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Deferring to Administrative Decision-Makers: SCC

Two recent Supreme Court of Canada cases concern the deference owed to administrative decision-making on judicial review. In both [*Alberta \(Information and Privacy Commissioner\) v. Alberta Teachers' Association*](#), 2011 SCC 61 (which concerned compliance with a statutory timeline by the Privacy Commissioner) and [*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador \(Treasury Board\)*](#), 2011 SCC 62 (which considered the adequacy of the arbitrator's reasons in a labour dispute), the court upheld the decision-maker's ruling, following (and elaborating on) the *Dunsmuir* analysis on standard of review. The unanimous decision in the Newfoundland case has changed the law on this issue according to the author of the ABlawg post [*Giving deference to the adequacy of reasons*](#), who points out that recent cases in both Alberta and Ontario had followed a line of authority holding that no deference was owed in a functional review of an administrative decision-maker's reasons.

Photo Radar Unjust Enrichment Claim Struck: MBQB

"(T)he doctrine of unjust enrichment is not intended to be a residual procedure for litigants who, having pled guilty to their offence notices under *The Summary Convictions Act*, later change their mind and then seek to make a collateral attack outside the procedures of that act" according to the court in [*Weaver v. City of Winnipeg et al.*](#), 2011 MBQB 309. The court found the plaintiff's claim against the City for unjust enrichment (brought under *The Class Proceedings Act*, C.C.S.M. c. C130 on behalf of motorists fined under the photo radar program) could not succeed as there was not an absence of juristic reason for any enrichment of the City and no corresponding deprivation of the plaintiff.

Federal Paramountcy Applies in Blood Regulation Safety Case: MBQB

The Manitoba Human Rights Commission does not have the jurisdiction to bring a discrimination claim against the Canadian Blood Services on behalf of an individual whose sexual orientation excluded him from donating blood according to the court in [*Canadian Blood Services v. The Manitoba Human Rights Commission and Zoldy*](#), 2011 MBQB 312. Allowing the MHRC to proceed would frustrate the federal purpose in controlling blood safety, thus engaging the principle of paramountcy. This did not leave the potential donor without a remedy, however, since he could apply to the Canadian Human Rights Commission to deal with the same issue.

Amendments to Court of Queen's Bench Rules

The Queen's Bench Statutory Rules Committee announced these important rule changes on December 22, 2011:

- [Rule 20A - Expedited Actions](#) has been replaced with a [new Rule 20A](#) which will come into force on April 12, 2012. The new rule changes the procedure for expedited actions in several significant ways. Key changes described in the [notice](#) include proportionality, powers of case conference judges, documentary disclosure, examinations for discovery and interrogatories, disclosure of witnesses and sanctions.
- [Subrule 73.01\(1\) - Payment Into Court](#) has been [amended](#) effective November 8, 2011. The amendment makes it clear that money can be paid into court only when the underlying documents (order, report, offer to settle or acceptance of offer) so provide.

Court of Queen's Bench Practice Direction - Civil Uncontested List Adjournments

The Court of Queen's Bench issued a new practice direction on December 15, 2011. Effective January 3, 2012 matters appearing on the civil uncontested list for a second time will be adjourned to the contested list, adjourned *sine die*, or struck, and may be brought back on by requisition. Matters appearing for a third time will be struck if not dealt with, subject to the granting of an adjournment in exceptional circumstances only.

Federal Court Rules Review

The Federal Courts' subcommittee conducting a global review of the Federal Court Rules is [inviting input](#) from stakeholders on the policy issues it has identified in the discussion paper [*Global Review of the Federal Court Rules*](#). Watch their website for [notices](#) of upcoming meetings with members of the subcommittee.

Recent Articles on Litigation Topics

The New Brunswick Court of Appeal ruling in [*Aviva Insurance Company of Canada v. Thomas*](#), 2011 NBCA 96 has shaken up the insurance industry according to the author of the *Lawyers Weekly* article [*Ruling lights fire under insurers*](#). The court found the insurer could not rely on Statutory Condition 4 (obliging the insured to notify the insurer of a change material to the risk) to cancel its insurance contract, when the insurer had treated the information as insignificant prior to the claim.

And the Ontario Court of Appeal has also sanctioned insurers who inappropriately deny benefits according to the author of the *Law Times* article [*Claim for mental distress puts pressure on insurance companies*](#), which discusses [*McQueen v. Echelon General Insurance Company*](#), 2011 ONCA 649.

The *Law Times* article [*Time to stop subsidizing doctors' abusive tactics*](#) discusses an Ontario medical malpractice case where the master criticized the defendants' "intentional strategy of delay."

Trial Warrior Blog author Antonin Pribetic discusses an [Ontario Court of Appeal decision](#) dealing with the status of e-signatures in [*New Case on E-Signatures in Canada*](#), posted December 22, 2011.

Winter CPD: LSM

Those who feel out of step with the growing electronic research services should [register](#) for the February 13, 2012 afternoon program [Electronic Legal Research Refresher](#). Knowledgeable presenters will discuss the benefits and drawbacks of online research on both free and subscription based sites. The program takes place in the Law Society classroom.

2012 MBA Mid-Winter Meeting

The Manitoba Bar Association's [Mid-Winter Meeting](#) will be held January 19-20, 2012 at the Fort Garry Hotel. The Civil Litigation section is cosponsoring the program **Expert Evidence** and the Administrative Law section is sponsoring **Administrative Law Boot Camp: Back to Basics**. Other programs that may interest civil litigators include:

- **Innovative Strategies for Effective Communication** - sponsored by the Women Lawyers' Forum;
- **Ethical Practice in the Electronic Age - The Use of Social Media**; and
- **Contractual Interpretation: Substance and Practice** - with Toronto lawyer Geoff Hall, author of *Canadian Contractual Interpretation Law*.

For further details see the [registration form](#) or [brochure](#).

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