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Severance Reconsidered: MBCA

As noted in the opening paragraph of [O'Brien v. Tyrone Enterprises](#), 2012 MBCA 3, this case directly raises the issue of whether it's time to reconsider the longstanding understanding that severance of civil trials on liability and damages is granted only in the most "exceptional" of circumstances in Manitoba. Other jurisdictions are similarly re-examining the proper approach to severance in light of rule changes and access to justice concerns, and the court points out that there is recent case law "supporting the conclusion that financial hardship can be a proper consideration in demonstrating that a case is exceptional or, more accurately, that a clear and compelling case has been made out for severance." (para. 52) The court upheld the motion judge's ruling allowing severance where the personal injury plaintiff's impecuniosity, and her lawyer's unwillingness to "front" the disbursement costs of proving damages unless liability was proven, raised access to justice issues. The court also comments on contingency fee arrangements and their relationship to access to justice at paras. 44-51, concluding that "contingency fee agreements, appropriately structured, can be an important tool in improving access to justice. The motions court judge was entirely correct in taking this factor into account in his decision."

Insufficient Evidence to Strike: MBCA

The CBC was unsuccessful in appealing the dismissal of its application to strike Nygård's statement of claim in [Nygård International Partnership v. Canadian Broadcasting Corp.](#), 2012 MBCA 8. The CBC had argued that Nygård's suit, alleging interference with its contractual relations during a television expose of Nygård's business practices, was an abuse of process contrary to Rule 25.11 of the Queen's Bench Rules. Without evidence of the extent of the CBC's knowledge of the contractual obligations of Nygård's employees and the nature and extent of the inducements made to them, there was no "context and factual matrix to enable the court to properly and fully adjudicate upon all the issues between the parties" at the pleading stage.

"Intrusion Upon Seclusion": ONCA Recognizes Tort of Invasion of Privacy

A one hundred and twenty year old debate about whether the common law should recognize a cause of action in tort for invasion of privacy has been settled by the Ontario Court of Appeal in [Jones v. Tsige](#), 2012 ONCA 32, an electronic stalking case where a bank employee accessed the bank records of a fellow employee over an extended period of time, surreptitiously and for personal reasons. "(T)he existence of a right of action for intrusion upon seclusion...would amount to an incremental step that is consistent with the role of this court to develop the common law in a manner consistent with the changing needs of society" said the court at para.65. The court reviews how individual privacy interests have been protected in the past, canvassing case law from Ontario and other provinces and examining federal and provincial privacy legislation. The decision, a must-read for lawyers, will affect how other jurisdictions will treat the growing number of complaints about privacy violations. The following articles dissect the decision and discuss its implications:

- [Tort of Invasion of Privacy in Ontario](#) and [Invasion of Seclusion and Data Protection](#), Slaw;
- [Intrusion on Seclusion in Jones v Tsige: The Role of Courts, the Value of Privacy, and the Difficulty of Erecting Fences](#), The Court;
- [Privacy poachers take big hit](#), Lawyers Weekly;
- [The cost of privacy: invasion of personal privacy can attract damages in Ontario](#), Workplace Wire.

New Q.B. Rule 20(A) in Force April 1, 2012

A reminder that the new [Rule 20\(A\)](#) will come into force April 1, 2012, changing the procedure for expedited actions in several significant ways as indicated in this [court notice](#). As described below, Justices Karen Simonsen and Shane Perlmutter will outline the important features of the new rule and discuss how it will affect your practice at a Law Society [program](#) on March 14, 2012.

MLRC Report on Limitations of Actions in Conversion and Detinue

The Manitoba Law Reform Commission released its report on [Limitations of Actions in Conversion and Detinue](#) on February 8, 2012. As noted in the [Executive Summary](#) this report, a follow up to the October 2010 *Limitations* report, concludes the Commission's work in respect of a modern *Limitations Act* for Manitoba. Concerning conversion and detinue, the Commission recommends a provision that the ultimate limitation period should run from the first date the personal property is converted or detained and a good faith purchaser exception.

e-Filing Update

Soon only those granted prior permission of the registrar will be able to file documents in paper form in the Saskatchewan Court of Appeal. After one year of test driving electronic filing of documents through their *eCourt* system, that court will be implementing mandatory e-filing effective April 2, 2012. For the latest information on e-filing in Manitoba, and what it will mean for your practice, be sure to attend [The Advent of e-Filing in Manitoba: Are you Ready?](#) on May 16, 2012. Chair Justice Laurie Allen and presenters Andrew Clark (Project Manager, BC e-Filing Initiative) and Fiona Duncalfe and Ron Coke (Legal Data Resources Corporation) will discuss the progress with respect to e-filing at the Manitoba Court of Queen's Bench and offer advice on what you need to do to prepare for e-filing in Manitoba.

Federal Court Rules Review

The subcommittee conducting a global review of the Federal Courts Rules has published a [discussion paper](#) by Professor Janet Walker on the policy issues at play. The subcommittee is [seeking input](#) on the proposals and will be holding open meetings to discuss the review in the future.

Recommended Reading

The following publications may interest litigators:

- B.C. CLE's Practice Points has posted several articles from its Litigator's Arsenal series which contain practical tips for litigators. They include: [Strategic Use of Examinations for Discovery](#); [Examinations for Discovery: "Techniques for Success"](#); and [Conceptualizing and Presenting at Trial and on Appeal](#).
- [Contingency Fee Counsel Not Required to Post Security for Costs for Impecunious Corporate Client](#), Trial Warrior Blog, and [Contingency-fee lawyers get reprieve](#)-, *Law Times* - these two articles discuss [Indcondo Building Corporation v. Sloan](#), 2012 ONCA 83, a recent decision holding that lawyers who take cases on a contingency fee basis do not have to post security for costs for their clients. Like the Manitoba Court of Appeal in *O'Brien*, above, the Ontario court stresses the positive connection between contingency fee arrangements and access to justice.
- [Lawyers want piece of action](#), *Lawyers Weekly* and [Thomson Reuters Class Action Approved](#), Slaw, both discuss [Waldman v. Thomson Reuters Corporation](#), 2012 ONSC 1138, in which an Ontario Superior Court judge certified a lawyer's class action suit against a legal publisher for copyright infringements concerning lawyer-created documents.
- [Scars left behind](#) - this *Lawyers Weekly* article discusses the Ontario Court of Appeal decision in [Kusnierz v. Economical Mutual Insurance Company](#), 2011 ONCA 823, which confirms that psychological impacts can be considered in calculating whole person impairments under Ontario's Statutory Benefit Schedule.

Apps for Litigators

If you are one of the many litigators using tablets and other mobile devices (especially [the latest Apple products](#)), you may be interested in these recent articles on apps that will make court preparation easier:

- [Will iPads End Post-It Notes in Voir Dire?](#) and [Top iPhone and iPad Apps for Lawyers](#), from the attorneyatwork blog;
- [Thoughts on the LegalTech 2012 Conference and some iPad Apps for Lawyers](#), Slaw; and
- [TranscriptPad: A Must Have iPad App for Mobile Attorneys](#), Lawyerist.

Upcoming CPD Programs: LSM

[Expedited Actions - The New QBR 20\(A\)](#) - Don't miss this important program examining the substantial changes to the expedited actions rule, which will come into force April 1, 2012. Justices Karen Simonsen and Shane Perlmutter will outline the salient features of the new rule and discuss how it will affect your practice. The program will be held March 14, 2012, from 12:00 noon to 2:00 p.m. in the Law Society classroom.

[Presenting and Challenging Expert Witnesses at Trial](#) - Presenter Richard Shekter will use anecdotal stories and demonstrative aids to teach you the strategies you need to successfully examine and cross-examine expert witnesses at this half day program on May 3, 2012, from 9:00 a.m. to 12:00 noon. [Register](#) by March 22, 2012 to take advantage of the early bird price.

[The Advent of e-Filing in Manitoba: Are you Ready?](#) - As noted above, this program will address what you need to do to prepare for the advent of e-filing in Manitoba. It will be held May 16, 2012, from 1:00 to 4:00 p.m. at the Law Society classroom.

[Current Trends in Personal Injury Damages in Canada](#) - Diarize now to attend Professor Daniel Gardner's review of trends in Canadian personal injury damages on June 20, 2012, from 9:00 to 11:00 a.m. at the Law Society classroom.

CBA Online Programs

The Canadian Bar Association is presenting a full day webcast on [Medical Malpractice: A How to Guide](#) on March 29, 2012. See the CBA website for more information and to register.

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