



## eLaw - Litigation Update

April 2010 - No. 40

ISSN 1916-3932

### In This Issue

No Duty of Care Owed in Abuse Cases: SCC

Conduct and Cost Awards

MLRC Report on Administrative Appointments

Mareva Injunctions and More

Facebook Faceoff

CPD Programs

## No Duty of Care Owed in Abuse Cases: SCC

In [\*Reference re Broome v. Prince Edward Island\*](#), 2010 SCC 11 the Supreme Court upheld the decision of the Prince Edward Island Court of Appeal that the province owed no duty of care to children who were physically or sexually abused while residing in a private orphanage which received provincial funding. Focusing its analysis on whether there was sufficient proximity between the Province and the children in the home, the court found that neither the child welfare legislation, nor other factors such as government funding of the home or the doctrine of *parens patriae*, established the necessary proximity. Critics of the decision say that while it may be legally correct, it does little to help define the scope of government liability where public services and authority have been contracted out. See, for example, the following articles:

[\*Reference re Broome: A Consistent, Albeit Unsatisfying Application of Tort Law\*](#) by Christine Kellowan and [\*Hardy Broome: Managing the "Accountability Deficit" in Public Services\*](#) by Daniel Del Gobbo, both posted on The Court.

## Conduct and Cost Awards

Courts are increasingly asked to make cost awards against self-represented litigants. Two recent Manitoba cases outline the principles to consider in different scenarios:

- In [\*Kalo v. LSM\*](#), 2010 MBCA 24, the Court of Appeal reviews the principles that apply to applications for security for costs. Finding that the appellant had "misused his right of access to the courts in the past" (para.11) and that "impecuniosity alone cannot be a justification to set aside the principles relating to costs" (para.10), the court orders him to pay security for costs in the amount of \$1000.
- In [\*Manitoba Metis Federation Inc. v. Belhumeur\*](#), 2010 MBQB 61, the court reviews the factors to consider in awarding throw away costs for the adjournment of a five week trial. The court rejects MMF's bid for full solicitor/client costs, but orders throw away costs in the amount of \$2,500.00, representing the unsalvageable costs expended by the MMF on trial preparation. Although the self represented litigant Pieuk exhibited an inability to comply with court imposed orders or timelines, his conduct was not

"reprehensible, scandalous or outrageous" to such a degree as to warrant the imposition of full solicitor/client costs.

## MLRC Report on Administrative Appointments

The Manitoba Law Reform Commission has posted its most recent report [\*Improving Administrative Justice in Manitoba: Starting with the Appointments Process\*](#) online, in both [full report](#) and [executive summary](#) format. The report examines the process used in making appointments to over 160 administrative agencies, boards and commissions in Manitoba. It also reviews developments and reforms in appointments policies in Canada and other jurisdictions.

## Mareva Injunctions and More

The most recent edition of McCarthy Tétrault's [\*Litigation Co-Counsel\*](#) contains several articles reviewing recent developments and trends in litigation. Of particular interest are articles on class actions, pensions and insurance law, and an entertaining summary of the law of mareva injunctions titled [\*Mareva - more than a cigar!\*](#)

## Facebook Faceoff

[\*Facebook discovery: Is civil litigation in uncharted waters?\*](#), a recent *Law Times* article, looks at the risks and rewards of using evidence obtained from social networking sites in personal injury and other litigation. Litigators weigh in on whether [Leduc v. Roman](#) (discussed in eLaw Update 30) or [Schuster v. Royal & Sun Alliance Insurance Co. of Canada](#) is more authoritative law on the admissibility of such evidence.

## CPD Programs

[\*Accommodation in the Workplace\*](#) - this half-day program will examine current issues on accommodation in the workplace from varying perspectives including workplace safety, human rights and discipline issues. The program takes place April 14, 2010 from 1:00 to 4:00 p.m. at the Law Society classroom.

[\*From Small Claims Court to the Court of Appeal\*](#) - our second program in the Bench & Beer Series for junior lawyers. Judges, masters and senior practitioners share their insights on courtroom practices in all levels of court in an informal, after work setting complete with beer and pizza. The program takes place May 27, 2010 from 5:00 to 7:00 p.m.

*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.*