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Facebook Service Ordered in Manitoba Case

Master Sharp made what is likely Manitoba's first [Facebook sub-service order](#) on January 14, 2009 in *Manitoba Public Insurance Corporation v. Campbell*, Court of Queen's Bench File No. C109-01-61534. The notice to the defendant shifts part of the responsibility for service to the defendant by asking that he contact the plaintiff (through its counsel) to obtain a copy of the statement of claim, in part because Facebook does not allow someone sending a message to another person's profile to attach a document to the message. The message appears in the person's inbox (not unlike an email address) and not on the person's "Wall" where all of his "Friends" would learn of the lawsuit. Thanks to MPI counsel Steve Scarfone for providing the tip and the copy of the order and notice.

Striking a Balance: MBQB

Balancing the competing priorities of timely resolution of a small claim for legal fees and avoiding multiple proceedings, the court denied the defendant's motion to strike and seized case management of the Rule 20A expedited fee indemnity action in [Kostic v. Merrill Lynch Canada Inc.](#), 2010 MBQB 3. The plaintiff, an employee of the defendant, claimed legal fees from the defendant regarding a separate action in which both she and her employer were sued. The defendant argued that the plaintiff's claim was an abuse of process in that a multiplicity of proceedings concerning the same subject matter is to be avoided. The court disagreed, finding the main actions to be "almost wholly legally and factually materially different than the legal fees indemnity action."

Court of Appeal Rules Amendment

The Court of Appeal has amended its Civil Rules, [Man. Reg 555/88](#) with [Man. Reg. 200/2009](#). The amendment will come into force March 1, 2010. This [chart](#), available at the Court Registry and at the Manitoba Courts [website](#), details the time-related amendments.

Court Casts Pall over Settlement Agreements

Lawyers who use Mary Carter agreements (or the slightly different Pierringer agreements) will want to review the Ontario Court of Appeal decision in [Laudon v. Roberts](#), 2009 ONCA 383. These agreements, used primarily in complex insurance litigation, allow for partial settlement of a lawsuit with one defendant while maintaining the claim against non-settling defendants. In *Laudon*, the plaintiff settled with one defendant for an amount greater than he was subsequently awarded at trial against the second defendant. The Court of Appeal set aside the trial judgment, however, on the basis that to allow it would result in double recovery to the plaintiff. The Supreme Court of Canada recently refused leave to appeal the decision, leaving lawyers to question the continued use of such agreements. See the following article concerning the import of the decision:

- [Mary Carter ruling could have 'chilling effect'](#)

A Litigation Blog to Watch

[The Trial Warrior](#), a new-in-2009 blog on trial advocacy and international litigation and arbitration by Toronto lawyer Antonin Pribetic, tied for the best new law blog award in the [2009 Clawbies](#). Described as "a wonderful blend of academia and practitioner reflections," it has timely and frequent posts on (mostly Ontario) case law, legislation and news.

Supreme Court Notice

In a [Notice to the Profession](#) dated December 2009 the Supreme Court announced its new practice of awarding costs in applications for leave to appeal where leave to appeal is granted. It is now the court's general practice to award costs "in the cause" rather than "in any event of the cause" and counsel should prepare their submissions accordingly.

E-Discovery Primer: LSM

Mark your calendars now for [E-Discovery - A Primer](#), a half-day program designed to help you understand how e-discovery issues will affect your practice. Presenters include Sedona Conference Institute 2009 faculty members Susan Wortzman and James Swanson, who will provide an overview of the Sedona Canada Principles. The program takes place March 25, 2010 from 12:00 noon to 4:00 p.m. at the Law Society classroom.

Online Privacy Issues Program: CBA

Learn how to plan for, identify and respond to [Privacy Issues in Civil Litigation](#) in this online CBA program scheduled for February 9, 2010, from 10:00 to 11:30 a.m. The program will explain and give practical tips to navigate the privacy legal landscape in Canada.

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