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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***Mainstreet Equity Corp. v Saskatoon (City)*, 2026 SKCA 16**

Leurer McCreary Kilback, 2026-02-03 (CA26016)

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Statutes - Interpretation - *Cities Act*, Section 163(f.1)(iii)
Statutes - Interpretation - *Condominium Property Act, 1993*, Section 93(2)

The appellant appealed the decision of the Assessment Appeals Committee of the Saskatchewan Municipal Board (committee) in which the committee overturned a decision of the Board of Revision (board) for the City of Saskatoon (city). The board had determined appeals relating to the city's assessment of 192 residential condominium properties (condominium properties), overturning the original assessment, which had assessed the condominium properties individually. The board directed that the condominium properties should instead be assessed as one property using the low-rise apartment model income approach.
HELD: The appeal was dismissed. (1) The committee correctly determined that the board's reassessment violated the market valuation standard. Section 93(2) of *The Condominium Property Act, 1993* expressly requires that every condominium unit be assessed individually and that each condominium title be held in fee simple. Further, *The Cities Act* defines "market valuation standard" as comprising four parts requiring: (i) mass appraisal; (ii) an estimate of the market value of the estate in fee simple in the property sold in a competitive and open market; (iii) a reflection of typical market

conditions for similar properties (the requirement of comparability); and (iv) quality assurance standards inherent in the manner of the assessment. In this case, the committee correctly addressed comparability and determined the condominium properties were titled separately and were, therefore, not comparable to apartment buildings with multiple units but with one title for the whole of the property. The committee expressly held that valid comparators to the condominium properties were other individual condominium units. The committee based its reasoning on a correct interpretation of the governing legislation and did not err in its consideration of comparability as it affects the market valuation standard. (2) The committee did not err in its reasonableness review of the board's decision. There was no error in the way in which the committee undertook its review of the board's conclusions that were reviewable on a reasonableness standard, nor was there an error in the committee's conclusion that the board's decision must be overturned.

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***Greiner v Greiner*, 2026 SKCA 17**

Jackson McCreary Drennan, 2026-02-04 (CA26017)

Family Law - Corporate Liability
Family Law - Division of Family Property
Family Law - Division of Property - Valuation
Taxation - Family Property Equalization - Notional Tax Adjustments

This appeal related to the division of family property following the separation of two spouses who jointly operated a ranching business through a joint venture and corporate entities. The assets included farmland, a cattle ranching operation, and the family home. After accounting for an interim distribution that had been made to the petitioner, the judge ordered the respondent to make an equalization payment to the petitioner in the amount of $5,510,189.33 within 90 days, failing which the ranching operation would be liquidated with the proceeds of sale being divided equally between the parties. The respondent appealed the judgment and applied for a stay pending the resolution of the appeal.
HELD: The appeal was granted in part. Adjustments were made to the valuation of land, improvements and outstanding payables. The equalization payment was recalculated, but no adjustments were made for potential capital gains or personal tax consequences.

Family Law - Division of Property Valuation

Human Rights - Freedom of Expression - Freedom of Conscience

Injunctions - Interlocutory In unction

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The cattle debt was transferred to the respondent. The trial judgment was also modified to facilitate the exchange of assets and equalization payment under trust conditions. (1) There was no reversible error in the land valuation accepted by the judge. In determining the value of assets and deciding what constitutes a fair and equitable division of family property, deference is given to the trial judge's findings of fact and appellate courts will not interfere unless there has been a palpable and overriding error. In this case, while there was an error in the judge's understanding that the 2023 report included the value of the improvements, there was no basis to interfere with the judge's acceptance of the 2023 report establishing the value of land. (2) There was no error in the judge ordering the sale of the home quarter alone. The judge found as a fact that neither party wanted the family home or the home quarter. His direct response was to capture the value by way of exposing it and letting the market determine its actual value, with each party having the right to place an offer or offers on the subject property. There was no basis for appellate intervention. (3) The judge did not err in holding that the $596,389.13 debt owed to the corporation from the respondent should be considered an asset of the corporation in determining the amount of the equalization payment. The value of a corporate enterprise, including any adjustment for receivables, should be determined as at one date unless an explanation is provided. Similarly, if one party owes a debt to the corporation, it might be expected that it would be included on the other side of the equation. But, as with most aspects of family property, a judge deciding the matter is given considerable discretion and must work with the evidence. In this case, the judge saw no reason to treat the respondent's debt to the corporation any differently than he had treated the petitioner's debt. Further, as reflected in the evidence, the respondent created this debt by acting in contravention of a previously granted preservation order and, according to the judge's finding, the funds were not used to support the joint venture. The potential tax consequences to the respondent for failure to pay the shareholder load are irrelevant to the judge's analysis at trial. There was no reason to find that the judge erred in fact, law or principle in arriving at that result. (4) There was no basis to interfere with the judge's determination on capital gains and disposition costs. Under s. 21(3) of *The Family Property Act*, the court will have regard to a tax liability that may be incurred by a spouse due to the transfer or sale of family property or any order made by the court. In this case, the judge found that tax liability was unlikely to be incurred. Further, and in any event, the judge was satisfied that, even with the inflated land values, it was only fair and equitable that the parties' share of the family property be calculated without considering any such tax impact because the respondent did not want to sell, and would not sell, if he had the ranch. There was no basis for the

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court to interfere with that determination. (5) The judge erred in his valuation of outstanding payables. When the judge arrived at an amount for the payables using values from a particular exhibit (R-22 amounts), he deducted the amount owing to ASL Paving on the basis that the assets represented by these borrowings were fixtures, would run with the land when sold “and therefore ought to be a debt to be paid on any such sale from the proceeds of sale”. He deducted the R-22 amounts owing to TER Cattle and Choice Cattle Credit Inc. because he could not “be satisfied on a balance of probabilities that this represent[ed] any additional indebtedness but rather a part of this total debt”. By accepting R-22 amounts as the outstanding payables of the corporation, the trial judge erred in law and principle. (6) There was no basis for the court to interfere with the judge’s decision that the $596,389.13 debt owed to the corporation from the respondent should be considered an asset of the corporation in determining the amount of the equalization payment. Contrary to the respondent’s assertion, the judge did not leave the question of whether the shareholder’s loan was part of the family property to another day. The issue he left open was the possible effect of the income tax consequences on the calculation of income for support purposes. He squarely decided that the shareholder’s loan was part of the corporation’s assets and capable of division, with no deduction to be made for the fact that the respondent was going to be personally responsible for that debt. The respondent sought to attack a critical finding of fact, i.e., that he lived beyond his means post-separation. No basis existed to find that the judge made a palpable and overriding error in so finding. (7) It was appropriate to order that equalization be contingent on the petitioner signing the Assumption of Debt Agreement. A judge of the Court of King’s Bench (and, by extension, the Court of Appeal) has the authority to disrupt contractual relations and issue all orders necessary to resolve a dispute regarding family property, as long as the parties to the agreement are before the court or accede to the court’s jurisdiction. Thus, with respect to the Assumption of Debt Agreement, if it had been presented in the court below, the judge would have had the authority to order the petitioner to enter into an agreement pursuant to which the TER Cattle debt would be transferred from GG Land to SJ Land. In the circumstances, it was appropriate and necessary to order, as part of the payment of the equalization amount and the transfer of assets, that equalization be contingent on the petitioner signing the Assumption of Debt Agreement and vice versa. (8) The judge did not err in his reasoning regarding capital gains and disposition costs. Contrary to the respondent’s assertion that there was proof a sale would take place, the judge did not accept that evidence, which was clearly within his discretion. There was no basis for the court to interfere with that determination.

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Saskatoon (City) v Saskatoon Civic Middle Management Association**,** **2026 SKKB 12**

Wempe, 2026-01-15 (KB26018)

Administrative Law - Judicial Review - Standard of Review - Reasonableness
Administrative Law - Procedural Fairness - Adverse Inference
Human Rights - Freedom of Expression - Freedom of Conscience
Labour Law - Collective Agreement - Dismissal

The respondent association filed a grievance on behalf of an employee who had been terminated by the applicant. The arbitrator found that the respondent violated the collective agreement when it terminated the employee's employment and ordered that she be reinstated. The arbitrator issued a supplementary award on November 4, 2024, which found that the City of Saskatoon (city) infringed upon the employee's rights of freedom of expression and conscience and discriminated against her on the grounds of sexual orientation and gender identity. The applicant sought judicial review of both awards.

HELD: The application was dismissed. (1) The arbitrator's application of the principles of the collective bargaining agreement was reasonable. The arbitrator came to his conclusions regarding the "without cause" termination clause by referencing long established norms of labour relations and collective agreements, the wording of the collective agreement and the memorandum of agreement, the evidence at the hearing, and *The Saskatchewan Employment Act*. The arbitrator's decision was a well-reasoned, rational chain of analysis, and it was readily apparent to the court how he arrived at his interpretation of the collective agreement. Accordingly, the arbitrator's findings that the collective agreement only permitted termination without cause for non-culpable reasons such as organizational or technological change was not unreasonable. (2) The arbitrator did not exceed his jurisdiction. (3) The arbitrator's finding that the termination was "with cause" was not unreasonable. The arbitrator had to determine whether the termination was a breach of the collective agreement provisions. Having found that the collective agreement did not provide an unfettered right on the city to terminate any employee at will for any reason by declaring that the termination was without cause, he examined the underlying reasons for the termination. He found the evidence established the employee was terminated because she refused to agree to the city's demand that she cease using the gender-neutral words "human" and "my humans" when addressing others whose gender identity was unknown to her. The arbitrator found that the reason provided by the respondent publicly was designed to disguise why the employee was dismissed. Based on those findings, it was reasonable for the arbitrator to conclude that although the applicant might have called it a "without cause" termination, in actuality it was "with cause". (4) The arbitrator did not breach procedural fairness by drawing adverse inferences against the applicant. The failure to bring before the tribunal some circumstance, document, or witness, when either the party themselves or their opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the circumstance or document or witness, if brought, would have exposed facts unfavourable to the party. In this case, one of the witnesses not called by the applicant was instrumental in initiating and directing the process culminating in the employee's termination and the other was her direct manager who had the most knowledge of her work performance and the concerns relating to her work. It was reasonable for the arbitrator to draw an adverse inference against the applicant for failing to call them as witnesses. (5) The arbitrator's decision to order reinstatement was reasonable. The arbitrator's findings that the termination was "with cause" were reasonable and as a result, the remedy of reinstatement was appropriate and reasonable. (6) The supplementary award decision was reasonable. The arbitrator's supplementary award only found that there was an infringement on the employee's freedom of expression and conscience in the circumstances of this case, where the employee was prohibited from using a gender -neutral term which to her was a term of principle, personal pride and conscience. It was not unreasonable for the arbitrator to find the discipline measures taken by the city for the employee's use of the gender-neutral word "human" were an infringement of her freedom of expression and conscience. (7) The arbitrator did not fail to apply the correct test for discrimination or base his findings on a more remote causal link than permitted. To make a claim for discrimination, an employee must establish a *prima facie* case of discrimination and then the onus shifts to the employer to show that it accommodated the employee to the point of undue hardship. The arbitrator found there was a link because the employee identified as "queer" and a member of the LGBTQIA2S+ community, part of her identity was to use the word "human" as a sign of respect and inclusion, and she was terminated for disputing a direction from her director to stop using the word "human". On the evidence before him, the arbitrator's finding that there was a clear link between the employee's sexual orientation or gender identity and her termination was entirely reasonable in the circumstances.

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***6517633 Canada Ltd. v Ailsby*, 2026 SKKB 14**

Wildeman, 2026-01-16 (KB26009)

Civil Procedure - Pleadings - Application to Strike - No Reasonable Cause of Action
Pleadings - Statement of Claim - Striking Out
Torts - Defamation

The claim in this case was commenced against numerous individuals, a law firm, and a rural municipality. The claim related to two quarters of real property located in the Rural Municipality of Norton No. 69 (RM). Among other things, the plaintiff claimed that on several occasions in May 2023 and June 2023, the defendants allowed their cattle to carry on forced free grazing of the grass on the plaintiffs' property and that the defendants claimed false entitlement to the fence between the plaintiffs' property and a road allowance. The plaintiffs sought compensatory, punitive and aggravated damages. The defendants sought to strike portions of the

proposed amended statement of claim filed by the plaintiffs, arguing that it had a number of deficiencies, including failure to disclose a reasonable claim against certain defendants, raising a claim that has already been the subject of another action; and that the claim was scandalous, vexatious, and an abuse of the court's process.
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, paragraph 8 of the amended claim was intended to intimidate and harass the defendants and was scandalous, vexatious, and an abuse of the court's process. Paragraph 9, in which the plaintiffs alleged conspiracy, did not raise a reasonable claim as the plaintiffs had not pleaded an agreement among the defendants or a common purpose, neither had they pleaded the material facts necessary to establish an unlawful act or unlawful means. Paragraph 12 of the plaintiff's pleadings failed to plead the materials facts to ground a claim in the tort of misfeasance of public office and was also scandalous, vexatious, and an abuse of the court's process as it intended to harass and intimidate the defendants. Paragraphs 10, 17 and 18 of the plaintiff's pleadings failed to plead a reasonable claim based on scant facts on the undeveloped road allowance and the bald assertion that the RM's conduct was unlawful. Paragraphs 9, 11 and 16 failed to provide a sufficient factual foundation to support the legal cause of action of defamation and were also brought for an improper purpose of intimidating and harassing the defendants, making it scandalous, vexatious and an abuse of court process. Paragraphs 14 and 15 did not plead any material facts to ground a cause of action against the RM with respect to the defendant's cattle grazing on the plaintiff's property. Paragraphs 7 and 10 also failed to plead material facts to ground a cause of action against the individual councillor and the RM poundkeeper. (2) Enhanced costs were appropriate. Portions of the claim were brought for the purpose of harassing and intimidating the defendants rather than to raise legitimate claims. The plaintiff's tactic of also naming the defendants' counsel as parties to the action was also vexatious conduct and an abuse of the court's process.

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***R v Pastuch*, [2026 SKKB 16]**

Dawson, 2026-01-20 (KB26010)

Criminal Law - Appeal - Mode of Trial on New Trial
Criminal Law - Jury Trial - Waiver
Criminal Law - Procedure - Jurisdiction

The applicant had been charged with fraud and theft of an amount exceeding $5,000 in 2016. In February 2017, the applicant filed an application under the Charter for delay, which was dismissed. After switching from a jury trial to a judge-alone trial, the applicant was found guilty on all three counts in the Indictment in June 2019, but the decision was successfully appealed at the Court of Appeal. The applicant subsequently pleaded guilty at a new trial to one of the three counts. After changing counsel and filing numerous applications, the applicant sought for an order declaring the proceedings in the Court of King's Bench after the

Saskatchewan Court of Appeal ordered a new trial a nullity on the ground that the trial has proceeded by judge alone, notwithstanding the applicant's election of a jury trial, without any re-election, contrary to governing law and the applicant's statutory right to a trial by jury.
HELD: The application was dismissed. The applicant had waived her right to be tried by a jury. Subsection 686(5)(a) of the *Criminal Code* provides that where an accused appeals from conviction and requests to be tried by a judge and jury if a new trial is ordered, the new trial shall be held by a judge and jury. Where no such request for trial by judge and jury is made, the new trial will be held before a judge or Provincial Court judge, as the case may be, pursuant to ss. 686(5)(b). If the accused specifically requests a new trial by judge and jury, the new trial must be conducted by a judge and jury in accordance with s. 686(5.01)(a) of the *Criminal Code*. In this case, the applicant had pled guilty and admitted in the s. 606 inquiry that she understood the nature and consequences of her plea. One of the consequences was that she waived her right to a jury trial. The address from the applicant at the time of sentencing submissions dispelled any suggestion that her belief that she could not have a jury trial had any impact on her entering a guilty plea. The entry of a guilty plea constituted a clear waiver of the applicant's right to be tried by a jury.

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***R v Pastuch*, [2026 SKKB 17]**

Dawson, 2026-01-20 (KB26011)

Criminal Law - Sentencing - Joint Submission
Criminal Law - Sentencing - Mitigating Factors - Parity Principle - Totality Principle
Criminal Law - Sentencing - Sentencing Principles - Fundamental Principle - Proportionality

The accused had pled guilty to theft of a value exceeding $5,000. The Crown and defence jointly submitted a sentence for the accused of three years and six months' incarceration, less credit for the time she spent on remand or serving her sentence after the first conviction, and some credit for the 10 years that she had been on bail release. They also jointly submitted that the court should impose a stand-alone restitution order pursuant to s. 738 of the *Criminal Code*.
HELD: The court accepted the joint sentencing submission and imposed a sentence of 1,277 days (three years, six months) of incarceration, reduced to 730 days (two years) after credit for time served and bail conditions. A restitution order of $4,940,218 was issued in favor of the 64 victims. The sentence was appropriate in the circumstances. The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:(a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;(b) to deter the offender and other persons from committing offences;(c) to separate offenders from society, where necessary;(d) to assist in rehabilitating offenders;(e) to provide reparations for harm done to victims or to the community; and (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community. Section 718.1 of the *Criminal Code* states that a fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 sets out that a sentence should be increased or reduced to account for any relevant

aggravating or mitigating circumstances; that similar sentences should be imposed for similar offences and similar offenders; and that the least restrictive sanction should be identified. In this case, the theft was committed by continuing fraud, committed over a period of over seven years. The amount stolen was enormous, some $4,940,218 from 64 different individuals or corporations. The initial five investors were relatives of the accused. The fraudulent conduct was intentional and prolonged, taking place over a continuous period of time. The accused was the director of the six corporations through which she was able to commit the theft of funds. The accused used the funds to support her own lifestyle, which included the purchase of a house, travel, money spent at casinos and taking people to concerts in the United States. On the other hand, the accused had no previous criminal record, had pled guilty and had expressed her remorse. The accused had also been assessed as a low risk to reoffend and had physical and mental health issues. Having regard to the circumstances, the gravity of the offence and the degree of the accused's moral culpability, the circumstances of the accused, the aggravating and mitigating factors, the principle of parity, and the basis for the joint submission, the sentence as jointly submitted met the public interest test set out in *R v Anthony-Cook*, 2016 SCC 43.

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***Mooney v Hoodoo (Rural Municipality)*, 2026 SKKB 15**

Danyliuk, 2026-01-20 (KB26019)

Injunctions - Interlocutory Injunction
Practice - Pleadings - Striking Out - *Res Judicata*

The plaintiff owned a lakefront lot at Wakaw Lake and entered into a lease called a Utility Lot Lease Agreement (lease) with the defendant, the rural municipality of Hoodoo (RM), in January 2021. After filing his applications and obtaining the required permits, the plaintiff decided to build a structure different from that described in his plans. This came to the defendant's attention, and the plaintiff was served with a compliance order, which the plaintiff did not appeal. The plaintiff filed another permit application, which was refused by the defendant. The plaintiff's appeal was allowed by the Development Appeals Board and the defendant's appeal against that decision was allowed by the Saskatchewan Municipal Board (SMB). The plaintiff sought to appeal the SMB's decision, but this application was dismissed. During this time, the RM's counsel sent the plaintiff a letter (dated August 28, 2025) that said that the plaintiff had breached the lease and gave the plaintiff a deadline of November 30, 2025, to fully comply with the permits and the zoning bylaw. If the plaintiff did not meet this deadline, then the defendant would move to end the lease and remove or destroy the plaintiff's building. The plaintiff then filed a claim against the defendant and an application for an injunction preserving his property. The defendants sought to strike the claim.
HELD: The plaintiff's claim was dismissed. The court also denied the application for injunction preserving the plaintiff's property. (1) The plaintiff's claim did not have any chance of success. A pleading can be struck if the pleading is scandalous, frivolous or vexatious or otherwise an abuse of process of the court. Attempting to relitigate a matter already decided can amount to an abuse of process. The prior final decision need not be one that was made by a court of competent jurisdiction; a decision, judicial in nature, may be one made by a tribunal of competent jurisdiction. In this case, the issues raised in the statement of claim had already been determined. In large measure the claim was the product of a dissatisfied litigant seeking to re litigate issues already decided by an

entity having jurisdiction to do so. (2) The conditions for granting an injunction were not met. In determining whether to grant an injunction, the following principles apply: (a) the plaintiff must demonstrate a serious issue to be tried; (b) the plaintiff must demonstrate a meaningful risk of irreparable harm; (c) the judge must weigh the risk of the irreparable harm the plaintiff is likely to suffer before trial if the injunction is not granted, and he or she succeeds at trial, against the risk of the irreparable harm the defendant is likely to suffer if the injunction is granted and he or she prevails at trial. In this case, the plaintiff had not demonstrated a serious question to be tried. There was also nothing in the plaintiff's claim that demonstrated that damages would be an inadequate remedy for the plaintiff, neither did the plaintiff file an undertaking as to damages. The balance of convenience also favoured the defendants. On balance, the equities pointed towards denying the injunction application.

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***Bierman v Joint Medical Professional Review Committee*, [2026 SKKB 22]()**

Robertson, 2026-01-27 (KB26016)

Administrative Law - Natural Justice - Procedural Fairness
Administrative Law - Standard of Review - Reasonableness

The appellant appealed a decision by the respondent Joint Medical Professional Review Committee (committee) ordering a reassessment and recovery of $254,015.52 from the appellant's billings from November 4, 2019, to June 12, 2021, and payment of an additional amount of $25,000 for a total payment order of $279,015.52
HELD: The appeal was dismissed. (1) The committee did not err in its exercise of jurisdiction by restricting the appellant's professional judgment, improperly substituting its own evidence, or improperly reassessing billed services. The committee is a creation of statute, and its jurisdiction is established by and confined to the authority provided by The Saskatchewan Medical Care Insurance Act (Act). The committee has an investigative and adjudicative role, with discretion over how it conducts that inquiry. The focus is to gather information from the physician about their pattern of medical practice as it relates to billing. The committee is the judge of what medical services are medically required and what is an acceptable pattern of practice. The billing review in this case was only concerned with whether the billings were payable under the terms of the physician payment schedule, and not an assessment of the subject physician's competence. There was no evidence to support the argument that the committee improperly reassessed billing services. With respect to improperly substituting evidence, the appellant relied upon professional misconduct cases which had little application to this appeal. (2) There was no breach of natural justice. If a presumption of improper billing arises from the evidence gathered during an inquiry, then the onus shifts to the subject physician to rebut that presumption. The interview is the usual forum for doing so. If the presumption is not rebutted, then the committee may conclude that an adverse finding is warranted by the evidence. In this case, the respondent informed the appellant of the case to meet in the September 28, 2021 letter informing him of the review and requesting documentation; the January 26, 2022 letter requesting additional information; the September 26, 2022 letter requesting an interview and identifying nine areas of concern with the appellant's billing practices; and the March 16, 2023 interview. The committee was also entitled to discontinue its practice of issuing a proposed order before issuing a final order under the authority conferred by s. 49(5) of the Act and as master of its own procedure. (3) The committee did not err in

law by failing to consider evidence. The decision in this case was detailed and addressed each category for which an order for repayment was made. The reasons were responsive to the issues, supported the conclusions and decisions, and were sufficient to allow for meaningful appellate review. (4) The committee's findings were supported by evidence. The appellant's failures or omissions in patterns of billing showed up in multiple categories. While it was repetitious, the respondent took care to show it applied the same reasoning for each category.

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***Input Capital Corporation v McKercher LLP*, 2026 SKKB 24**

Robertson, 2026-01-28 (KB26017)

Contracts - Interpretation - Mortgage and Guarantee
Mortgages - Equitable Mortgages - Enforcement
Statutes - Interpretation - *Saskatchewan Farm Security Act*, Section 31

The plaintiff applied for determination of a question of law regarding the effect of a failure to complete an acknowledgment of guarantee as required by s. 31 of *The Saskatchewan Farm Security Act* (SFSA).
HELD: The court ordered the respondent to make an equalization payment to the appellant in the amount of $381,929.24 to facilitate division of the parties' non-taxable property. Costs of $1,000 were also awarded to the appellant. (1) The guarantee in this case was not legally enforceable against the defendants. Section 31(2) of the SFSA provides that no guarantee has any effect unless the person entering into the obligation in the presence of the lawyer or notary public signs the certificate in the prescribed form. In this case, when the 2015 guarantee was signed, no lawyer or notary public issued a certificate in the prescribed form. (2) The mortgage was not legally enforceable against the defendants. In this case, it was evident both from the wording of the documents and from extrinsic evidence of the framers' intent that the mortgage was the enforcement mechanism for the guarantee. As the guarantee was of no effect, a finding that the mortgage was unenforceable was consistent with and respected the intent of the SFSA.

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***Ozem v Ozem*, 2026 SKKB 25**

Mitchell, 2026-01-28 (KB26020)

Wills and Estates - Capacity - Undue Influence
Wills and Estates - Testamentary Capacity
Wills and Estates - Proof of Will in Solemn Form

The applicants sought an order directing that the deceased's last will and testament be proven in solemn form. The deceased's will had appointed the respondent sole executrix and sole beneficiary of the estate while two of the respondents were named alternate beneficiaries. The applicants argued that irregularities in the execution of the will and the failure of the will to make any mention of their father or brother raised serious suspicions that at the time the deceased's will was executed, she lacked full knowledge of its contents and did not approve of those contents. They asserted alternatively that the respondent unduly influenced the deceased to instruct her lawyer to prepare her will and to execute it.
HELD: The application was dismissed. (1) The will was not invalid. Under s. 7 of *The Wills Act*, a will is not valid unless: (a) it is in writing and signed by the testator or by another person in the testator's presence and at the testator's direction; (b) it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as the testator's will; (c) the signature is made or acknowledged by the testator in the presence of 2 or more witnesses who are in the presence of the testator at the same time; and (d) at least 2 of the witnesses in the presence of the testator attest and sign the will or acknowledge their signatures on the will. In this case, there was no question that the will was testamentary in nature. It was prepared on the deceased's instructions and executed in front of two witnesses. The applicant's averment that, when he told the lawyer the deceased's will named the respondent as the sole beneficiary and did not name the deceased's husband and four surviving children, the lawyer blanched, was the only evidence that hinted that the deceased's testamentary intention may not have been accurately reflected in her will. This was insufficient to raise a genuine issue for trial. (2) The applicants did not establish undue influence or duress. To prove a will is the product of undue influence, it is necessary to prove that power was exercised over the testator, and it was the exercise of that power that resulted in the will being made. In this case, while there was evidence that the respondent and the deceased had a close relationship and the respondent accompanied the deceased to her meetings with the lawyer, the lawyer's evidence was uncontroverted that he met with the deceased without the respondent being present, and he satisfied himself that she was competent both at the time she instructed him about the terms of her will and at the time she returned to his law office to execute the documents.

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***Hnidy Estate, Re*, [2026 SKKB 30]**

Turcotte, 2026-02-03 (KB26025)

Practice and Procedure - Documents - Disclosure - Production
Wills and Estates - Capacity - Undue Influence
Wills and Estates - Testamentary Capacity
Wills and Estates - Proof of Will in Solemn Form

This application arose in the context of a dispute regarding the estate of A.P.H. (estate). The deceased passed away on September 22, 2024, leaving four children surviving him: G.H., S.H.-P., C.K., and N.M., and was predeceased by a daughter, M.H. Under the 2020 will, G.H. stood to benefit from a devise of land. S.H.-P., C.K., N.M. and M.H. stood to differentially benefit from certain

bequests. Under the 2023 will, only S.H.-P., C.K. and N.M., or their surviving children, stood to benefit through the bequests and devises out of the estate, with no provision for G.H., M.H. or M.H.'s surviving children. On August 26, 2025, G.H. and T.Y., the executor of M.H.'s estate, filed a caveat dated August 25, 2025 (caveat) against the estate. The applicants sought the disclosure of the medical, pharmaceutical and medical practitioner records of the deceased, along with the solicitor file of the deceased's long term estate planning lawyer, to buttress the evidence they hope to muster at the special hearing to have the 2023 will directed to be proven in solemn form. The respondents opposed the disclosure.
HELD: The application was granted in part. The respondents were ordered to disclose and produce the solicitor file in respect of the deceased's estate planning from and after the execution of the 2020 will to the execution of the 2023 will. The respondents were also ordered to disclose the solicitor file regarding the preparation and execution of the 2023 will. The application for the disclosure and production of the deceased's medical and pharmaceutical records for the ten years preceding his death in advance of a determination that the 2023 will be proven in solemn form was dismissed. The applicants were partly entitled to the disclosure they sought in advance of a hearing to determine whether the 2023 will should be proven in solemn form. To obtain production of documents in advance of an order for proof in solemn form, a challenger must provide credible allegations of undue influence. If a document has not been disclosed, the party seeking to have it disclosed bears the onus of establishing there is a discernable and proportionate reason for concluding the document is relevant based on the allegations contained in the application and the affidavit evidence and supporting materials of the parties challenging and propounding the will. In this case, the applicants had challenged the 2023 will. There was no meaningful evidence to support the requirement that the deceased's pharmaceutical, medical or medical practitioner records were relevant and should be disclosed in advance of the hearing to determine whether the 2023 will should be proven in solemn form. The affidavit evidence, however, raised concerns as to the validity of the 2023 will. In the circumstances, the solicitor file with respect to the deceased's estate planning was relevant, but only the portion of that file from and after the deceased's execution of the 2020 will to the date of the execution of the 2023 will.

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***R v Harman*, [2026 SKPC 2]**

Green, 2026-02-04 (PC26002)

Constitutional Law - *Charter of Rights* - Arrest or Detention
Criminal Code - Motor Vehicle Offences - Impaired Driving
Criminal Code - Motor Vehicle Offences - Impaired Driving - Driving with Excessive Alcohol

On February 8, 2025, the accused was driving a semi-trailer unit near the intersection of Queen Street and Highway 10 on the outskirts of Yorkton. His truck jack-knifed into the ditch and then partially straddled the road. At 1:03 am, a passerby called the police to report the accident. As a result, RCMP Cst. Dan Reed responded and arrived onsite at 1:13 am. After attempting to speak to the accused several times, and after making other observations of the scene and of the accused, Cst. Reed arrested the accused for impaired driving at 1:20 am. He then demanded that the accused provide samples of his breath into an approved instrument and drove him to the Yorkton RCMP detachment where two samples were received from the accused. The accused

claimed that his rights under ss. 8, 9 and 10(b) of the *Charter of Rights and Freedoms* were violated.
HELD: The accused was found guilty of impaired driving. (1) The officer had reasonable grounds to believe that the accused had committed the offence of impaired driving at the point of arrest. Section 495 of the *Criminal Code* provides that a peace officer can arrest a person whom he or she has reasonable grounds to believe has committed an offence. In this case, the officer honestly believed the accused had committed the offence of impaired driving at the time of arrest. Taken together, the stated grounds for arrest – jack-knifing a semi-trailer, evasive actions towards the officer, the odour of alcohol on the accused's breath, slurred speech, glassy eyes and being unsteady on his feet – made the officer's belief reasonable. (2) The Breathalyzer demand was made to the accused as soon as practicable after his arrest. Section 320.28(1) of the *Criminal Code* requires that the breath demand be given as soon as practicable after an arrest. As soon as practicable means within a reasonably prompt time. In this case, the arresting officer was the first officer to arrive at the scene of a night-time accident on a busy highway in winter conditions, with a semi-trailer unit partially straddling the highway. The officer had a number of public safety concerns for the travelling public in clearing the accident scene and reducing the danger to passers-by. As well, he had to coordinate and direct the efforts of the other police officers who arrived at the accident scene after him and had to deal with an initially uncooperative accused who had to be taken back to the police vehicle, searched, placed in the vehicle and then brought outside again in a few minutes to adjust his handcuffs. In the context of what happened, the breath demand was read to the accused in a reasonably prompt time after his arrest. (3) The breath samples were taken from the accused as soon as practicable after the demand pursuant to s. 320.28(1)(a) of the *Criminal Code*. In this case, considering the challenge that the accused presented to the officers at the detachment – being rude, argumentative and uncooperative – and the time required for the accused to speak to a lawyer and for the officer to conduct the observation period, the breath samples were taken from the accused in a reasonably prompt time, and as soon as was practicable. (4) The accused's ability to operate a motor vehicle was impaired by alcohol. When the evidence of impairment establishes any degree of impairment ranging from slight to great, the offence has been made out. In this case, while some unsteadiness in the accused's ability to walk may have related to the winter and potentially icy conditions on the highway and while neither police officer at the scene had previously met the accused to observe him or hear him speak, there were clear indicia of alcohol consumption by the accused, including alcohol on his breath, slurred speech, uncontrolled and erratic behaviour, and individual (albeit unopened) cans of beer in his semi-unit cab. The evidence of the accused's behaviour, appearance and demeanour upon arriving at the police detachment also led to the conclusion that the accused was intoxicated. (5) The accused's blood alcohol concentration equaled or exceeded 80 mg% within two hours of driving.

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***R v Kilmer*, 2026 SKPC 4**

Stang, 2026-02-04 (PC26003)

Criminal Law - Evidence - Admissibility - Voluntary Statement
Criminal Law - Evidence - Confessions and Admissions
Evidence - Admissibility - Statement - Voluntariness

The defendant was stopped by wildlife officers during a decoy operation in October 2024. The defendant was asked several questions about hunting, including whether he had been hunting, whether he was alone, and if he had a firearm. The defendant provided affirmative responses to all these questions and indicated to one of the wildlife officers that the firearm was in the back seat of his truck. Eventually, a firearm and alcohol were discovered in the possession of the defendant. The defendant was subsequently charged with one offence under The Alcohol and Gaming Regulation Act, 1997 and four alleged offences under *The Wildlife Act, 1998*. During the trial, a voir dire was conducted to address the voluntariness of statements made by the defendant. HELD: The court held that the Crown proved voluntariness regarding the statements made by the defendant during the initial conversation with the wildlife officers and the apology conversation the defendant had with the officers. However, the Crown did not prove voluntariness of the statements made by the defendant during his conversations with the wildlife officers regarding the possession of firearms. (1) The Crown had proved voluntariness with respect to the initial conversation with the defendant and the conversation involving the defendant's apology. In general, statements, verbal or otherwise, made by an accused or defendant to a person in authority cannot be used in evidence against them unless they were made voluntarily. In determining voluntariness, the following factors are applicable: (a) threats or promises; (b) oppression; (c) other police trickery; and (d) operating mind. In this case, while it was true that the decoy operation itself could be considered a trick, the purpose of it was not to elicit statements from anyone. The decoy operation itself was not so appalling as to shock the community. In addition, while the defendant was unable to contact a lawyer and was not provided assistance in contacting a lawyer, this factor alone did not create oppression or an atmosphere of oppression. The evidence did not establish that the defendant was so intoxicated that he no longer had an operating mind. (2) The Crown did not provide sufficient detail in the wildlife officer's testimony regarding the firearms to properly assess and determine whether the Crown has proven beyond a reasonable doubt the voluntariness of things said by the defendant during the firearm conversation. The court did not determine whether any of the statements would ultimately be admitted at trial since the defendant intended to bring a *Charter* application.

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