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No Requirement of Certainty of Damages: MBCA

The court rejected the appellant's argument in [Andison v. Katz](#), 2012 MBCA 107 that he did not have knowledge of all material facts of a decisive character on which to base a negligence action against the lawyer who drafted his separation agreement until the judge's ruling that the agreement was unequivocal made it certain he would suffer a loss. Section [20\(3\)](#) of *The Limitation of Actions Act* makes it clear, said the court,

...that material facts of a decisive character do not require certainty or near certainty regarding either the prospect of success or of the amount of the damages that would flow in the event that the cause of action is ultimately proved. All that is required is that the would-be plaintiff knew or ought to have known of facts that indicate a "reasonable prospect of [the action] succeeding" and that the action would result in damages "sufficient to justify the bringing of the actions."

Although the appeal court came to a different conclusion as to when the limitation period commenced, it agreed with the application judge's finding that the appellant was not within the 12 month time-frame required by the Act.

Act, Not Regulation, Establishes Entitlement to Reimbursement: MBCA

The Automobile Injury Compensation Appeal Commission finding that a Manitoba motorist was not entitled to reimbursement of expenses for out-of-province medical care was reasonable said the Court of Appeal in [*Harder v. Manitoba Public Insurance Corp. et al.*](#), 2012 MBCA 101. Having rejected entitlement, the Commission was not required to go on to consider whether s.6 of the [*Reimbursement of Expenses Regulation*](#) (allowing MPIC to limit out-of-province expenses) addressed concerns about financially responsible management of bodily injury claims.

No Interest on Protracted Appraisal Award: MBQB

The court rejected an insured's claim for interest on a business interruption loss award in [*2712270 Manitoba Ltd., et al. v. Grain Insurance and Guarantee Company*](#), 2012 MBQB 317, finding that the court has neither inherent nor equitable jurisdiction to award pre-judgment interest on an appraisal award where there was no abuse of process. Neither *The Insurance Act* nor *The Queen's Bench Act* provide for interest on appraisal awards and the insured was not pursuing interest by way of damages.

Punitive Damages A Remedy, Not a Cause of Action: MBQB

In [*Payne v. R. Litz & Sons Co. Ltd.*](#), 2012 MBQB 269 the court dismissed the defendant's motion to strike out sections of a statement of claim seeking punitive damages on the basis that they did not disclose a reasonable cause of action. "(P)unitive damages are a remedy, not a cause of action, and a separate and distinct cause of action is not required in order to pursue them," said the court. It was therefore not open to the defendant to attempt to strike out the claim under Queen's Bench Rule 25.11(d) for not disclosing a reasonable cause of action. "Further, it would not be appropriate at the pleadings stage of the litigation to determine whether the facts as pleaded in the statement of claim are sufficient to establish an independent actionable wrong, when that independent actionable wrong need not rise to the level of a cause of action to be enforceable." (para. 17)

Court of Queen's Bench Rule Amendments

The QB notice [*Amendment to Court of Queen's Bench Rules - Costs in Forms of Pleadings*](#) sets out the rule and form amendments resulting from the changes made to Tariff A in January 2011. These amendments came into force December 1, 2012.

Amended [*Rule 74.14*](#) (Lawyers' Fees and Disbursements in Estate Matters) came into force January 1, 2013. This [*notice*](#) from the court summarizes the background to the changes. The new rule is intended to modernize practices related to and the amount of fees payable to lawyers in estate matters. The changes to the Estate Tariff Rule also include significant revision to Form 74AA, which can be found as a [*schedule*](#) to the amendment. Service of the new form is mandatory on the personal representative and all beneficiaries affected by

the lawyer's fees and disbursements within 60 days of the lawyer's retainer.

Recommended Reading

- [*Tips for Litigators to Avoid Communications Claims*](#) - this *LAWPRO* magazine article urges litigators to be proactive in avoiding communication errors that may lead to insurance claims. It offers tips on providing clients with the information they need to assess litigation-related risks and to fully understand the scope of the retainer.
- [*Top Appeals of 2012: The Appeals Monitor Looks Back*](#) and [*Top Appeals of 2013: The Appeals Monitor Looks Forward*](#) - it's common at this time of year to both reflect on the past and look to the future, as is done in these two articles from the Canadian Appeals Monitor. The articles discuss four areas in which appellate courts were active in 2012 and five areas in which the Supreme Court is expected to make waves in 2013.
- [*Smile, you're on metadata*](#) - the metadata from digital images is increasingly being used as evidence in Canadian courts, raising privacy issues and changing the test for document production. This *Lawyers Weekly* article discusses how such evidence is being used and why laying the right foundation for its production is important.

Winter CPD: LSM

- [*Writing to Persuade*](#) - this advocacy writing workshop with instructor Stephen Armstrong is designed to teach litigators to write persuasive factums. Participants can register for a half or a full day program, with the afternoon session focussing on skills building using editing exercises. The program takes place February 21, 2013 at the Law Society classroom. [Register](#) on or before January 18, 2013 to take advantage of the early bird discount.
- [*The Interpretation of Bilingual Documents: A Primer for Practitioners*](#) - Find out how recent court decisions on the interpretation of bilingual enactments have affected the requirement for judges and lawyers to review both versions of statutes at this lunch hour program on February 15, 2013. Attend the program in person at the Law Society classroom or by teleconference.
- [*Powerful Witness Preparation*](#) - spend a day immersing in the methods and procedure that will help you prepare witnesses to be powerful and persuasive communicators. Join presenter Dan Small at this highly acclaimed seminar to be held March 8, 2013 at the Law Society classroom. [Register](#) by February 1, 2013 to receive the early bird rate.

For those who prefer a webinar format, consider registering for the following programs:

- [*Avoid Hating the Law 10 Years From Now: An Ethical Lesson From the Trenches*](#) (February 12, 2013); [*The Fear Factor: How Good Lawyers Get Into Bad Ethical Trouble*](#) (February 26, 2013); and [*It's Not*](#)

["Time" Management, It's LIFEtime Management](#) (March 12, 2013) are all presentations by Stuart Teicher, a professional legal educator who focuses on ethics law. [Register](#) for 2 or more programs and save or get a discount if you register as a group.

Manitoba Bar Association Mid-Winter Conference

The 2013 MBA [Mid-Winter Conference](#) takes place January 24-25, 2013 at the Fort Garry Hotel. The Civil Litigation section will present **Civil Trials -An Overview: Procedure and Evidence** and the Administrative Law and Labour and Employment sections will present **The Standard of Review: A Never-Ending Source of Work for Lawyers**. Other programs that may interest civil litigators include:

- Courtesy in the Courtroom/Civility as a Strategy
- What You Don't Know CAN Hurt You: Bilingual Statutory Interpretation for Anglophones
- Who Wins-Who Loses at a Judicially Assisted Dispute Resolution Conference?

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

Skilled Lawyer Series III - Litigation: CBA

The Canadian Bar Association continues its skilled lawyer series of online courses designed to assist litigators to refine their core advocacy skills with the following winter programs:

- [Mediation Advocacy](#) (January 15, 2013) - will offer strategies to ensure successful mediations;
- [Preparing for Arbitration](#) (February 12, 2013) - will identify the key steps to conducting arbitrations; and
- [Making your Case before an Administrative Tribunal](#) (March 5, 2013) - learn what makes administrative law practice unique.

Honouring Chief Justice Richard Scott on His Retirement

Manitoba's legal community is invited to participate in two events honouring Chief Justice Richard Scott on his retirement. An educational forum [Courting Change: The Changing Role of Courts](#) will be held February 8, 2013 and a [gala dinner](#) is planned for February 9, 2013. See www.scottretirement.org for more information.

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