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In This Issue

Local Limitation Laws Apply to Foreign Arbitral Awards: SCC

Wigmore Repurposed - Balancing Freedom of the Press and the Public Interest: SCC

Lawyer's Competence "A Serious Concern": MBQB

Enforcing Settlement Agreements: MBQB

Developer Added as Party in Variance Appeal: MBQB

E-Discovery Roundtable

Queen's Bench Act and Rules Review

Local Limitation Laws Apply to Foreign Arbitral Awards: SCC

Enforcement of foreign arbitration awards has been constrained by the Supreme Court of Canada decision in [Yugraneft Corp. v. Rexx Management Corp.](#), 2010 SCC 19, released May 20, 2010. The court confirmed that local limitation rules (in this case a two-year limitation period under the *Alberta Limitations Act*) applied to the enforcement of a Russian arbitral award. The limitation period runs from the time the award holder could reasonably have known that the other party had assets in the jurisdiction in which enforcement is sought. Given the increasing use of international arbitration as "the dispute resolution mechanism of choice for international commercial disputes," arbitrators, litigators and business lawyers have all weighed in on the ramifications of the decision:

- [Provincial Limitation Periods and Foreign Arbitral Awards](#), posted May 24, 2010 The Court;
- [Local Limitations in International Commercial Arbitration](#), Osler Update, May 25, 2010;
- [Foreign arbitral awards subject to provincial limitation periods. Supreme Court of Canada rules: Yugraneft Corp. v. Rexx Management Corp.](#) posted May 20, 2010 on the Trial Warrior blog.

Wigmore Repurposed - Balancing Freedom of the Press and the Public Interest: SCC

The Supreme Court of Canada rejected the argument that s.2(b) of the *Charter* gives journalists constitutional immunity against compelled disclosure of secret sources, but recognized a limited confidential source privilege on a case by case basis in [R. v. National Post](#), 2010 SCC 16. A promise of confidentiality will be respected where the journalist can

establish that the four criteria for a privilege adapted from the Wigmore test have been met. The majority found that the Wigmore criteria "provide a workable structure within which to assess, in light of society's evolving values, the sometimes-competing interests of free expression and the administration of justice and other values that promote the public interest." (para. 55) The following articles discuss the decision:

- [R v. National Post: Journalist-Source Confidentiality on a Case-by-Case Basis](#) by Cris Best, posted May 18, 2010 on The Court;
- [Supreme Court of Canada recognizes 'confidential source' privilege](#), *Lawyers Weekly*, May 21 2010.

Lawyer's Competence "A Serious Concern": MBQB

The allegations just get weirder in the Harry Potter-inspired case involving local band The Wyrds Sisters and Ontario lawyer Kimberly Townley-Smith. The [initial action](#) to restrain Warner Bros. from releasing Harry Potter and the Goblet of Fire (because it referred to a band named the Weird Sisters) was dismissed by the Ontario Superior Court with [costs](#) of \$140,000. The plaintiff brought [multiple subsequent actions in Ontario](#), including an unsuccessful [attempt to sue](#) several Ontario judges personally for conspiracy, fraud, misrepresentation, abuse of process, and abuse of public office. The lawyer was found personally liable for one-half of the party and party costs in that action. The matter made its way to Manitoba recently ([Baryluk c.o.b. The Wyrds Sisters v. Warner Bros. Entertainment Inc.](#), 2010 MBQB 66) when Warner Bros. sought costs against the lawyer personally for steps taken by the Wyrds Sisters to resist the execution of one of the costs judgments in Manitoba. They had previously settled all outstanding litigation with the plaintiff and agreed not to seek costs against her. Noting that Warner Bros. would have to live with the ramifications of this settlement, the Manitoba court apportioned the \$31,800 costs award sixty-four between the plaintiff and her lawyer. The court described the lawyer's litigation tactics in the Manitoba case as "obstructive, threatening, contemptuous, abusive, and largely without substance." And, in the latest twist in the ongoing debacle, the plaintiff Baryluk has brought a malpractice suit against her former lawyer, as noted in the May 31, 2010 *Law Times* article [Client sues counsel for suing judges But lawyer counterclaims, alleges coverup of judicial corruption](#).

Enforcing Settlement Agreements: MBQB

In [Malley v. Red River Valley Mutual Insurance Company](#), 2010 MBQB 111 the court rejects the plaintiff's argument that he was coerced into signing an insurance settlement agreement concerning losses he suffered in a home fire. The court found that the plaintiff failed to prove that he lacked the mental capacity to enter into the agreement or that the agreement was procured by fraud or duress. The court also stressed that "the considerations taken into account when determining the validity of settlement agreements differ in the civil context as opposed to the familial context." (para.25)

Developer Added as Party in Variance Appeal: MBQB

The court reviews the law concerning joinder of necessary parties ([Rule 5.03](#)) and intervention ([Rule 13.01](#)) in [Whellams Lane Residents' Association v. The City of Winnipeg](#), 2010 MBQB 109. Devonshire Properties, a developer who had been granted a variance to build on its Whellams Lane property, asked for standing in the appeal of the variance decision by the residents' association of the property. The court concluded that Devonshire should be added as a party under s.5.03, as it had a "direct" interest in the dispute and "its presence as a party (was) necessary to enable the court to adjudicate effectively and completely on the issues involved in the proceedings." The court also granted Devonshire leave to intervene as an added party under s. 13.01, finding that it had a clear proprietary, commercial and legal interest in the matter and it would not unduly delay or prejudice the determination of the rights of the parties.

E-Discovery Roundtable

Experts examine proportionality, privacy, cross-border litigation, and the ways in which legal departments manage e-discovery in [The e-discovery shift](#), published in June/July edition of *Canadian Lawyer InHouse*. The article is a summary of discussions which took place at a March 2010 roundtable on e-discovery in Canada. It offers a variety of perspectives on the shift taking place in discovery planning and management with the growing need to preserve electronic data.

Queen's Bench Act and Rules Review

The Civil Litigation section of the Manitoba Bar Association will present the program [Review of Lesser Known but Valuable sections of the Queen's Bench Act and Rules](#) on June 14, 2010 at 12:00 noon at the Law Society classroom. Topics to be examined include proper affidavits for motions and applications, vexatious litigant applications, and stay of proceedings. Contact the [MBA](#) for further details or to register.

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