



In this issue:

1. [Rules Apply to Self-Represented Litigants: C.A.](#)
2. [Conflict of Interest: Q.B.](#)
3. [Contingency Fees and Bankruptcy Proceedings](#)
4. [Comportment of Counsel: AB.Q.B.](#)
5. [Apology Accepted?](#)

1. Rules Apply to Self-Represented Litigants: C.A.

The Court of Appeal in [Fegol v. National Post Co. et al.](#), 2007 MBCA 27 (CanLII) considers the issue of strict enforcement of the Queen's Bench Rules when one of the parties is a self-represented litigant. The court finds that:

To validate the plaintiff's actions as service in these circumstances would send the wrong message that the Rules can be ignored by self-represented litigants. The essential element of fairness that guides all proceedings does not demand that the Rules be ignored when one of the parties is self-represented. Fairness must be demonstrated to the self-represented litigant, but also to the other party who is represented by counsel....Simply put, self-represented litigants do not "have some kind of special status"....

2. Conflict of Interest: Q.B.

The court in [Alevizos v. Manitoba Chiropractors Association et al.](#), 2007 MBQB 56 (CanLII) considers whether counsel for the defendants should be removed given that a former member of their firm will be called by the plaintiff to testify at trial. The court reviews the law prohibiting a lawyer from being an advocate and a witness in the same cause, as well as the duty of loyalty owed to the client, with reference to Chapters [5](#) and [9](#) of the [Code of Professional Conduct](#). The court ultimately finds that counsel should be removed in this case.

3. Contingency Fees and Bankruptcy Proceedings

The Supreme Court of Canada, on April 19, 2007, refused leave to appeal from the B.C. Court of Appeal decision in [Orion Trucking Centre Ltd. \(Trustee of\) v. CIT Financial Ltd.](#), 2006 BCCA 418 (CanLII). The case dealt with the question of:

...whether in a proceeding for the taxation of solicitors' fees under the current bankruptcy legislation a registrar is required to determine the reasonableness of fees payable on what might be described as the conventional basis despite the existence of a contingent fee agreement between a trustee in bankruptcy and its solicitors. The B.C. Court of Appeal approved the solicitors' contingent fee.

4. Comportment of Counsel: AB.Q.B.

The decision in [Re Dool \(Estate of\)](#), 2007 ABQB 12 (CanLII) serves as a reminder to counsel of the potential costs of uncivil behaviour. The court was hearing a motion by the challengers of a will to discontinue their claim on the basis of financial and health reasons. The respondent was seeking costs. On the facts, the applicants were permitted to withdraw without costs, and with their own costs being paid from the estate. Aside from the discussion on costs, the reasons also include a section specifically entitled "Comportment of Counsel" which addresses the manner in which counsel for the respondent (mis)behaved toward both opposing counsel and the court.

5. Apology Accepted?

Opposition [Bill 217, The Apology Act](#), was introduced in the provincial legislature on April 12, 2007. The Act would permit the making of an apology that could not then be "admissible in a court as evidence of the fault or liability of the person in connection with the matter." Similar legislation came into effect in British Columbia in the spring of 2006. For an examination of the issues surrounding this kind of legislation, see the B.C. Ministry of Attorney General's 2006 [Discussion Paper on Apology Legislation](#).

[Go to the eLaw Archive](#)

The Law Society of Manitoba provides this service solely for the benefit of and to support the competence of its members. Members should exercise their professional judgment in using or adapting any content.