KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 186**

Date: **2025 10 30**
File No.: QBG-RG-02705-2019
Judicial Centre: Regina

BETWEEN:

ALICIA YASHCHESHEN

PLAINTIFF

- and -

SASKATCHEWAN GOVERNMENT INSURANCE

DEFENDANT

Appearing:

Alicia Yashcheshen	self-represented plaintiff
Reginald A. Watson, K.C. and Craig Savoie	for the defendant

JUDGMENT — ROBERTSON J.
October 30, 2025

Contents **Paras.**

INTRODUCTION

[1] This decision addresses applications by the plaintiff, Alicia Yashcheshen, for leave to appeal against the award of costs made in my decision of August 15, 2025, reported as *Yashcheshen v Saskatchewan Government Insurance*, 2025 SKKB 127 at paras 107-149 [*Costs Award*], and to authorize recording of Chambers proceedings. For the following reasons, the application for leave to appeal is dismissed and the application to record Chambers proceedings is dismissed.

BACKGROUND

[2] This will be my fifth written decision in this litigation. The *Costs Award* dealt with both the application of the plaintiff, Alicia Yashcheshen, to set aside the Judgment and the application by the defendant, Saskatchewan Government Insurance, [SGI] for an award of costs.

[3] The history of this litigation is summarized in: my fiat of April 24, 2025 (*Yashcheshen v Saskatchewan Government Insurance*, 2025 SKKB 58 at para 5 [*April 24 Fiat*]); my unreported fiat of June 11, 2025 (*Yashcheshen v Saskatchewan Government Insurance* (11 June 2025) Regina, QBG-RG-02705-2019 (Sask KB) at paras 2-10 [*June 11 Fiat*]); my Judgment of June 19, 2025 at paras 9-25 (*Yashcheshen v Saskatchewan Government Insurance*, 2025 SKKB 85) [*Judgment*]; and the *Costs Award* of August 15, 2025 at paras. 4-15.

[4] The decisions are all under appeal to the Court of Appeal: *April 24 Fiat* - CACV 4551; *June 11 Fiat* - *Yashcheshen v Saskatchewan Government Insurance* (26 June 2025), CACV 4566 (Sask CA); *Judgment* - CACV 4571; and the *Costs Award* – CACV 4616.

[5] The application for leave to appeal against the *Costs Award* was filed in this Court on October 9, 2025.

ISSUES

[6] The applications raise the following issues:

(a) Should leave be granted to appeal against the *Costs Award*?

(b) Should the Court stay enforcement of the *Costs Award*?

(c) Should permission be given to record Chambers appearances?

(d) What, if any, award should be made on costs for these applications?

ANALYSIS

[7] I will address the issues in the order stated above.

(a) Should leave be granted to appeal against the *Costs Award*?

[8] *The King's Bench Act*, SS 2023, c 28, ss 6-14(b) requires leave of the judge giving the judgment or order to appeal against judgments or orders as to costs only that, by law, are left to the discretion of the judge.

> **No appeal of certain judgments without leave**
>
> **6-14** Except with leave of the judge giving the judgment or making the order, the following judgments and orders are not subject to appeal:
>
> (a) judgments given or orders made by a judge with the consent of the parties;
>
> (b) subject to the rules of court, judgments given or orders made by a judge as to costs only that, by law, are left to the discretion of the judge.

[9] Section 6-14 is unusual in that it gives the judge against whose decision appeal is sought the power to decide whether leave to appeal should be granted. The

scope of the provision is limited to consent orders and judgments and to judgments or orders "as to costs only that, by law, are left to the discretion of the judge." Placing this authority within the judge of first instance may recognize that: these orders are often made without recorded reasons; the judge below, given their first-hand knowledge, may be in the best position to evaluate the merits of the proposed appeal; and the appellant would face a high bar on appeal.

[10] At the hearing of this application on October 14, 2025, SGI questioned whether the application for leave to appeal was filed in time, citing the 15-day time limit in *The Court of Appeal Rules* at Rule 11, which is reproduced below.

> **Appeals requiring leave**
>
> **11**(1) Subject to any statute governing the appeal, where leave to appeal is necessary, the application for leave shall be made within 15 days after the date of the judgment or order sought to be appealed from or within such time as ordered by the court or a judge.

[11] As stated above, the *Costs Award* is dated August 15, 2025 and the application for leave to appeal against that decision was filed October 9, 2025, so well after 15 days. I am not convinced that *The Court of Appeal Rules* apply to an application under s. 6-14 of *The King's Bench Act*. But if they do, I would grant an extension of time so that the application for leave to appeal could be heard.

[12] As set out above, Ms. Yashcheshen filed on August 18, 2025 notice of appeal in the Court of Appeal against the *Costs Award*: CACV 4616. I expect Ms. Yashcheshen later filed this leave application in case her first appeal was found to be filed incorrectly. The earlier notice of appeal demonstrates an early intention to appeal against the *Costs Award*, which is relevant to granting relief against any time limit.

[13] Subsection 6-14(b) requires leave to this Court for "judgments given … by a judge as to costs only". As noted above, the *Judgment* on which the *Costs Award*

is based was previously appealed to the Court of Appeal.

[14] Section 38 of *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01 (repealed and replaced by *The King's Bench Act*, s 6-14) was judicially considered in *Collis v Saskatchewan Government Insurance*, 2002 SKCA 64 at paras 22-23, [2002] 8 WWR 30 [*Collis*]. Jackson J.A. for the Court of Appeal wrote:

> [22] Mr. Collis's counsel next argues that s. 38 of *The Queen's Bench Act, 1998* required that leave be obtained by the Court of Queen's Bench before proceeding to this Court. Clause 38(b) provides:
>
> > **No appeal of certain judgments without leave**
> >
> > 38 Except with leave of the judge giving the judgment or making the order, the following judgments and orders are not subject to appeal:
> >
> > ...
> >
> > (b) subject to the rules of court, judgments given or orders made by a judge as to costs only that, by law, are left to the discretion of the judge.
>
> [23] This is not a judgment made as to costs only. It is, as the above judgment taken out reveals, a judgment finding SGI in contempt and, on that basis, the chambers judge awarded solicitor and client costs.

[15] This reasoning strikes me as applicable to this application. As in *Collis*, Ms. Yashcheshen seeks to appeal against more than an award of costs. The *Judgment* and *Costs Award* are in two separate, but related, decisions. The *Costs Award* arises from the *Judgment*. If the existing appeal against the *Judgment* is allowed, then any appeal against the *Costs Award* becomes moot.

[16] It appears to me that ss. 6-14(b) of *The King's Bench Act* does not apply to the proposed appeal, since the appeal is not "as to costs only". The existing appeals in the Court of Appeal are related. However, in case I am wrong, I will go on to consider

the proposed grounds of appeal.

[17] Ms. Yashcheshen, in her brief of law filed October 9, 2025 at para. 27, summarized her grounds of appeal as follows:

> **IV. Grounds of Appeal**
>
> [27] The Appellant submits that the trial judge erred in principle or exercised discretion unreasonably by:
>
> (a) Disregarding Financial Hardship and Disability – Justice Robertson failed to give meaningful weight to uncontroverted evidence of the Applicant's chronic medical disability and financial incapacity, contrary to the proportionality mandate in Rule 11-1 and the access-to-justice considerations recognized in *Choubal* [*1348623 Alberta Ltd. v Choubal*, 2016 SKQB 200, 94 CPC (7th) 210] and *Thomas* [*Thomas v Saskatchewan Indian Gaming Authority*, 2021 SKCA 164].
>
> (b) Misapplication of Tariff Columns – Costs were awarded on Column 3 without adequate findings of exceptional complexity. The record shows no novel legal issues or factual intricacy warranting the highest column.
>
> (c) Improper Second Counsel Costs – Second counsel costs were granted without identifying any necessity or exceptional circumstances to justify the additional expense when SGI has demonstrated a pattern of wasteful legal spending.
>
> (d) Failure to Mitigate or Scrutinize SGI's Costs – Justice Robertson failed to consider SGI's wasteful or duplicative disbursements, including couriering documents already emailed, which inflated the Bill of Costs.
>
> (e) Punitive Reliance on Conduct – The decision placed undue emphasis on alleged "wilfully frustrating behaviour" of the Applicant/Plaintiff as a punitive factor, rather than applying the neutral statutory factors in Rule 11-1(4).
>
> (f) Inadequate Reasons – The judgment does not provide sufficient reasoning linking the *Choubal* factors to the

high-column award, demanding appellate review.

[18] The Saskatchewan Court of Appeal in *Rothmans, Benson & Hedges Inc. v Saskatchewan*, 2002 SKCA 119, 227 Sask R 121 set out the principles under which leave to appeal is determined. First, is the proposed appeal of sufficient merit to warrant the attention of the Court of Appeal. And second, is the proposed appeal of sufficient importance to the proceedings before the court, or to the field of practice or the state of the law, or to the administration of justice generally, to warrant determination by the Court of Appeal?

[19] SGI argued that the proposed grounds of appeal did not merit granting leave to appeal. SGI noted the high bar for appeal of a costs award, citing *McNabb v Cyr*, 2018 SKCA 51 at para 31:

> **B. Standard of Review**
>
> [31] It is well-settled that an order of costs is a discretionary order and that an appellate court will interfere only if it is shown that the order was made arbitrarily or without regard to the applicable principles. In *Wongstedt v Wongstedt*, 2017 SKCA 100, [2018] 4 WWR 82, Caldwell J.A. said, "the appellate court looks to see whether the judge misapplied some governing principle or rule or disregarded some critical fact or other consideration or whether the costs award is itself 'so obviously unjust as to invite intervention'" (at para 41, quoting *Benson v Benson* (1994), 120 Sask R 17 (CA) at para 90). See also *K.R. v J.K.*, 2018 SKCA 35.

[20] With respect to "disregarding financial hardship and disability", the *Costs Award* addressed this claim in paras. 131-135. Although I agree with SGI's argument there was no evidence adduced to support either claim, I nonetheless accepted at para. 135 that "the plaintiff is a person with limited means."

[21] With respect to "misapplication of tariff column", the *Costs Award* at paras 109–117 addressed the question of which tariff column was appropriate. SGI pointed out that Ms. Yashcheshen's ground of appeal erroneously states that costs were

awarded on Column 3. Although at para. 139 of the *Costs Award* I found that Column 3 would otherwise be appropriate, having regard to the factors stated in *1348623 Alberta Ltd. v Choubal*, 2016 SKQB 200, 94 CPC (7th) 210 [*Choubal*], I concluded that Column 2 should be chosen, having regard to "the limited financial means of the plaintiff".

[22] With respect to "improper second counsel costs", the *Costs Award* at paras 140-148 addressed the question of second counsel costs. SGI pointed out that Ms. Yashcheshen, in her brief of law at para. 14, raise "the Applicant's self-represented status and limited resources", which SGI argued are irrelevant to the question of second counsel costs.

[23] With respect to "failure to mitigate or scrutinize SGI's costs", the *Costs Award* at para 107 accepted SGI's claim for disbursements, referring to the affidavit filed in support.

[24] With respect to "punitive reliance on conduct", SGI argued that any comments from the *Costs Award* were supported by the history of the litigation.

[25] With respect to "inadequate reasons", the *Costs Award* addresses SGI's request for costs at paras. 107-149. Ms. Yashcheshen's brief of law at para. 27 elaborates on this ground, stating "The judgment does not provide sufficient reasoning linking the *Choubal* factors to the high-column award, demanding appellate review." SGI argued that, to the contrary, the *Costs Award* expressly addresses the "*Choubal* factors". Further, the *Costs Award* is at the high end of reasons given in awarding costs in terms of providing explanation.

[26] I agree with SGI that these grounds do not merit appellate review.

[27] I did consider whether there was a public policy issue that merited the attention of the Court of Appeal with respect to the first ground of the potential adverse

impact on access to justice from an award of costs against a person of limited financial means.

[28] Ms. Yashcheshen at para. 11 of her brief of law stated "A high-column award risks creating a prohibitive financial barrier and undermines the very principles articulated in *Choubal*."

[29] The financial means of the party against whom costs are sought is only one of several factors for the Court to consider. Ms. Yashcheshen appears to argue that where that party is impecunious or of limited financial means, then that factor should be the dominant or determinative factor, such that there should either be no award of costs or only a nominal award. The apparent rationale would be that it is better that successful defendants bear the burden of defending claims, even from vexatious litigants, than to discourage access to justice by the prospect of a costs award.

[30] The *Costs Award* at paras 131-136 did address "Access to Justice", citing *Yashcheshen v Teva Canada Ltd.*, 2022 SKCA 49 at para 127, [2022] 8 WWR 60, where the Court of Appeal stated that "The financial circumstances of a litigant are a factor to be considered in awarding costs, but it is not a determinative factor, (see Rule 11-1(4))." The Court of Appeal, at para. 126, referred to three previous decisions rejecting Ms. Yashcheshen's argument that she was immune from a costs award as an indigent litigant: *Yashcheshen v University of Saskatchewan*, 2019 SKCA 67 at paras 32-35, 62 Admin LR (6th) 15 [*Yashcheshen CA 2019*], leave to appeal to Supreme Court of Canada dismissed with costs 2020 CanLII 97854; *Yashcheshen v Canada (Attorney General)*, 2021 SKCA 116 at para 23; and *Yashcheshen v Law School Admission Council Inc.*, 2021 SKCA 149 at para 45.

[31] The fact that the Supreme Court of Canada dismissed Ms. Yashcheshen's appeal in *Yashcheshen CA 2019* "with costs" is telling.

[32] These decisions have been followed and applied by this Court in awarding costs, including in *Yashcheshen v Canada (Attorney General)*, 2020 SKQB 188 at para 53 and *Yashcheshen v Canada (Attorney General)*, 2020 SKQB 185 at para 83, in which Mitchell J. concluded at para. 84 "that the ordinary rule for awarding costs should be followed in this matter."

[33] Having regard to the existing case law dealing with this issue, I am not persuaded the issue requires further consideration by the Court of Appeal.

[34] In conclusion, I dismiss the application for leave because I conclude that s. 6-14 does not apply. There are already appeals before the Court of Appeal, including on the issue of costs. That Court will determine whether and how they proceed. If I am wrong and I was required to decide on whether to grant leave to appeal, I would not do so because I am not persuaded the grounds of appeal raise questions which merit the attention of the Court of Appeal, having regard to the discretionary nature of costs and the questionable foundation for the grounds.

(b) Should the Court stay enforcement of the *Costs Award*?

[35] *The Court of Appeal Rules*, in Rule 15(2)(a), authorizes the judge appealed from to stay the execution of the judgment.

> **Application for stay pending appeal**
>
> **15**(1) Unless ordered pursuant to Subrule (3) or otherwise provided by law, the service and filing of a notice of appeal or an application for leave to appeal does not:
>
> (a) stay the execution of the judgment appealed from;
>
> (b) stay proceedings in the action; or
>
> (c) invalidate any intermediate act or proceeding taken pursuant to the judgment.

> (2) An application to stay the execution of all or part of a judgment or to stay proceedings pending an appeal may be made to:
>
> (a) the judge appealed from; or
>
> (b) a judge of the court. (Forms 5a and 5b)

[36] Having regard to my conclusion on the question of leave to appeal, I decline to stay enforcement of the *Costs Award*.

[37] The Court of Appeal changed its Rules to require application to stay a decision under appeal. It appears open to Ms. Yashcheshen to apply under Rule 15 to the Court of Appeal for a stay of enforcement of the *Costs Award*. I leave the question of stay to the Court of Appeal.

(c) Should permission be given to record Chambers appearances?

[38] Ms. Yashcheshen's request to record the Chambers hearing relied upon ss. 29(1)(b) of *The Evidence Act*, SS 2006, c E-11.2, which is reproduced below:

> **Authority to make recording of evidence**
>
> **29**(1) Notwithstanding anything in any other Act:
>
> (a) the evidence in any proceeding, or any portion of that evidence, may be recorded by a sound recording device; and
>
> (b) a court may order that the evidence in any proceeding, or any portion of that evidence, shall be recorded by a sound recording device.

[39] Ms. Yashcheshen's reliance upon this provision was misplaced. A reading of this section in the context of the full statute, in particular the following sections 30–37 all of which reference s. 29, confirm that s. 29 applies to official recording of proceedings by the court, not third party recordings. This construction is reinforced by *The Recording of Evidence by Sound Recording Machine Regulations*, RRS c R-6, Reg 1, which provides for permitted sound recording machines used by the

court and a 90-day retention period of recordings by the court. Simply put, the legislation relied upon by Ms. Yashcheshen does not contemplate third-party recordings.

[40] On the contrary, *The King's Bench Rules* in Rule 9-33 expressly prohibits third-party recording of court proceedings. Rule 9-34 contemplates requests to obtain a copy of court recordings, but only for trial proceedings.

> **Recording of proceedings**
>
> **9-33** No person shall record by any device, machine or system the proceedings of any Court or chambers:
>
> (a) without leave of the presiding judge; and
>
> (b) except as provided by *The Evidence Act* or any order issued pursuant to that Act.
>
> **Court recording of proceedings – request for copy**
>
> **9-34**(1) In this rule, **'recording of a proceeding'** means an audio or video recording of a proceeding made by or on behalf of the Court, but does not include a recording made of a chamber application, a pre-trial conference or a case management conference.
>
> (2) Court recordings of chamber applications, pre-trial conferences and case management conferences do not form part of the Court record, and no access to these recordings shall be granted by the Court to any party, lawyer of record, member of the media, or member of the public.
>
> (3) Subject to subsection (4) and to any enactment, rule or order restricting access to a proceeding, no person shall obtain or make a copy of a recording of a proceeding except by order of the Court.
>
> (4) The local registrar may provide a copy of the recording of a proceeding to a lawyer of record who files a request with the Court in Form 9-34A.

> (5) Any person, other than a lawyer of record, seeking a copy of the recording of a proceeding must file an application with the Court in Form 9-34B.
>
> (6) On receipt of an application pursuant to subrule (5), the Court may do any of the following:
>
> > (a) require that notice of the application be given to the other parties to the proceeding or to other interested persons;
> >
> > (b) set the matter down for a hearing;
> >
> > (c) grant the application, on any terms and conditions that the Court may direct;
> >
> > (d) dismiss the application.
>
> (7) An order granting a request for a copy of the recording of a proceeding shall be in Form 9-34C, with any additional terms and conditions that the Court may direct.

[41] In *Battlefords Tribal Council Inc. v Federation of Saskatchewan Indians Inc.*, 2008 SKQB 65, 63 CPC (6th) 95, [*Battlefords Tribal Council*] Popescul J. (as he then was) considered *The Evidence Act*, *The Recording of Evidence by Sound Recording Machine Act*, RSS 1978, c R-6 (since rep), and the former *Queen's Bench Rules*, in particular Rules 468 and 469, in ruling that the Court's audio recording of a Chambers appearance should not be provided to the parties in that proceeding. In doing so, Popescul J. recognized the different purpose of recording Chambers appearances, where the Court hears argument based upon affidavit evidence, and trials, in which witnesses testify and give oral evidence.

> [18] Essentially, therefore, the audio recording is utilized as an extension of the chambers judge's own notes and to assist the chambers clerk in accurately and expediently recording oral fiats on the court file.
>
> [19] There is no useful purpose to be served by preserving audio recordings or transcriptions of the arguments of counsel and/or dialogue between counsel and the judge once the fiat has been rendered. Such a recording or transcript of a recording is of no use to the appellate court because the record of evidence and the

> decision of the Court is contained on the court file. The essence of why the chambers judge decided the way he or she did would be contained within the decision.
>
> [20] The judge is entitled to control his or her own court. If he or she chooses to permit an audio recording to be made for his or her purposes or as an aid to the chambers clerk, such a decision is within the absolute discretion of that presiding chambers judge. As a result, some chambers proceedings may be audio recorded, while others may not be.
>
> [21] Given the purpose of audio recording of chambers, the inconsistent and *ad hoc* basis upon which it is done, the lack of a legislative requirement or court rule to create and keep such an audio recording, and the absence of any rational basis to which a recording of "argument" can be used subsequent to a decision being rendered, I see no reason to exercise my inherent discretion to direct the Registrar to provide the audio recordings of the chambers proceeding to counsel.
>
> [22] To transform the current practice of "non-transcript chambers" into a process that is tape recorded, transcribed and disseminated to the parties and the general public would have a negative overall impact. Administrative costs and inconvenience would be incurred for little or no benefit. Furthermore, and perhaps more importantly, there would be a potentially chilling effect upon the otherwise free and frank dialogue that occurs between the Bench and the Bar during the chambers process if every word or position needed to be measured with exactitude.

[42] Rules 9-33 and 9-34 of *The King's Bench Rules* appear to be a codification of *Battlefords Tribal Council*. *Battlefords Tribal Council* has been cited and followed in subsequent decisions of this Court and the Court of Appeal which applied those Rules:

(a) *Phillips Legal Professional Corporation v Vo*, 2017 SKCA 58, [2017] 12 WWR 779, [*Phillips CA #1*]; affirming 2015 SKQB 248 473 Sask R 48;

(b) *George Gordon First Nation v Saskatchewan*, 2020 SKQB 91 [*George Gordon*];

(c) *Sawatsky v Isfeld*, 2021 SKCA 141 [*Sawatsky*];

(d) *Jackson v Jackson*, 2022 SKQB 114 at para 57 [*Jackson*]; and

(e) *Phillips v Vo*, 2023 SKCA 20, 478 DLR (4th) 359 [*Phillips CA #2*]; reversing 2022 SKQB 41

[43] In *Phillips CA #1* at paras 86-87, the Court of Appeal quoted from *Battlefords Tribal Council* in applying those reasons to deny production of the recording of an assessment of costs hearing:

> [86] However, Mr. Phillips's best evidence argument is based again on the premise that the assessment hearing should be treated as a trial for which a transcript of the evidence is available. There was no *viva voce* evidence to be recorded in this case. As is often the case with tribunals or courts, a recording is made for administrative purposes to assist officials to do their work properly. The purpose of the recording is similar to a recording that may or may not be made of a matter heard in Chambers. In *Battlefords Tribal Council Inc. (c.o.b. Battlefords Tribal Council) v Federation of Saskatchewan Indians Inc.*, 2008 SKQB 65, 63 CPC (6th) 95, Popescul J. (as he then was) explained the following:
>
> > [11] There are no legislative enactments or court rules that require the audio recording of chambers.
> >
> > …
> >
> > [18] Essentially, therefore, the audio recording is utilized as an extension of the chambers judge's own notes and to assist the chambers clerk in accurately and expediently recording oral fiats on the court file.
>
> [87] The Court in that case declined to release the audio recording. The reasons for doing so were set out as follows:
>
> > [21] Given the purpose of audio recording of chambers, the inconsistent and *ad hoc* basis upon which it is done, the lack of a legislative requirement or court rule to create and keep such an audio recording, and the absence of any rational basis to which a recording of "argument"

> can be used subsequent to a decision being rendered, I see no reason to exercise my inherent discretion to direct the Registrar to provide the audio recordings of the chambers proceeding to counsel.
>
> [22] To transform the current practice of "non-transcript chambers" into a process that is tape recorded, transcribed and disseminated to the parties and the general public would have a negative overall impact. Administrative costs and inconvenience would be incurred for little or no benefit. Furthermore, and perhaps more importantly, there would be a potentially chilling effect upon the otherwise free and frank dialogue that occurs between the Bench and the Bar during the chambers process if every word or position needed to be measured with exactitude.

> [88] These comments apply with equal force in this case. The hearing before the assessment officer was similar to a Chambers hearing. There are no legislative enactments or court rules requiring the audio recording. The recording that was made was not evidence or an official record of the proceedings but merely an aid to assist the assessment officer – an extension of her own notes. This distinction must be kept in mind. The evidence before the assessment officer was exclusively documentary and the parties' arguments did not constitute evidence. Generally speaking, as with a Chambers decision, an appellate court simply requires the decision of the assessment officer and the evidence tendered, in this case, the file material.

[44] In *George Gordon*, I denied a request for a transcript of the hearing of a summary judgment application heard over four days.

> [15] I find that Rule 9-34(2) applies to a summary judgment application heard outside of regular civil chambers. The availability of a recording does not depend upon whether the application is heard in regular chambers, as may still occur, or on its own on a scheduled date. It is the nature of the hearing, without *viva voce* evidence (live witnesses), that is relevant. The record of this hearing will be the affidavits and agreed statement of facts filed by the parties. The decision will speak for itself. If that decision is appealed, the recording of the proceeding will not form part of the appeal record, unless the Court of Appeal directs otherwise.

[45] In *Sawatsky* at paras 7 - 11, Barrington-Foote J.A. for the majority refused to admit the audio recording of a Chambers hearing from the then Court of Queen's Bench on the appeal of the Chamber's judge's decision.

> [7] Like Schwann J.A., it is also my opinion that Mr. Sawatsky's fresh evidence application should be granted, as it satisfies the test specified in *R v Palmer*, 1979 CanLII 8 (SCC), [1980] 1 SCR 759.
>
> [8] There is also the matter of the audio recording of the January 13, 2021, Chambers hearing before Acton J. As Schwann J.A. explains in her reasons, a memory stick containing that audio recording was taped to the Queen's Bench file. The parties had not heard the recording and were unable to say why it was there. Further, neither party applied to adduce the audio recording as fresh evidence on this appeal.
>
> [9] Ms. Isfeld urged the panel to listen to the recording. Mr. Sawatsky did not object to that suggestion. I have concluded that it would nonetheless be inappropriate to treat the audio recording as evidence. Neither counsel claimed to have been given permission to access the recording. Indeed, counsel for Ms. Isfeld was denied access. That is consistent with the practice in the Court of Queen's Bench, which generally treats recordings of Chambers proceedings as solely for the use of the judges of that Court: see Rule 9-34 of *The Queen's Bench Rules*.
>
> [10] In these circumstances, I am not prepared to admit the audio recording as evidence.
>
> [11] Further, access to the recording is not required, as there is sufficient evidence to decide this appeal without it. The issue in relation to the January 13 hearing is whether Acton J. became seized of the family law application. The parties agree as to the substance of what transpired at the January 13 hearing. The matters on which they agree, together with the endorsement on the Queen's Bench file, are sufficient to confirm that Acton J. was seized. Further, as noted above, Mr. Sawatsky conceded that point on this appeal.

[46] In *Jackson*, Megaw J. denied the application of the respondent seeking an order requiring the Chambers proceeding on a contempt application to be recorded and to preserve that recording for use on any ultimate appeal.

[47] In *Phillips CA #2*, the Court of Appeal held that the request by a lawyer for a copy of a Chambers hearing for the purpose of defending himself in a Law Society discipline proceeding should be granted where it could be relevant to the Law Society proceeding.

> [26] Rather, the scheme of Rule 9-34(5) and the Forms themselves is to the clear effect that a copy of a recording should be released if it is sought for an acceptable purpose, if the proposed manner of its use will not be problematic and if its use will be limited to the purpose in question. …
>
> ...
>
> [30] Thus, as for the terms of Rule 9-34(5) and the Forms themselves, the bottom line is this: in circumstances where a copy of a recording is requested so that it may be used in a legal proceeding, including as here the defence of professional discipline charges, a Chambers judge should avoid being drawn into a *de facto* adjudication of matters that will be sorted out in the other proceeding. So long as it is reasonable to believe that a copy of the recording could be of some relevance in the legal proceeding, the judge should grant the application. They should resist making an assessment of how important or necessary the recording will be to the applicant's case and then granting access to the recording on the basis of that assessment.

[48] Similar to the request in *Jackson*, Ms. Yashcheshen asked for permission to record the Chambers appearance for future use in possible complaint and discipline proceedings against one of SGI's lawyers. In her brief of law at paras. 20, 22 and 32, Ms. Yashcheshen wrote:

> [20] The Applicant alleges repeated incidents of harassment and abusive conduct by opposing counsel, Mr. Reg Watson, including verbal attacks and disruptive outbursts during open court. A verbatim audio record is necessary to capture tone, interruptions, and exact wording that a written transcript may not fully convey. Accurate evidence is essential for any subsequent disciplinary or civil proceedings.
>
> ...

> [22] The Applicant intends to provide the recording to the Law Society of Saskatchewan, to law enforcement for potential criminal harassment investigations, and to relevant foreign authorities to document the treatment she receives in a Canadian courtroom. These purposes fall squarely within the evidentiary objectives contemplated by *The Evidence Act*.
>
> ...
>
> [32] The companion application under s. 29(1)(b) of *The Evidence Act* is equally grounded in law and necessity. Saskatchewan courts have recognized that accurate audio evidence may be required to protect the integrity of the record and the fairness of the process (*R. v. Nikolovski*, [1996] 3 S.C.R. 1197; *Dagenais v. CBC*, [1994] 3 S.C.R. 835). The Applicant has demonstrated repeated incidents of in-court harassment by opposing counsel and seeks to preserve and exact evidentiary record for potential regulatory, civil, and criminal proceedings.
> …

[49] One of the duties of any presiding justice is to keep order in court, including discouraging uncivil behaviour, while respecting the adversarial nature of litigation. In *Groia v Law Society of Upper Canada*, 2018 SCC 27 at para 3, [2018] 1 SCR 772, Moldaver J. observed for the majority of the Supreme Court of Canada that "trials are not – nor are they meant to be – tea parties."

> [2] To achieve their purpose, it is essential that trials be conducted in a civilized manner. Trials marked by strife, belligerent behaviour, unwarranted personal attacks, and other forms of disruptive and discourteous conduct are antithetical to the peaceful and orderly resolution of disputes we strive to achieve.
>
> [3] By the same token, trials are not — nor are they meant to be — tea parties. A lawyer's duty to act with civility does not exist in a vacuum. Rather, it exists in concert with a series of professional obligations that both constrain and compel a lawyer's behaviour. Care must be taken to ensure that free expression, resolute advocacy and the right of an accused to make full answer and defence are not sacrificed at the altar of civility.

[50] For the record, I do not recall having occasion to caution any of SGI's

lawyers during either the trial or Chambers proceedings on this case. There was no misconduct by Mr. Reginald Watson, K.C. or any of SGI's lawyers at the Chambers hearing in question.

[51] Although Mr. Watson did occasionally rise to make objection, he did not make what I consider to be "verbal attacks" or "disruptive outbursts". While Ms. Yashcheshen is entitled to her own opinion, I do note that she was not present in the courtroom during any of the proceedings in which I presided. Given the manner in which the proceedings unfolded, with Ms. Yashcheshen either not appearing or appearing by telephone, SGI's lawyers and Ms. Yashcheshen were never in the same room. When they spoke, I asked they address the Court and not each other. So there was little to no direct exchange between Ms. Yashcheshen and SGI's lawyers.

[52] I denied the application at the time of the Chambers hearing and continue to deny the application for four reasons, any one of which is sufficient reason. First, the application is arguably moot, since the request was for Ms. Yashcheshen to make her own recording of the Chambers appearance. Ms. Yashcheshen, in reply to my question, confirmed she was not recording the Chambers proceeding, which went ahead and is completed. Second, if the application is taken as a request for the Court's recording of proceedings in Chambers, that recording is intended for the use of the Court, not parties or the public. Third, unlike the facts in *Phillips CA #2*, the request for a copy of a recording is based on the applicant's speculation that it might be useful for some future proceeding, not for an actual and identifiable proceeding. Fourth, the factual basis for its use – alleging misconduct in the courtroom by a lawyer – is not supported by my own observation of the proceedings.

(d) What, if any, award should be made on costs for these applications?

[53] Having regard to Rule 11-1 of *The King's Bench Rules*, SGI as the successful party is entitled to an award of costs. I therefore award costs in favour of

SGI fixed at $500 payable forthwith by Ms. Yashcheshen.

J.
D.N. ROBERTSON