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In This Issue

Contaminated Property Claim Continues

Impecuniosity Irrelevant in Costs Determination

E-Discovery Update

CPLED Resource Materials Half-Price Sale

Bench & Beer Program: LSM

Contaminated Property Claim Continues

[Towers Ltd. v. Quinton's Cleaners Ltd. et al. and Amec Earth & Environmental Limited et al. and Quinton's Cleaners Ltd.](#), 2010 MBQB 91 is the latest decision in the ongoing environmental contamination dispute involving two Winnipeg dry cleaning businesses. The court granted Amec's motion for summary judgment dismissing Perth's third party claim against them for breach of duty of care in respect of an environmental site assessment. Perth's, who had previously settled with Towers, argued that there were genuine issues for trial in respect of the third party claim resulting from a viable cause of action. The court disagreed, finding that while Perth's may have relied on Amec's report in purchasing the dry cleaning business from Quinton's, any negligence by Amec in the assessment and evaluation of the property prior to Perth's occupation cannot have contributed to its contamination. Since Perth's did not identify any basis upon which they would be entitled to indemnity from Amec if they were held liable to Towers, their assignee, Towers, would be in no better position than them in this regard.

Impecuniosity Irrelevant in Costs Determination

In [Alevizos v. Manitoba Chiropractors Association et al.](#), 2010 MBQB 67 the court is asked to determine the appropriate cost award following a lengthy trial in which the plaintiff chiropractor's claims against his governing body were dismissed. The court finds that the plaintiff's conduct was not so "reprehensible, scandalous and outrageous" as to warrant an award of solicitor-client costs. The court declined, however, to consider the plaintiff's financial situation (he claimed a high cost award would bankrupt him) when setting the amount of the award.

E-Discovery Update

Peg Duncan, a member of the editorial board of Sedona Canada, has recently updated her [Electronic Discovery Reading List](#), which lists and links to resources on all aspects of e-discovery. New additions include:

- [Model Discovery Plans and Checklists for Preparing a Discovery Plan](#) - a draft published for comment April 13, 2010;
- [eDiscovery - Did You Know?](#) - an entertaining You Tube music video on electronic discovery law posted February 11, 2010. The video explains the negative impacts the explosion of technology is having on the law, including difficulties in finding relevant evidence in large haystacks of irrelevant information; and
- An update of the E-Discovery Canada [Case law digests \(common law\)](#), published April 16, 2010. The update adds new sections on demands for particulars and discovery plan, and new cases concerning such topics as spoliation, proportion and marginal utility, cost shifting and privacy issues.

Two recent articles examine the financial implications of e-discovery: [Taking the fear out of e-discovery](#), from the March 2010 *National* magazine, explores the skyrocketing costs of meeting discovery obligations in the digital age and how proportionality and cost shifting impact who will pay. The article concludes with the caution that corporations must develop document management systems to minimize potential costs. [E-discovery - are you in or out?](#), from the May 2010 *Canadian Lawyer* magazine, considers whether collection, preservation and production of documents should be insourced or outsourced.

CPLED Resource Materials Half-Price Sale

Limited quantities of the 2009-2010 Manitoba CPLED Resource Materials are now [on sale](#) for half price, including the combined Civil Procedure/Administrative Advocacy volume. Contact the Education and Competence Department for further information or to purchase.

Bench & Beer Program: LSM

[From Small Claims Court to the Court of Appeal](#) is 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.

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