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A judgment in a prior proceeding is admissible as evidence in a subsequent interlocutory proceeding as proof of the prior findings as long as the parties participated in the prior proceeding on similar or related issues according to the Supreme Court of Canada in [*British Columbia \(Attorney General\) v. Malik*](#), 2011 SCC 18. The court found that the chambers judge properly relied on evidence from an earlier *Rowbotham* application in granting an *ex parte* order authorizing the province to search the Malik family properties in connection with its action for reimbursement of defence costs in the Air India bombing trial. The four essential conditions to justify the *Anton Piller* order were met: strong *prima facie* case, serious damage to plaintiff from defendant's alleged misconduct, convincing evidence of incriminating information, and real possibility of destruction of evidence. The court acknowledged the thoroughly draconian nature of such orders (para. 29), but also noted the strong public interest in avoiding unnecessary multiple proceedings:

The admissibility of prior civil or criminal judgments in subsequent civil proceedings, and the effect to be given to them, must be seen in the broader context of the need to promote efficiency in litigation and reduce its overall costs to the parties. The doctrines of *res judicata*, issue estoppel and abuse of process are all part of this larger judicial policy but they do not exhaust its potential. (para. 37)

These articles discuss the decision in more detail:

- [*SCC ruling paves way for B.C. to seek repayment of Malik's legal tab*](#),
Canadian Lawyer;

- [SCC Comments on Requirements for an Anton Piller](#), All About Information blog post;
- [Supreme Court of Canada allows B.C. government's appeal: reinstates Anton Piller Order](#), Trial Warrior blog.

No Leave to Appeal Bailee for Reward Decision: MBCA

In [Roschuk v. Relf](#), 2011 MBCA 37 the Court of Appeal denied leave to appeal the recent [Q.B. decision](#) finding a car repair business owner liable in negligence for property stolen from a vehicle for which he was a bailee for reward. The court found that the applicant had failed to prove the first part of the three prong test under s.15 of *The Court of Queen's Bench Small Claims Practices Act*, that the issue to be argued is one of law alone. The court's comments at para.14 illustrate the difference between arguments raising issues of law alone and arguments concerning questions of mixed law and fact:

The applicants did not argue before me that the judge misunderstood or incorrectly stated the elements required to exist before a person can be said to be a bailee for reward. They did not argue that he incorrectly assigned to them the burden of disproving negligence. Either of those arguments would raise a question of law only. Rather, they argued that they were not bailees for reward. Such a determination could only be made by this court by deciding whether, on the facts of the situation, the legal test was satisfied. That is a clear illustration of the classic explanation given in Southam of a question of mixed law and fact. Leave cannot be granted on such a question.

Court Exercises Discretion to Appoint Appraiser: MBQB

In [Winnipeg Regional Health Authority v. Temple Insurance Company](#), 2011 MBQB 92 the court exercised its jurisdiction to appoint an appraiser in a six-year-old liability and damages dispute under a builders' risk property insurance policy. According to the court, both the legislation and the authorities clearly support an appraisal process, even where coverage is at issue. Despite the lengthy gap between the loss and the motion by the insured, the court found no evidence of either unreasonable delay or prejudice to the insurer. The court also rejected the argument that a proper valuation would not be possible without the involvement of the trier of fact, finding that dissatisfaction with the quality of the information provided by the insured is not a basis upon which to preclude the plaintiffs from exercising their clear right under the terms of the policy (para. 23).

No Proof City Responsible for Sewer Back Up: MBQB

There was no proof the city was negligent in its operation of the sewage disposal system which flooded the plaintiff's basement three times in four years according to the court in [Leblanc v. City of Brandon](#), 2011 MBQB 72. The plaintiff failed to prove that the city was responsible for the large deposit of gravel which caused her newly installed back up valve to fail, and the city's inspection system, although not perfect, was reasonable.

Amendments to the Rules of the Supreme Court of Canada

The Supreme Court of Canada has amended its [rules of practice](#) effective April 11, 2011. The [Rules Amending the Rules of the Supreme Court of Canada](#), SOR/2011-74, were published in Part II of the Canada Gazette on March 30, 2011. The court [guide to the amendments](#) is available online and at the registry. Significant changes include the deletion of the document formatting provisions from the Rules (now in [Guidelines](#) pursuant to Rule 21) and new provisions for calculating filing deadlines.

Free Online Resources

[Practice Points](#), an initiative of [CLE BC](#), offers free downloads of selected papers from recent B.C. legal education programs. It's a great source for current analysis of legislation, case law and practice developments in 19 practice areas. Several new papers have been posted in the last month which relate to litigation practice. They include:

- [*The Modern-Day Soapbox: Defamation in the Age of the Internet*](#) - discusses how Canadian courts have adapted to the electronic frontier. Among the topics covered are online publication and limitation periods, hyperlinks, the evidentiary trail, obtaining disclosure (a model disclosure order is included), and balancing privacy and disclosure;
- [*Intellectual Property Issues in Social Media*](#) - highlights the issues and tensions between intellectual property and social media in the areas of copyright and trademark;
- [*Affidavit Tips: Baker's Dozen*](#) - a refresher on effective affidavit drafting;
- [*Keeping a Lid on Pandora's Box: Best Practices in Locating and Collecting Electronic Evidence*](#) - a practical overview of strategies to locate, collect, and preserve electronic evidence; and
- [*Mental Disorders in Litigation*](#) - this psychiatrist's review of the basic psychiatric disorders commonly seen in civil litigation focuses primarily on descriptive issues to assist lawyers in identifying and dealing with possible disorders.

A Judge's Take on How to Deal With Difficult Judges

In [*Dealing With Difficult Judges*](#), from the latest edition of [LawPro Webzine](#), Ontario judge Carole Curtis shares her insights on prevention and damage control when facing a difficult judge. She identifies nine categories of difficult judges and offers practical strategies for each situation.

Articles on Litigation Topics

These recent articles may be of interest to litigation lawyers:

- [*Communicating with personal injury clients*](#) - from the April 29, 2011 issue of *Lawyers Weekly*, discusses how to address the growing demand for better communication from dissatisfied personal injury clients;
- [*Getting the best out of a civil jury trial*](#) - is the fourth instalment in the *Canadian Lawyer* series on improving your litigation skills;
- [*Rethinking class action settlements*](#) - *Lawyers Weekly*, May 13 2011, asks whether the public policy goals of class proceedings legislation are being met.

New Code of Professional Conduct Training Sessions: LSM

For those who have yet to complete their mandatory [Code](#) training session, several [new sessions](#) have been scheduled, including video replay programs in the Law Society classroom. Questions related specifically to the *Code* can be sent to codequestions@lawsociety.mb.ca.

CBA Online Programs

There are two more sessions scheduled in the CBA's Skilled Lawyer Series - Litigation Stream: [Cross-examination of Fact Witnesses](#), online May 17, 2011 and [Retaining and Presenting Experts at Trial](#), which takes place June 14, 2011. All programs in the series can be viewed in a recorded format.

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