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1. No Compensation for 3rd Party Production Order: S.C.C.

The Supreme Court in [Tele-Mobile Co. v. Ontario](#), 2008 SCC 12 considered whether Telus could be exempted from compliance with a third-party production order made pursuant to *Criminal Code* ss. 487.012. The court found that compensation was not available to the third party for compliance with the order and that the exemption provision (s. 487.015(4)) could adequately address any issues relating to undue expenses of compliance where these were found to be unreasonable. Dealing with the question of what is unreasonable the court held that:

In essence, the financial consequences must be so burdensome that it would be unreasonable in the circumstances to expect compliance. This, I readily acknowledge, is a somewhat tautological explanation, but I see no purpose in offering alternative definitions for a term so well known and understood as having a fact-specific compass. What is reasonable will be informed by a variety of factors, including the breadth of the order being sought, the size and economic viability of the object of the order, and the extent of the order's financial impact on the party from whom production is sought. Where the party is a repeated target of production orders, the cumulative impact of multiple orders may also be relevant.

The article [Supreme Court of Canada Denies Compensation to Third Party for Costs of Complying with Production Order](#) by Mark Morrison and Michael Dixon of [Blakes](#) published in the April 1, 2008 *Blakes Litigation Bulletin* summarizes the court's decision and provides some additional commentary.

2. Another Look at Pure Economic Loss and Bird Construction: C.A.

The Court of Appeal dismissed the defendant's summary judgment motion in [Brett-Young Seeds Ltd. et al. v K.B.A. Consultants Inc. et al.](#), 2008 MBCA 36 (CanLII). The court found that:

I am of the view that the judge did not err when he concluded that the plaintiffs have demonstrated that there is a genuine issue as to the defendants' liability in the circumstances of this case. I am, however, of the view that he erred in law when he concluded that [Bird Construction](#) precludes the plaintiffs' claim for loss of profits. A review of the decision of La Forest J., at minimum, leaves the door open for the plaintiffs' claim. Both the jurisprudence and academic commentary subsequent to *Bird Construction* supports this conclusion and demonstrates that the plaintiffs' claim relates to a developing area of the law. As such, it would be unjust to decide the

3. Vexatious Litigants in the Court of Appeal

In [Benson v. Workers' Compensation Board \(Man.\) et al.](#), 2008 MBCA 32 (CanLII) the court considered the question of availability of vexatious litigant orders in the Court of Appeal and found that:

Though I have concluded that this court does not have the power to make the blanket prohibition order sought by CNR barring Benson from instituting further proceedings against it, we are far from powerless to prevent abuse. Benson has already been declared a vexatious litigant in the Court of Queen's Bench and cannot commence proceedings there without judicial permission. If he obtains that permission, he should be free to appeal the outcome of the particular matter. If he does not obtain that permission, he must not be allowed to continue.

The court went on to make a [Pelisek](#) order finding that the plaintiff "...has persistently and without reasonable grounds instituted vexatious proceedings in this court and has, as a result, abused our process" and prohibiting the plaintiff from filing any further motions, applications or appeals in the matter without first obtaining leave.

4. Patient Safety and the Canadian Disclosure Guidelines

On Tuesday, May 13, 2008 at 12:00 p.m., the [Health Law Section](#) of the Manitoba Bar Association will present on the [Canadian Disclosure Guidelines](#) recently published by the [Canadian Patient Safety Institute](#) and will address the question of the potential impact of those Guidelines on patient safety and malpractice litigation in Canada. [Contact the MBA](#) for further details and to register for the program.

5. Upcoming CLEs for Litigators

The following upcoming Law Society CLE programs will be of interest to civil litigators:

- [Residential School Settlements: Navigating the Independent Assessment Process](#), May 28, 2008 from 9:00 a.m. - 4:00 p.m.
 - [When to Say "I'm Sorry" - Implications of the New Apology Legislation](#) on June 3, 2008 from 12:00 - 1:30 p.m.
 - [Civil Actions Involving Minors](#) on June 5, 2008 from 12:00 - 1:30 p.m.
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