



eLaw - Litigation Update

September 2009 - No. 33

ISSN 1916-393

In This Issue

[Summary Judgment
Process Confirmed: Man.
CA](#)

[More on Spoliation](#)

[Facebook Profile Relevant:
ON. S.C.](#)

[Proposed Limitation of
Actions Act Changes](#)

[Small Claims Court Fee
Change](#)

[Litigation Publications](#)

[Upcoming CPD Programs:
LSM](#)

[Fall Conferences: CBA](#)

New season, new look. We've switched to a different service to create and deliver eLaw. Your feedback, especially regarding technical issues, is welcome.

Contact us at elaw@lawsociety.mb.ca.

Summary Judgment Process Confirmed: Man. CA

In [Perth Services Ltd. v. Quinton](#), 2009 MBCA 81 the Court of Appeal upheld the decision in [Towers Ltd. v. Quinton's Cleaners Ltd.](#), 2009 MBQB 34 granting Perth Services summary judgment of its cross and third-party claims against Quinton's for full indemnification concerning a contamination claim it had settled. Quinton's, who had declined to defend the action settled by Perth Services, argued that the case could not be determined on summary judgment since there were genuine issues for trial. The Court of Appeal found no basis to intervene, holding the judge's reasoning to be a "good illustration of the process that should be undertaken by a judge in a complex summary judgment motion. The reasons reflect an appreciation of the applicable law, the rules of evidence, the facts and the balancing of factors that is implicit in the exercise of discretion." (para.46)

More on Spoliation

In [Kulynych v. Manitoba Lotteries](#), 2009 MBQB 187 the court rejected the plaintiff's argument for an adverse inference of spoliation because there was no proof the video surveillance tapes supporting the defendant's evidence had been intentionally destroyed.

A wide range of remedies is available in spoliation cases, as pointed out in an article in the Summer 2009 [Fillmore Riley Report](#): *Spoliation: The Consequences of Destroying Evidence*. The author urges organizations to develop record management policies, noting that it is much easier to rebut a presumption of intentional destruction of evidence if a reasonable policy

mandating destruction was followed.

Facebook Profile Relevant: ON. S.C.

Following [Leduc v. Roman](#), 2009 CanLII 6838 (discussed in [Update No. 30](#)), the Ontario Superior Court has again ordered production and preservation of Facebook documents, this time in a medical and rehabilitation benefits case: [Wice v. Dominion of Canada General Insurance Company](#), 2009 CanLII 36310 (ON S.C.).

Proposed *Limitation of Actions Act* Changes

A [Draft Report for Consultation on The Limitation of Actions Act](#) and an [executive summary](#) of the report are now available on the Manitoba [Law Reform Commission website](#). Proposed changes include: abolition of the various categories of claims set out in the current Act, and their replacement with a single, basic two year limitation which would begin running when the existence of a claim was discovered or discoverable; and a 15 year ultimate limitation, running from the date on which the act or omission on which the claim is based occurred. After this, no claim could be brought, regardless of discoverability. The Commission seeks comments on all aspects of the consultation report, and, in particular, in relation to the abolition of special limitations provisions applicable to real property claims.

Small Claims Court Fee Change

[The Law Fees and Probate Charge Regulation, amendment \(M.R. 97/2009\)](#) has changed the calculation of filing fees for Small Claims Court actions under [Manitoba Regulation 322/87R](#). Effective July 1, 2009 the fee for claims up to and including \$5000 is \$50 and the fee for claims over \$5000 is \$75.

Litigation Publications

The interactive version of [The Sedona Canada Principles Addressing Electronic Discovery](#) was posted June 23, 2009 on the LexUM [E-discovery Canada](#) website.

In [Honda v. Keays: Back to Baxendale for the Damages Formerly Known as Wallace](#), author Ryan Edmonds explores the impact of the Supreme Court of Canada's surprising decision last summer reformulating the rules on bad-faith damages in employment contract disputes.

Upcoming CPD Programs: LSM

Be sure to register now for the following continuing professional development programs offered by the Law Society of Manitoba this fall:

[Strategic Legal Writing: Preparing Persuasive Documents](#) - Eugene Meehan, Q.C., The Honourable Chief Justice Marc M. Monnin, and Garth Smorang, Q.C. will share their expertise on strategic and persuasive legal writing in this half-day program presented September 10, 2009, 1:00 - 4:00 p.m. at the Law Society classroom. The program will be repeated at the Western Bar Association Annual meeting on September 11, 2009, from 9:00 a.m. - noon, at the Elkhorn Resort, Clear Lake, Manitoba.

[Frauds, Scams and Stings: Lawyers Beware!](#) - Learn how to deal with the increasing threat of scams targeting lawyers at this lunch program, featuring law enforcement and insurance specialists who know what to do. The program takes place at the Law Society classroom from noon - 1:30 p.m. on September 23, 2009.

[Gathering and Preparing Evidence for Trial: 3rd Party Disclosure Applications](#) - Experienced civil and criminal practitioners and a judge will share their expertise on preparing for trials and on applications for disclosure of third party records. The program takes place October 30, 2009 from 1:00 - 4:00 p.m. at the Law Society classroom.

The 2009 Isaac Pitblado Lectures looks at the future of law in [Practising Law in the 21st Century: evolution or revolution](#). Keynote speakers include Professor Richard Susskind, OBE, author of *The End of Lawyers? Rethinking the Nature of Legal Services*, Jordan Furlong, editor of the *National* magazine and Dan Pinnington, practice advisor at LawPRO. The program takes place November 13 & 14, 2009 at the Fort Garry Hotel, Winnipeg. Register before September 15, 2009 to take advantage of the early bird discount.

Fall Conferences: CBA

The Canadian Bar Association is presenting the following out-of-town conferences which may be of interest to litigators:

[Hot Topics in Civil Litigation and Insurance Law](#) - October 23-24, 2009 at the Rimrock Resort Hotel in Banff, Alberta

[National Administrative Law and Labour and Employment Law CLE Conference](#) (Access and independence: Restoring the Balance in Administrative Tribunals and Labour Boards), November 20-21, 2009 at the Fairmont Château Laurier Hotel, Ottawa, Ontario.

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.