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1. Recent Cases of Note

In [F.H. v. McDougall](#), 2008 SCC 53, the Supreme Court of Canada declared "once and for all" that there is but a single civil standard of proof that does not vary with the seriousness of the allegations made by a plaintiff (para.40). The court dispelled the notion that there is a standard of proof "commensurate with the allegations" and clarified that in all cases evidence must be sufficiently "clear, convincing and cogent" (para.46) to satisfy the balance of probabilities test.

The Manitoba Court of Appeal recently released its decision in [Koropeski v. American Biaxis Inc.](#), 2008 MBCA 130. The case concerns a wrongful dismissal suit and contains some interesting observations regarding management status and compensation for overtime.

In [Commonwealth Marketing Group Ltd. v. The Manitoba Securities Commission](#), 2008 MBQB 319 Justice Schulman found that no case had been made out to strike a statement of defence on the basis that intentional destruction of taped evidence impacted the plaintiffs' ability to have a fair trial. The judge reviews the law of spoliation and concludes that a qualitative assessment of the defendant's act and its impact on the plaintiffs should be left for the trial judge on the condition that the defendants make no use of the transcript during the discovery process.

2. Conflicts of Interest not Black and White

In yet another in a long line of court decisions on conflicts of interest, the Ontario Superior Court of Justice has granted a motion to remove an Ontario law firm as counsel of record on the grounds of a disqualifying conflict of interest created by the transfer of a litigation associate from a firm acting for the moving party: [1964 Bay Inc. \(Budget Car Rentals Toronto Limited\) \(Re\)](#), 2008 CanLII 54295 (ON S.C.). Although the court agreed there was a sufficient explanation for the delay in implementing a protective ethical screen in this case, it found the screening mechanism itself to be deficient. In allowing a member of the firm who was engaged in the retainer to establish the screen and in failing to promptly inform the moving party of the conflict the firm "fell short of satisfying the objective test, that on the basis of clear and convincing evidence, all reasonable measures were taken to ensure that no disclosure would occur by the "tainted" lawyer to members of the firm who are engaged against" the interests of the moving party.

As the court notes, conflicts of interest come in many shades of grey and can be costly for all. The complexities are highlighted in Simon Chester's article *The Conflicts Challenge* published in the December 2008 edition of [Headnotes and Footnotes](#). Another look at the August 2008 [Final Report](#) and [Toolkit](#) published by the Canadian Bar Association [Task Force on Conflicts of Interest](#)

is recommended. The toolkit includes checklists, precedent agreements and model letters that can be adapted for your practice. And on a related topic see the November 14, 2008 *Lawyers Weekly* article [Handling lawyer exits](#), which highlights the challenges of lawyer mobility and suggests some management techniques to ensure smooth exits.

3. Supreme Court Notice re: Filing of Electronic Documents

The Supreme Court of Canada has issued a [Notice to the Profession](#) dated December 2008, concerning the filing of electronic documents. The notice indicates that parties are now required to file electronic versions of notices of appeal, factums, records and books of authorities, which will be accessible during hearings. The format of these documents must follow the [Guidelines for Printed and Electronic Versions of Appeal Documents](#). Parties must still file the printed version of the documents prepared according to the requirements of the [Rules](#) of the court.

4. Research Tips

Select English Reports from 1220 to 1873 can now be accessed free online on the [CommonLII website](#) based on data provided by [Justis](#).

[Regulation 413/08](#) under Ontario's [Legislation Act, 2006](#) came into force on November 30, 2008, making copies of statutes and regulations published on [e-Laws](#) (Ontario's legislation website) official copies of the law. Until the regulation came into effect only laws printed by the Queen's Printer were official sources of the law.

The Ontario government has also announced significant changes to its civil rules designed to increase access to justice and speed up the process. See the December 11, 2008 [News Release](#) for further details.

5. Winter CLEs

Those who missed last month's program concerning the new rules on client identification and verification (in effect December 31, 2008) will have another opportunity to learn about the rules at the repeat program ["Know Your Client" Rules](#). The program, presented by Barney Christianson, Q.C., takes place at the Law Society on Wednesday, January 7, 2009 from 12:00 noon - 1:30 p.m. Contact the [Law Society](#) for further details, to register for the program, or to download sample forms to assist in complying with the rules.

The Manitoba Bar Association will offer several continuing legal education sessions of interest to litigation lawyers at its annual [Mid-Winter Meeting](#) on January 23, 2009, including:

- 9:30 - 11:30 a.m. - *Trial Evidence/Process Refresher*, a panel discussion of evidentiary basics at trial, including common objections, documentary evidence and expert evidence;
- 9:30 - 11:30 a.m. - *Demystifying the "New" Standards of Review, Post-Dunsmuir*, an overview of the review of administrative decisions;
- 9:30 - 11:30 a.m. - *Dispute Resolution & Mediation Skills for Lawyers*, concerning conflict management techniques; and
- 2:00 - 4:00 p.m. - *Class Actions*, how they are handled in Manitoba and the certification application.

Contact the [Manitoba Bar Association](#) for further details and to register.

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