would be partially or wholly ineffective due to a disposition of the defendant's assets out of its ordinary course of business. 3) The court declined to grant standing to the plaintiff to bring an application under s. 18-4 of the BCA and therefore declined to grant interim relief under s. 18-4 of the BCA. The plaintiff's mere assertion that it was a creditor of the defendant was insufficient to bring an action under s. 18-4. The court was not convinced that the plaintiff's existing contractual remedies were insufficient to vindicate its rights. Statutory oppression remedies enable those with an interest in a corporation to have their reasonable expectations protected in circumstances where no other legal recourse is available. There is no basis for an oppression remedy where a party has a legal remedy available through contract or tort.

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***Karmazyn v Gall*, 2025 SKKB 196**

Robertson, 2025-11-24 (QBG-RG-00933-2020)

Statutory Torts - Violation of Privacy

The plaintiff was an instructor and program head at Saskatchewan Polytechnic and was a member of the faculty association, a certified trade union. The defendants all held positions in the faculty association. The plaintiff alleged three separate violations of his privacy which involved the faculty association accessing a reprimand letter without his consent. The court determined: 1) whether the applications were suitable for summary judgment; 2) whether the action should be allowed or dismissed; and 3) whether costs should be awarded.
HELD: There was no actionable breach of privacy. The court dismissed the action in its entirety with column 2 costs awarded to the defendants. The faculty association was entitled to use the reprimand letter for its legitimate purposes. 1) The parties agreed that the applications were suitable for summary judgment, and the court agreed. The relevant facts could be determined from the affidavits. 2) The court set out the elements for the statutory tort of privacy set out in The Privacy Act and reviewed the six Saskatchewan cases in which the tort has been considered (see paras 13-21). The elements of the statutory tort are proof that: a) the plaintiff had a reasonable expectation of privacy in the subject of the alleged violation; b) the plaintiff's privacy was infringed by some act, conduct, or publication by the defendant; c) the defendant acted wilfully; d) the defendant acted without claim of right; and e) the defendant acted without the consent of the plaintiff or other person with lawful authority to give consent to the impugned act, conduct, or publication. The court noted that this claim was based on the faulty premise that the faculty association acted without claim of right. Here, the faculty association received the reprimand letter as required by the collective agreement between Saskatchewan Polytechnic, as employer, and the faculty association, as certified trade union for its members. The provisions of the collective agreement restricted the employer's use of reprimand letters: these provisions did not apply to the trade union. The employer authored the reprimand letter, with the plaintiff and faculty association as the two required recipients under the collective agreement. The court found that the faculty association was entitled to use the reprimand letter for its legitimate purposes. There was no publication of the reprimand letter outside the faculty association, and the court found there could be no actionable breach of privacy here. The court noted that had there been a breach of privacy, only nominal damages would have been awarded. 3) The court awarded costs in favour of the defendants as a single award calculated on column 2.

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R v Ritzand, 2026 SKKB 26

Tochor, 2026-01-30 (KB26021)

Criminal Law - Manslaughter - Sentencing
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Criminal Law - Sentencing - Principles of Sentencing

This was a sentencing decision following the conviction of two men accused of manslaughter and aggravated assault on October 30, 2025. Both accused had initially been charged with committing second-degree murder, attempted murder and robbery with violence (see: 2025 SKKB 189). The Crown sought a sentence of incarceration for 10-12 years plus ancillary orders. The accused, A.R., argued for a global sentence of seven years with time served on the manslaughter count and a conditional sentence of two years less a day, followed by two years' probation, for the aggravated assault. The accused, C.L., sought a global sentence of four years for the manslaughter and two years concurrent for the aggravated assault (see paras 81 to 86 for caselaw relied upon by both Crown and defence).
HELD: The court reiterated the principles of sentencing as set out in the *Criminal Code* with particular emphasis on the extent to which sentencing in Canada is an individualized process. The general sentencing range for manslaughter in Saskatchewan is between four and 12 years, with departures from this range in extraordinary circumstances. Aggravated assault tends to warrant a term of two to four years, but again, higher or lower sentences have been imposed depending on circumstances. The court considered the offenders' moral culpability and cited *R v Laberge*, 1995 ABCA 196 (*Laberge*), for its framework for determining the moral culpability of an offender convicted of manslaughter. The court must not only evaluate the offender's mental state but the actions the offender took in committing the unlawful act and how likely they were to risk or cause bodily injury, risk or cause serious bodily injury, or risk or cause life-threatening injury. The Crown argued that the accused fell into the third category, indicating a high level of moral blameworthiness. C.L. argued that he fell into the second category. The court found that both accused had a high level of moral culpability based on the method by which and the manner in which they committed the crimes. The two accused confronted the first victim and told the second victim "You're next", demonstrating some degree of deliberation. They stabbed both victims in the neck and left them in a ditch. The moral blameworthiness of both accused was at the high end of the *Laberge* spectrum. Among the aggravating factors were that the acts constituted near-murder; that neither of the victims posed a threat to either accused; that the victims were left in a ditch without a cell phone; the stabbings were disproportionate to the conflict; and A.R. had a criminal record for violence. There were several mitigating factors: the crimes were spontaneous, A.R. surrendered himself to police the next day, he had had a difficult upbringing, he had tried to address his personal issues while on remand, he had numerous supports, and he had a reintegraton plan. C.L. was a relatively young first-time offender, he had a pro-social lifestyle and strong supports, he had a continuous work history and he had complied with bail conditions for more than three years. Balancing the aggravating and mitigating circumstances together with the sentencing objectives, principles and factors in the *Criminal Code*, the court sentenced both accused to eight years' incarceration for the manslaughter and four for the aggravated assault. While C.L. had argued that the sentences should run concurrently, having arisen from the same offence, the court disagreed and drew on caselaw to support the necessity of consecutive sentences (see paras 102 to 108). Although the stabbing of the second victim took

place only shortly after the stabbing of the first, that did not mean the two incidents should be interpreted as a "single criminal adventure". Consecutive sentences would ensure the punishment of these offenders was proportionate to the gravity of their offences. With the principle of totality in mind, the court adjusted the sentences for aggravated assault to two years. This meant the two accused each received a total sentence of 10 years. The court also imposed ancillary orders and waived the victim fine surcharge as neither accused could pay.

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***Blackbird Security Inc. v EyeQ Security Services Inc.*, 2026 SKKB 34**

Popescul, 2026-02-09 (KB26029)

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King's Bench Rules - Rule 3-22, Rule 3-26, Rule 10-13
Orders and Judgments - Default Judgment - Application to Set Aside - Defence on Merits

The defendant (applicant) applied to set aside the noting for default and the judgment rendered against them on April 29, 2025 (see: 2025 SKKB 60). The plaintiff in that action (respondent) had sued the applicant and another defendant (M.M.) for breach of contract and breach of fiduciary duty. Their statement of claim was issued on April 22, 2024, and served on the applicant on April 26, 2024, and M.M. on May 1, 2024. Neither of those parties filed a statement of defence and both were noted for default on May 21, 2024. On March 6, 2025, the respondent applied for an assessment of damages, which they argued had arisen due to M.M.'s solicitation of the respondent's clients and employees in breach of the restrictive covenant in his employment contract. They argued that the applicant was vicariously liable and served the applicant with their materials on this application despite its having been noted for default. No-one appeared for the applicant or M.M. at the hearing of this application. The judge released his decision a few weeks later, finding that the respondent was entitled to damages of $223,882.40, plus pre-judgment interest and costs, from the applicant and M.M. jointly and severally. The applicant filed the instant application on July 22, 2025, and it was eventually heard on August 28, 2025. The court had to decide whether to set aside the noting for default and the judgment.
HELD: The court pointed out that King's Bench Rule 3-26 allows a plaintiff default judgment where the defendant fails to file a defence, but that a plaintiff must be prepared to prove their claims pursuant to subrule (2). The applicant sought to have the noting for default and judgment set aside pursuant to "Rule 10-13" and "the inherent jurisdiction of the court". The court noted that Rule 10-13 applied to a default judgment obtained under Rule 3-22, i.e., on a debt or liquidated demand. This case was somewhat more complex, as the judge had reviewed the whole record before it and determined both liability and damages. The court recognized, however, that the inapplicability of Rule 10-13 was not determinative, as the applicant also advanced the court's inherent jurisdiction as a ground. However, the court must consider the factors applicable to a Rule 10-13 application outlined in *Sparrow v Schnurr*, 2017 SKQB 358 (*Sparrow*), and based upon earlier caselaw: "(1) The application to set aside should be made expeditiously after the default judgment comes to the attention of the applicant; (2) The applicant should provide an acceptable explanation of its failure

to respond to the claim; (3) The applicant should disclose a defence that raises arguable issues; and (4) The applicant should satisfy the court that setting aside the default judgment will not seriously prejudice the plaintiff" (*Sparrow* at para 17). Furthermore, given that the default judgment was granted on its merits, the court considered: (5) whether there were exceptional circumstances. (1) The president of the applicant company (M.B.C.) filed an affidavit in support of its application in which he professed that the statement of claim was received by his office but never brought to his attention. M.B.C. admitted to having received the application for judgment in March 2025 but stated he did not review the documents in detail as he was "not familiar with legal matters". M.B.C. made an appointment with his lawyer that took place on the return date of the application, and the lawyer advised him he could not handle it but would refer him to Saskatchewan counsel. The Saskatchewan lawyer discovered on March 26, 2025, that the application had been argued on March 20 and the decision reserved. Apparently, the applicant took no action from this time until July 22, 2025, when the application was filed. The court found that the application was not made expeditiously. (2) The court noted that the return date featured prominently on the application and the notice at the bottom of the document indicated that failure to respond could result in an order being made in its absence. It should have been clear that the documents represented an urgent matter, and the applicant provided no explanation for its failure to respond. (3) M.B.C.'s affidavit did not append a draft statement of defence nor any exhibits. The affidavit simply offered factual assertions disputing the assertions in the respondent's materials. Moreover, the court found inconsistencies in M.B.C.'s evidence. None of this constituted an arguable defence. (4) The applicant submitted that the respondent would suffer no prejudice if the matter were reopened. The court found, however, that there would be serious material prejudice, as reopening would allow the applicant to relitigate issues already determined by the court in its judgment. This meant the respondent would need to re-prove matters it had already successfully proven, and the respondent did not have the benefit of an arguable defence from the applicant indicating what arguments they would need to make. (5) Even if the applicant had cleared the previous four hurdles, the court could not find that exceptional circumstances existed. The applicant would need to establish that the injustice created by the noting for default and judgment were such that public confidence in the administration of justice would be undermined. While the applicant argued that the respondent's application for judgment was served on only seven days' notice contrary to Rule 6-9(2), the court found that notice was not required, the applicant had not established it was prejudiced by the seven-day notice period, and the judge who heard the application was aware of the manner and timing of service and had not been at all concerned about it. The application was dismissed with costs to the respondent.

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***R v Redwood*, 2025 SKPC 32**

Beaton, 2025-11-12 (PC25030)

Criminal Law - Motor Vehicle Offences - Leaving Scene of Accident
Criminal Law - Sentencing - Conditional Sentence Order

The accused pled guilty to leaving the scene of an accident pursuant to s. 320.16(3) of the *Criminal Code*. The accused drove her vehicle quickly in an alley; video footage showed the vehicle hitting garbage cans. The vehicle also hit the victim, who later died in hospital. The accused told bystanders that the victim needed assistance and then left the scene at the insistence of her

boyfriend, who had an outstanding warrant. The Crown sought a nine-month custodial sentence followed by two years of probation, a two-year driving prohibition and a DNA order. Defence counsel sought a conditional sentence of 14 months with continued use of electronic monitoring for the first nine months. Defence counsel did not agree with the driving prohibition or the DNA order. The court determined an appropriate sentence, taking into consideration the circumstances of the accused and sentencing principles.
HELD: The court found that an appropriate sentence was a conditional sentence order of 15 months with restrictive conditions, followed by a 24-month probation order. The court also ordered a DNA order, a two-year driving prohibition, and a victim surcharge of $200. The accused was a 29-year-old Indigenous woman with no criminal record, and with a low risk of reoffending. Her personal circumstances involved intergenerational transference of trauma. She started drinking at 12 years old, became a mother at 16 years of age, left school, and survived relationships marked by intimate partner violence. She was the sole caregiver of her four children. Letters of reference described her as someone who had turned her life around, and who was attending college to complete grade 12. She expressed genuine remorse and pled guilty. The court set out the relevant sentencing principles, including the application of *Gladue* principles. The paramount sentencing objectives were general deterrence and denunciation. The court noted that the duty imposed by s. 320.16(3) was not onerous: a person involved in an accident must remain at the scene, identify himself or herself and give assistance to any injured party. In balancing all the factors and considering the principles of denunciation and deterrence, in addition to societal interests, the court found that a conditional sentence order with restrictive conditions would meet the sentencing principles in this case. The court noted that a conditional sentence is available even for grave offences with aggravating circumstances (*R v Proulx*, 2000 SCC 5). The court stressed that the accused was not criminally culpable for causing the victim's death; she was criminally culpable for leaving the scene and not giving police a chance to speak with her at that time.

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