

# DIGEST OF UNREPORTED MANITOBA CASES JULY-DECEMBER, 1978

BRENT LATIMER\*

This issue of the Manitoba Law Journal will contain a continuation of the Digest of Unreported Manitoba Cases.<sup>1</sup> We will be digesting all Manitoba Court of Appeal, Court of Queen's Bench, County Court and Surrogate Court decisions that are not reported in the major as well as the more specialized report series. In this issue, we will be digesting cases from the last half of 1978.

The numbered references are to the filed case reports contained in the E.K. Williams Library at Robson Hall, University of Manitoba.

The cases are listed according to general law school areas of study. So far, they are listed according to 26 areas of study.<sup>2</sup> If a particular case has direct relevance to more than one field, it is digested under each appropriate heading. It may become necessary to add a few new headings; this will likely be needed for only the more specialized areas.

We wish to acknowledge Mr. Eugene Szach's contribution in providing us with the digests, as well as Ms. Donna Hodgins for her secretarial assistance.

## Administrative Law

### Manitoba Court of Appeal

#87 — *International Brotherhood of Electrical Workers, Local 2085 v. Felec Services Inc.* — judicial review — arbitration board decision — applicability of *certiorari* — 12 pp. — Freedman, C.J.M., Guy & O'Sullivan, J.J.A. — July 7.

#99 — *Smith v. Winnipeg, City of* — judicial review — demolition order under *City of Wpg. Act* — validity of prior notice and hearing — 4 pp. — Guy, Monnin & O'Sullivan, J.J.A. — Oct. 17.

#100 — *Nocita v. Municipal Board of Manitoba* — appeal — application for leave to appeal Municipal Bd. decision — jurisdiction — question of law — 6 pp. — Monnin, J.A. (in chambers) — Oct. 19.

#120 — *Al's Towing Service Ltd. v. Highway Transport Bd. of Man.* — *certiorari* and prohibition — procedural rules of admin. tribunal — effect of late filing of documents by parties seeking to intervene at public hearing — 8 pp. — Monnin, Matas & O'Sullivan, J.J.A. — Dec. 22.

### Manitoba Court of Queen's Bench

— None —

### Manitoba County Court and Surrogate Court

— None —

## Agency

### Manitoba Court of Appeal

— None —

### Manitoba Court of Queen's Bench

— None —

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1. The Digest first appeared in (1979), 10 Man. L. J. 103 and covered the period of January-June, 1978.
2. re: Administrative Law; Agency; Business Organizations; Civil Liberties; Civil Procedures; Commercial and Consumer Transactions; Constitutional Law; Contracts; Creditors' Rights; Criminal Law, Procedure and Sentencing; Evidence; Family Law; Insurance; Labour Law; Landlord and Tenant; Legal Ethics; Local Government Law; Negotiable Instruments; Personal Property; Real Property; Restitution; Taxation; Torts; Transportation and Communication Law; Trusts; Wills.

*Manitoba County Court and Surrogate Court*

#55 — *Campbell, Lane and Haliburton Ltd. v. Larsen* — real estate — suit for commission — house sold pursuant to multiple listing agreement — 3 pp. — Thompson, C.C.J. — July 20.

#74 — *Merrill Lynch, Royal Securities Ltd. v. Ferreira* — stockbroker — commodity account agreement — losses — whether broker obeyed client's instructions *re* sale — whether broker negligent in not helping client minimize losses — agent's "duty of disclosure" — custom and usage — 5 pp. — Jewers, C.C.J. — Oct. 16.

#90 — *Red River Realty (1972) Ltd. v. Derksen* — real estate — commission — listing agreement between agent and vendor — property sold by 3d party — agreement providing for payment of commission — 3 pp. — Barkman, C.C.J. — Dec. 4.

#94 — *Caravan Trailer Rental Co. v. Haldane* — liability — contract signed by agent — false declaration *re* identity of principal — personal liability of agent — 9 pp. — Lockwood, C.C.J. — Dec. 7.

#98 — *Jenkins v. Hobman* — real estate — commission — suit by agent against defendant developer — whether plaintiff was effective cause of sale of home or whether plaintiff merely assisted a 2nd agent with sale — 11 pp. — Jewers, C.C.J. — Dec. 11.

**Business Organizations***Manitoba Court of Appeal*

#112 — *Kobrinsky v. Rabkin* — partnership — medical partnership — shareholdings in pharmacy co. connected with partnership — purchase option in shares — whether partnership dissolved — winding-up — 2 pp. — Monnin, Hall & Matas, J.J.A. — Dec. 6.

*Manitoba Court of Queen's Bench*

— None —

*Manitoba County Court and Surrogate Court*

#70 — *Klos v. Patrick* — *Business Name Registration Act* — application by persons aggrieved as a result of registration of business name — former employee of applicants registering name on his own behalf — 4 pp. — Barkman, C.C.J. — Oct. 3.

**Civil Liberties**

— None —

**Civil Procedure***Manitoba Court of Appeal*

#109 — *Children's Aid Society of Winnipeg v. Lambert* — appeal — motion to extend time for appeal — intention to appeal — possibility that judgment appealed from is wrong — 3 pp. — Monnin, J.A. (in chambers) — Nov. 16.

#113 — *Welichka v. Welichka* — default judgment — motion to set aside — order for sale of matrimonial home — wife not present at hearing — 15 pp. — Freedman, C.J.M., Matas & O'Sullivan, J.J.A. — Dec. 6.

*Manitoba Court of Queen's Bench*

#93 — *Canadian Association of Industrial, Mechanical & Allied Workers v. Winnipeg, City of* — Statement of Claim — motion to claim against Police Commission — whether commission a legal entity — whether Commission the employer of police officers — 10 pp. — Nitikman, J. — Aug. 24.

#104 — *Lazenby v. Lazenby* — *Mental Health Act* — jurisdiction of local judge of Q.B. — application to change committee handling estate of mentally disordered person — 4 pp. — Lorne Ferg, J. — Oct. 2.

#125 — *Hourie v. Sunderstrom* — professional negligence claim — motion by Legal Aid Man. to strike out claim against it — *Legal Aid Services Society of Man. Act*, s. 17 — 3 pp. — Hamilton, J. — Nov. 29.

#126 — *Jacob Sales Ltd. v. Adelaide Investments Ltd.* — stay of proceedings — action for declaration — stay sought on basis of applicant's refusal to rely on arbitration clause in contract — 3 pp. — Deniset, J. — Dec. 11.

*Manitoba County Court and Surrogate Court*

#72 — *Active Builders Ltd. v. Winnipeg Iron Works Ltd.* — appeal — motion for extension of time to appeal — small debts court decision — requirement that appellant demonstrate a fairly agreeable case on appeal — appeal a *de novo* trial — 10 pp. — Jewers, C.C.J. — Oct. 10.

#84 — *Flamond, re* — jurisdiction of County Ct. — licence suspension appeal — retired C. C. judge previously seized of matter — whether new application premature — *C. C. Act*, s. 73 — 4 pp. — Barkman, C.C.J. — Nov. 20.

### Commercial and Consumer Transactions

#### *Manitoba Court of Appeal*

— None —

#### *Manitoba Court of Queen's Bench*

#83 — *Hayward Gordon Ltd. v. J. R. Heath & Co.* — fitness of goods — alleged failure to correct defects — grinder and pump for fish processing — 11 pp. — Dewar, C.J.Q.B. — July 25.

#108 — *Eddie Willox Agencies Ltd. v. South Park Mercury Sales Ltd.* — automobile — defects — reasonable fitness for purpose — exclusion clause — “Manufacturer’s warranty” — passing of property in automobile — 24 pp. — Morse, J. — Oct. 11.

#### *Manitoba County Court and Surrogate Court*

#97 — *Huisman v. Lakeshore Contracting (Manitoba) Ltd.* — condition — warranty — breach — acceptance of goods by buyer — *Sale of Goods Act*, s. 13(3) — vendor’s compliance with requirements *re* quality of material — 5 pp. — Barkman, C.C.J. — Dec. 11.

### Constitutional Law

— None —

### Contracts

#### *Manitoba Court of Appeal*

#82 — *R. in rt. of Man. v. Barc* — specific performance — sale of land — whether sale contract or purchase option — revocation — conditions precedent *re* sale contract — 11 pp. — Monnin, Hall & Matas, JJ.A. — July 4.

#108 — *Victor Investments Corp. v. Fidelity Trust Co.* — breach — suit for damages — repudiation of contract by plaintiff — attempt to re-negotiate — 5 pp. — Freedman, C.J.M., Guy & Monnin, JJ.A. — Nov. 13.

#### *Manitoba Court of Queen's Bench*

#83 — *Hayward Gordon Ltd. v. J. R. Heath & Co.* — terms — suit for purchase price — rescission sought — alleged unfitness of goods and failure to correct defects — grinder and pump for fish processing — 11 pp. — Dewar, C.J.Q.B. — July 25.

#87 — *Lake Manitoba Estates Ltd. v. Communities Economic Development Fund* — offer and acceptance — whether contract existed for transfer of land — *Statute of Frauds* — 22 pp. — Wright, J. — July 28.

#95 — *Tokaryk v. Wasyleski* — undue influence — transactions *re* farmland — owner entering transactions after suffering stroke — soundness of mind — 9 pp. — Deniset, J. — Aug. 30.

#98 — *Tiger Hills School Division No. 29 v. Tiger Hills School Division Assoc'n. No. 29 of the Manitoba Teachers' Society* — offer and acceptance — collective bargaining — arbitration — agreement of settlement alleged — effect of subsequent negotiations — 6 pp. — Solomon, J. — Sept. 18.

#108 — *Eddie Willox Agencies Ltd. v. South Park Mercury Sales Ltd.* — fundamental breach alleged — sale of car — fire in car — repudiation of contract — acceptance of repudiation — 24 pp. — Morse, J. — Oct. 11.

#110 — *Olson v. Griffith* — specific performance — offer and acceptance — sale of land — request by purchasers for specific performance — delay by purchasers in tendering purchase price — condition precedent — 8 pp. — Solomon, J. — Oct. 17.

#119 — *Natuk v. Kawula* — specific performance — *non est factum* — sale of farmland — whether vendor coerced or intimidated by purchaser or solicitor — 14 pp. — Wilson, J. — Nov. 13.

#130 — *Senkow v. Senkow* — undue influence — unconscionable transaction — transfer of land from mother to son — declaration sought to invalidate transfer — mother allegedly senile — 21 pp. — Morse, J. — Dec. 15.

- #131 — *Kozak v. Fletcher* — specific performance — rescission — sale and purchase agreement for cottage — whether purchasers forfeited their contractual rights by failure to make payments — waiver — promissory estoppel — 14 pp. — Morse, J. — Dec. 19.
- #137 — *Jay-Em Developments Ltd. v. Maruschak* — illegality — statutory restrictions on transfers of land — enforceability of contract contravening statute — specific performance — 11 pp. — Hewak, J. — Dec. 28.
- #139 — *Dromoherski v. Lamont* — terms — breach — construction of house foundation — suit for balance of contract price and extras — counterclaim for defective performance — 19 pp. — Dewar, C.J.Q.B. — Dec. 29.

*Manitoba County Court and Surrogate Court*

- #56 — *Hiller v. E. Wunnemann Painting & Decorating Ltd.* — terms — construction contract — replacement of sub-contractor — contractual obligation of general contractor to new sub-contractor — 6 pp. — Thompson, C.C.J. — July 20.
- #59 — *Wm. Dyck & Sons (1968) Ltd. v. Enns* — terms — renovation of house — whether contract price previously agreed upon by parties — extra work performed — counterclaim *re* alleged extra costs and deficient workmanship — interest — 29 pp. — Coleman, C.C.J. — Aug. 16.
- #79 — *Sidon v. Las Vegas Tours Ltd.* — travel — whether contract made with one or other of two travel companies — companies sharing office space — 9 pp. — Lockwood, C.C.J. — Nov. 6.
- #81 — *Bau v. Taylor* — terms — representations — automobile repair — whether customer had authorized repair job or estimate only — 5 pp. — Lockwood, C.C.J. — Nov. 13.
- #88 — *Drapack v. Showcase Productions Ltd.* — misrepresentation — *contra proferentem* rule — exclusion clause — agreement *re* hiring of pub band — exclusion clause *re* changes in personnel — band leader attempting complete change of personnel — 3 pp. — Thompson, C.C.J. — Nov. 29.
- #90 — *Red River Realty (1972) Ltd. v. Derksen* — real estate — sale — listing agreement in writing between vendor and agent — property sold by 3d party — agreement providing for payment of commission — 3 pp. — Barkman, C.C.J. — Dec. 4.
- #91 — *Siska v. International Harvester Co. of Canada Ltd.* — terms — truck repair — warranty — truck in defective condition — expiration of warranty period — claim of further defects — release letter signed by plaintiff's lawyer — 9 pp. — Lockwood, C.C.J. — Dec. 4.
- #92 — *Turner Roto-Rooter (1970) Ltd. v. Frederick* — terms — breach — unplugging of clogged pipes — complications — refusal by homeowner to pay bill — whether service co. erred in analyzing problem — 8 pp. — Kennedy, C.C.J. — Dec. 4.

**Creditors' Rights**

*Manitoba Court of Appeal*

— None —

*Manitoba Court of Queen's Bench*

- #99 — *Wilson v. The Queen in rt. of Manitoba — Executions Act* — priorities as between creditors of co. — sales tax — hydro bill — money owing to landlord — priority of Gov't. of Canada — Workers' Compensation Board — 6 pp. — Solomon, J. — Sept. 18.

*Manitoba County Court and Surrogate Court*

- #56 — *Hiller v. E. Wunnemann Painting & Decorating Ltd.* — construction contract — replacement of sub-contractor — legal obligation of general contractor to new sub-contractor — *Builders & Workers Act* trust — 6 pp. — Thompson, C.C.J. — July 20.
- #100 — *Associates Financial Services Ltd. v. Parsons* — chattel mortgage — renegotiation of debtors' obligation — default — right of creditor to sue for balance owing — 5 pp. — Jewers, C.C.J. — Dec. 19.

**Criminal Law, Procedure and Sentencing**

*Manitoba Court of Appeal*

- #85 — *R. v. Shurvell* — breathalyzer — certificate of analysis — whether "reasonable notice" given to accused — whether 15 minutes between taking of samples — 7 pp. — Freedman, C.J.M., Monnin, Hall, Matas & O'Sullivan, J.J.A. — July 6.

#90 — *R. v. Charette* — sentencing — joint submission by counsel suggesting maximum sentence — trial court imposing sentence twice as long — disposition by C.A. — 2 pp. — Freedman, C.J.M., Guy, Monnin, Hall & O'Sullivan, J.J.A. — Sept. 5.

#97 — *Johnson v. Manitoba Police Commission* — Manitoba Police Commission — attempt to stay proceedings before Commission — right to seek declaration — *Man. Evid. Act*, s. 97 — 12 pp. — Freedman, C.J.M., Guy & Matas, J.J.A. — Sept. 21.

#105 — *R. v. Lacroix* — child abduction — *mens rea* — accused taking young girl for ride on motorcycle — no evidence of molestation — 5 pp. — Freedman, C.J.M., Guy, Hall, Matas & O'Sullivan, J.J.A. — Nov. 8.

#106 — *Inco Ltd. v. The Queen* — information — sufficiency of information — charge under Reg. to *Mines Act* — allegation that accused "failed to ensure" safe performance of machinery — 10 pp. — Monnin, Hall & O'Sullivan, J.J.A. — Nov. 9.

#114 — *R. v. Chapman* — sentencing — attempted murder — unlawful use of firearm during flight from the commission of an indictable offence — robbery — 5 pp. — Guy, Monnin, Hall, Matas & O'Sullivan, J.J.A. — Dec. 7.

#115 — *R. v. Gregory* — dangerous driving — appeal from conviction — accused running red light and striking pedestrians — sentencing — 17 pp. — Guy, Monnin, Hall, Matas & O'Sullivan, J.J.A. — Dec. 7.

*Manitoba Court of Queen's Bench*  
— None —

*Manitoba County Court and Surrogate Court*

#61 — *R. v. Carlson* — possession of marijuana for purpose of trafficking — attempt by accused to prove lack of intention to traffic — failure of accused to testify — 9 pp. — Jewers, C.C.J. — Aug. 24.

#63 — *R. v. Ross* — breathalyzer — refusal to take test — adequacy of information — "a sample" used in information — whether reasonable and probable grounds existed for request to take test. (Criminal Procedure) — information — whether offence adequately described — whether a nullity — 15 pp. — Philp, C.C.C.J. — Sept. 6.

#66 — *Sydor v. The Queen* — breathalyzer — validity of conviction — certificate evidence — sentencing — 2 pp. — Jewers, C.C.J. — Sept. 21.

#68 — *Kellet v. The Queen* — *Highway Traffic Act* — charge of failing to make accident report — amendment to information at conclusion of Crown's case — amendment identifying accused as "owner" instead of "driver" of car in question — propriety of amendment — 16 pp. — Jewers, C.C.J. — Sept. 28.

#71 — *R. v. Mayo* — *res judicata* — charge of possession for purpose of trafficking — previous conviction for trafficking — charges arising out of related circumstances — 27 pp. — Coleman, C.C.J. — Oct. 5.

#78 — *R. v. Silverman* — offence involving importation of diamonds — adequacy of records kept by accused *re* disposal of diamonds — 4 pp. — Barkman, C.C.J. — Nov. 3.

#82 — *Chartrand v. The Queen* — breathalyzer — whether instrument used to take samples was "approved instrument" — *Code*, s. 237 — 16 pp. — Jewers, C.C.J. — Nov. 14.

#89 — *R. v. Allard* — *mens rea* — care or control of motor vehicle while impaired — accused with friend — argument *re* who was to drive — accused's intention upon entering vehicle — 7 pp. — Philp, C.C.C.J. — Nov. 29.

#95 — *Bernier v. The Queen* — breathalyzer — accused claiming to be in process of reporting a crime at time of offence — whether valid defence under *Code*, s. 25(1) (a) — 3 pp. — Thompson, C.C.J. — Dec. 8.

#102 — *R. v. Purves* — trial *de novo* — application for trial *de novo* — *Code*, s. 755 (4) — tests used to decide whether appeal should be *de novo* or on record — 7 pp. — Barkman, C.C.J. — Dec. 20.

### Evidence

*Manitoba Court of Appeal*

#85 — *R. v. Shurvell* — breathalyzer — certificate of analysis — whether "reasonable notice" given to accused — whether 15 minutes between taking of samples — 7 pp. — Freedman, C.J.M., Monnin, Hall, Matas & O'Sullivan, J.J.A. — July 6.

*Manitoba Court of Queen's Bench*

#108 — *Eddie Willox Agencies Ltd. v. South Park Mercury Sales Ltd.* — destruction of evidence — effect on onus of proof — rebutting of presumption against party destroying evidence — 24 pp. — Morse, J. — Oct. 11.

#128 — *Federal Business Development Bank v. Rothberg* — privilege — production of documents — documents edited to protect alleged privilege — receivership — receiver producing documents — conflict of interest — 5 pp. — Hewak, J. — Dec. 6.

*Manitoba County Court and Surrogate Court*

#71 — *R. v. Mayo* — *res judicata* — charge of possession for purpose of trafficking — previous conviction for trafficking — charges arising from related circumstances — 27 pp. — Coleman, C.C.J. — Oct. 5.

#76 — *Nault v. Maurice E. Sabourin Ltd.* — witnesses — failure by party to call all available witnesses — adverse inference — 12 pp. — Dureault, C.C.J. — Oct. 26.

#82 — *Chartrand v. The Queen* — hearsay — expert evidence — breathalyzer — whether "approved instrument" used for test — allegation that instrument identified by hearsay evidence — 16 pp. — Jewers, C.C.J. — Nov. 14.

**Family Law***Manitoba Court of Appeal*

#92 — *Haykowski v. Haykowski* — dower — homestead — what constitutes deceased's homestead — 2 pp. — Guy, Monnin & O'Sullivan, JJ.A. — Sept. 13.

#95c — *Winder v. Winder* — *alimony* — *order of interim alimony* — *Divorce Act*, s. 10 — whether wife need establish "necessitous circumstances" to receive interim alimony — 3 pp. — Freedman, C.J.M., Monnin & Matas, JJ.A. — Sept. 18.

#98 — *Miller v. Miller* — divorce — maintenance — lump sum payment to wife — lump sum payment to children — professional hockey player — purchase of home for wife and children — 13 pp. — Hall, Matas & O'Sullivan, JJ.A. — Sept. 21.

#102 — *McDairmid v. McDiarmid* — divorce — maintenance — appeal by wife from award — claim for lump sum payment — transfer to wife of husband's interest in matrimonial home — 8 pp. — Freedman, C.J.M., Monnin & Matas, JJ.A. — Oct. 25.

*Manitoba Court of Queen's Bench*

#79 — *Wolch v. Wolch* — *alimony* — application for interim *alimony* — principles involved in awarding interim *alimony* — 5 pp. — Hamilton, J. — July 14.

#90 — *Walker v. Walker* — divorce — cruelty — adultery — division of assets — farm couple — maintenance — 4 pp. — Deniset, J. — Aug. 9.

#91 — *Burshtein v. Burshtein* — divorce — three-year separation — desertion — maintenance — dispute *re* personal property under *Married Women's Prop. Act* — arrears of maintenance — occupation rent under *Law of Prop. Act* — 38 pp. — Wright, J. — Aug. 17.

#92 — *Diamond v. Diamond* — divorce — maintenance — application for reduction of maintenance payments — effect of previous agreement *re* quantum of maintenance — 5 pp. — Deniset, J. — Aug. 21.

#100 — *Cooper v. Cooper* — divorce — maintenance — application under *Married Women's Prop. Act* — summer cottage — market gardening property — lump sum maintenance payment — 6 pp. — Solomon, J. — Oct. 17.

#118 — *Waldman v. Waldman* — divorce — 3-year separation claimed in petition — separation for less than 3 years at time petition presented — amendment sought — 4 pp. — Morse, J. — Nov. 9.

#121 — *Lockhart v. Lockhart* — divorce — maintenance — wife with custody — whether wife should be expected to go to work in light of parties' financial situation — 5 pp. — Morse, J. — Nov. 14.

#122 — *Toews v. Toews* — divorce — maintenance — wife with custody — ability of husband to pay more maintenance — 4 pp. — Jewers, J. — Nov. 14.

*Manitoba County Court and Surrogate Court*

#57 — *B., re adoption of* — adoption — application by natural father and new wife — attempt to have consent of natural mother waived — 6 pp. — Lorne Ferg, C.C.J. — July 25.

#62 — *Sherman v. Marcy* — guardianship — contest between maternal aunt's family and close friends of child's deceased mother — wishes of child — wishes expressed by father of child and by deceased mother — 8 pp. — Jewers, C.C.J. — Aug. 30.

#65 — *Comrie v. Comrie* — custody — young children — custody awarded to mother — 2 pp. — Keith, S.C.J. — Sept. 20.

#103 — *Fortin v. Fortin* — maintenance — interim maintenance — application under *Family Maintenance Act* — wife and husband both stockholders and employees in business — 9 pp. — Jewers, C.C.J. — Dec. 21.

### Insurance

#### *Manitoba Court of Appeal*

— None —

#### *Manitoba Court of Queen's Bench*

#115 — *Leutert v. M.P.I.C.* — automobile — motion to name insurer as nominal defendant — allegation that accident caused by unidentified vehicle — whether applicant made “all reasonable attempts” to identify unknown driver — 5 pp. — Dewar, C.J.Q.N. — Oct. 27.

#132 — *Jarvela v. Phangureh* — automobile — indemnification — subrogation — application to court to distribute available insurance moneys among successful litigants — subrogated claims for hospital care — priority as against damage claims — 13 pp. — Nitikman, J. — Dec. 21.

#### *Manitoba County Court and Surrogate Court*

#60 — *Viselli v. M.P.I.C.* — automobile — claim for damage to car — claim by plaintiff that car stolen at time of accident — denial by insurer of theft — fraud alleged — 7 pp. — Philp, C.C.C.J. — Aug. 21.

#76 — *Nault v. Maurice E. Sabourin Ltd.* — fire — motorcycle — misrepresentations by insured in application for insurance — rejection by insurer of application — negligence alleged against agent and insurer — *Insurance Act*, s. 236 (1) — 12 pp. — Dureault, C.C.J. — Oct. 26.

#99 — *Stewart Smith Canada Ltd. v. Bubbs* — indemnification — salvage — airplane crash — removal of equipment from plane after crash — whether equipment covered by policy — identity of insurer — waiver of breach of policy — 15 pp. — Lockwood, C.C.J. — Dec. 11.

### Labour Law

#### *Manitoba Court of Appeal*

#87 — *International Brotherhood of Electrical Workers, Local 2085 v. Felec Services Inc.* — arbitration — judicial review — grievance based on seniority clause — “lateral transfer” sought by grievor — error of law alleged — 12 pp. — Freedman, C.J.M., Guy & O’Sullivan, J.J.A. — July 7.

#### *Manitoba Court of Queen's Bench*

#77 — *Retail Store Employees Union, Local 832 v. Westport Chrysler Plymouth Ltd.* — certification — appropriateness of unit — judicial review of Bd.’s decision *re* appropriateness of unit — 4 pp. — Wright, J. — July 7.

#98 — *Tiger Hills School Division No. 29 v. Tiger Hills School Division Association No. 29 of the Manitoba Teachers' Society* — contract negotiations following arbitration award — alleged agreement of settlement — effect of subsequent negotiations — 6 pp. — Solomon, J. — Sept. 28.

#134 — *Man. Gov't. Employees' Assoc'n. v. Liquor Control Commission of Man.* — arbitration — position classification — step payments — entitlement to higher step wage after specified period of time — reliance by Bd. on extrinsic evidence to resolve alleged ambiguity in agreement — 14 pp. — Morse, J. — Dec. 21.

#### *Manitoba County Court and Surrogate Court*

#85 — *Furnasman Heating Ltd. v. Vincent* — *Employment Standards Act* — claim by employer against employee for termination of employment without proper notice — estoppel against employer — discretion to award “fair” damages — 9 pp. — Jewers, C.C.J. — Nov. 21.

#85 — *Badger v. Red River Messenger & Transfer Ltd.* — *Employment Standards Act* — termination of employment by employee without proper notice — quantum of damages — holiday pay — 2 pp. — Thompson, C.C.J. — Nov. 29.

### Landlord and Tenant

#### *Manitoba Court of Appeal*

— None —

#### *Manitoba Court of Queen's Bench*

#111 — *North American Life Assurance Co. v. Wharfco Ltd.* — commercial lease — breach claimed by landlord — whether installation of pinball machines breaches covenant by tenant to use premises as retail store — renewal privilege — 6 pp. — Deniset, J. — Oct. 18.

#136 — *Morris v. Wenzoski Construction Ltd.* — voluntary waste — negligence — commercial lease — destruction of premises by fire — tenant's liability to landlord — 20 pp. — Nitikman, J. — Dec. 22.

#### *Manitoba County Court and Surrogate Court*

#73 — *Smith v. Ryback* — residential tenancy — declaration sought *re* validity of notice to vacate issued by landlord — *Act*, s. 100 — order sought to force landlord to make repairs — “major structural renovations” alleged as cause of notice to vacate — 10 pp. — Kennedy, C.C.J. — Oct. 12.

#96 — *Shead v. Indurent Ltd.* — commercial tenancy — distraint — motion to prevent landlord from distraining for rent — determination of amount of rent owing to landlord — set-off — 11 pp. — Kennedy, C.C.J. — Dec. 8.

#101 — *Edison Rental Agency (1969) Ltd. v. Mudge* — residential tenancy — termination — order for possession — failure to pay rent “on demand” — *Act*, s. 104(1) — validity of payment by mail — eviction — *Act*, s. 111 — 11 pp. — Kennedy, C.C.J. — Dec. 20.

### Legal Ethics

#### *Manitoba Court of Appeal*

— None —

#### *Manitoba Court of Queen's Bench*

#96 — *Hunt v. Avlonitis* — conflict of interest — purchase of shares by one client of lawyer from another client — allegation of impropriety against lawyer — 6 pp. — Deniset, J. — Sept. 4.

#### *Manitoba County Court and Surrogate Court*

— None —

### Local Government Law

#### *Manitoba Court of Appeal*

#99 — *Smith v. Winnipeg, City of* — demolition of House — *City of Wpg. Act* — validity of required notice and hearing given to owner — 4 pp. — Guy, Monnin & O'Sullivan, J.J.A. — Oct. 17.

#100 — *Nocita v. Municipal Board of Manitoba* — Municipal Board — application for leave to appeal decision of Bd. — jurisdiction — question of law — requirement that resolution be passed by city council — 6 pp. — Monnin, J.A. (in chambers) — Oct. 19.

#### *Manitoba Court of Queen's Bench*

#93 — *Canadian Association of Industrial, Mechanical & Allied Workers v. Winnipeg, City of* — Police Commission — whether legal entity capable of being sued — vicarious liability for acts of police officers — 10 pp. — Nitikman, J. — Aug. 24.

#103 — *Imperial Broadway Tower Ltd. v. Winnipeg, City of* — business tax assessment — parking lot under apartment block — spaces in lot rented to tenants of block — whether tax payable — 6 pp. — Solomon, J. — Sept. 28.

#106 — *Quail Ridge Properties Ltd. v. Winnipeg, City of* — taxation — assessment — tax concession agreement between municipality and developer — effect of amalgamation of City of Wpg. on agreement — 16 pp. — Solomon, J. — Oct. 4.

#135 — *Weiss v. St. Francis Xavier, Munic. of* — assessment — dwelling house — whether house exempt under *Municipal Assessment Act*, s. 30(2) — owner an employee and shareholder of co. growing nursery stock on land in question — 6 pp. — Dewar, C.J.Q.B. — Dec. 21.

#137 — *Jay-Em Developments Ltd. v. Maruschak* — *City of Wpg. Act* — restrictions on transfer of land — enforceability of sale agreement which contravenes restrictions in *Act* — 14 pp. — Hewak, J. — Dec. 28.



*Manitoba County Court and Surrogate Court*  
— None —

### Negotiable Instruments

*Manitoba Court of Appeal*  
— None —

*Manitoba Court of Queen's Bench*

#96 — *Hunt v. Avlonitis* — promissory note given for purchase of shares — allegation of misconduct against lawyer who arranged transaction — 6 pp. — Deniset, J. — Sept. 4.

*Manitoba County Court and Surrogate Court*  
— None —

### Personal Property

*Manitoba Court of Appeal*  
— None —

*Manitoba Court of Queen's Bench*

#114 — *Ruzyllo v. Public Trustee of Manitoba* — gifts — cheque given to plaintiff for personal care services — insufficient funds to cover cheque — death of donor — 6 pp. — Hunt, J. — Oct. 20.

*Manitoba County Court and Surrogate Court*

#69 — *National Drugs Ltd. v. Dominion Storage Co.* — bailment for reward — claim for loss of goods — damages — limitation of liability clause — 3 pp. — Keith, C.C.J. — Oct. 2.

### Real Property

*Manitoba Court of Appeal*

#82 — *R. in rt. of Man. v. Barc* — sale of land — specific performance — whether sale agreement or purchase option — revocation — required approvals *re* purchase — whether conditions precedent — 11 pp. — Monnin, Hall & Matas, JJ.A. — July 4.  
#99 — *Smith v. Winnipeg, City of* — house — demolition by city — trespass — validity of prior notice and hearing given to owner — 4 pp. — Guy, Monnin & O'Sullivan, JJ.A. — Oct. 17.

#113 — *Welichka v. Welichka* — partition and sale — matrimonial home — application by wife to set aside order for sale made in previous court hearing — wife not present at previous hearing — 15 pp. — Freedman, C.J.M., Matas & O'Sullivan, JJ.A. — Dec. 6.

*Manitoba Court of Queen's Bench*

#87 — *Lake Manitoba Estates Ltd. v. Communities Economic Development Fund* — land claim — plaintiff claiming legal right to receive title to land held by defendant — whether defendant agreed to transfer land — effect of *Statute of Frauds* — 22 pp. — Wright, J. — July 28.

#105 — *Bialowas v. Kozubenko* — easement — compensation — slight encroachment of brick and eaves onto adjoining land — 6 pp. — Morse, J. — Oct. 4.

#123 — *Vermette v. Vermette* — easement — farmlands — access road — attempt by landowner to close access road — easement by prescription claimed by applicant — 8 pp. — Hamilton, J. — Nov. 17.

*Manitoba County Court and Surrogate Court*

#58 — *Ciecko v. Fotti* — *lis pendens* — motion for order to vacate — no allegation in Claim of interest in the land — 4 pp. — Barkman, C.C.J. — Aug. 14.

### Restitution

— None —

### Taxation

*Manitoba Court of Appeal*

#96 — *International Nickel Company of Canada v. Min. of Finance of Man.* — mining tax — reassessment — *Mining Royalty and Tax Act* — actual income from mining operations — sale of output to subsidiary companies at discount prices — market value — interest — 9 pp. — Freedman, C.J.M., Guy, Hall, Matas & O'Sullivan, JJ.A. — Sept. 19.

*Manitoba Court of Queen's Bench*

#101 — *Aetna Roofing Co. v. Min. of Finance of Manitoba* — sales tax — assessment — roofing company — metal flashing embedded into roofs — whether tax payable on flashing — “consumption” — “purchaser” — 5 pp. — Hamilton, J. — Sept. 20.

#103 — *Imperial Broadway Tower Ltd. v. Winnipeg, City of* — business tax — assessment — parking lot under apartment block — spaces in lot rented to tenants of block — whether tax payable — 6 pp. — Solomon, J. — Sept. 28.

#106 — *Quail Ridge Properties Ltd. v. Winnipeg, City of* — property tax — assessment — tax concession agreement between municipality and developer — effect of amalgamation of City of Wpg. on agreement — 16 pp. — Solomon, J. — Oct. 4.

*Manitoba County Court and Surrogate Court*

— None —

**Torts***Manitoba Court of Appeal*

#99 — *Smith v. Winnipeg, City of* — trespass — demolition of house by city — validity of notice and hearing given to owner — 4 pp. — Guy, Monnin & O'Sullivan, JJ.A. — Oct. 17.

#101 — *Timothy Farms Ltd. v. Elm River Hutterian Mutual Corp.* — negligence — prairie fire — sufficiency of evidence *re* origin of fire — 6 pp. — Guy, Hall & O'Sullivan, JJ.A. — Oct. 19.

*Manitoba Court of Queen's Bench*

#93 — *Canadian Association of Industrial, Mechanical & Allied Workers v. Winnipeg, City of* — assault — claim against Police Commission — whether a legal entity — vicarious liability — motion to dismiss claim against Commission — 10 pp. — Nitikman, J. — Aug. 24.

#94 — *Soko v. Norman* — negligence — motor vehicle accidents — plaintiff involved in two separate collisions — injuries — whiplash — nervous shock — 7 pp. — Deniset, J. — Aug. 24.

#102 — *Beachman v. Renard* — negligence — damages — personal injuries — motor vehicle accident — psychological effects — disability claimed — loss of employment — 12 pp. — Deniset, J. — Sept. 28.

#113 — *Derhousoff v. The Pas, Town of* — negligence — sewer back-up — alleged negligent construction of sewer by town — *res ipsa loquitur* — 4 pp. — Hunt, J. — Oct. 20.

#125 — *Hourie v. Sundstrom* — negligence — professional negligence action — motion by Legal Aid Man. to strike out claim against it — whether claim barred by s. 17 of *Legal Aid Services Society of Man. Act.* — 3 pp. — Hamilton, J. — Nov. 29.

#136 — *Morris v. Wenzoski Construction Ltd.* — negligence — destruction of business premises by fire — suit by landlord against tenant — *res ipsa loquitur* — 2 pp. — Nitikman, J. — Dec. 22.

#141 — *Pavao v. Vieira* — breach of promise of marriage — plaintiff journeying to Canada to meet defendant — 3d party acting as marriage broker — marriage of convenience — damages — 10 pp. — Hewak, J. — Dec. 29.

*Manitoba County Court and Surrogate Court*

#76 — *Nault v. Maurice E. Sabourin Ltd.* — negligence — application for insurance — misrepresentations by insured — cancellation of coverage by insurer — negligence alleged against agent and insurer — 12 pp. — Dureault, C.C.J. — Oct. 26.

#77 — *Melnyk v. Scott* — negligence — car-pedestrian accident — pedestrian crossing street against red light — statutory onus on defendant — alleged failure to keep proper lookout — 8 pp. — Kennedy, C.C.J. — Oct. 27.

**Transportation and Communications***Manitoba Court of Appeal*

#94 — *Forest Moving & Storage Co. v. Leslie's Storage Ltd.* — Highway Transport Bd. — Public Service Vehicle certificate — judicial review — certificate exceeding territorial limits of original application — public convenience — 3 pp. — Hall, Matas & O'Sullivan, JJ.A. — Sept. 14.

#120 — *Al's Towing Service Ltd. v. Highway Transport Bd. of Man.* — Highway Transport Bd. — procedural rules — effect of late filing of documents by parties seeking to intervene at public hearing — 8 pp. — Monnin, Matas & O'Sullivan, J.J.A. — Dec. 22.

*Manitoba Court of Queen's Bench*

— None —

*Manitoba County Court and Surrogate Court*

— None —

### Trusts

*Manitoba Court of Appeal*

— None —

*Manitoba Court of Queen's Bench*

#114 — *Ruzyllo v. Public Trustee of Manitoba* — personal care services provided by plaintiff — cheque presented by settlor — insufficient funds to cover cheque — death of settlor — 6 pp. — Hunt, J. — Oct. 20.

*Manitoba County Court and Surrogate Court*

— None —

### Wills

*Manitoba Court of Appeal*

— None —

*Manitoba Court of Queen's Bench*

#82 — *Meighen v. First Presbyterian Church of Brandon* — interpretation — codicil — whether codicil disposes of residue of estate — *cy-pres* doctrine — absolute disposal of residue intended — 6 pp. — Deniset, J. — July 24.

#88 — *Rempel v. Braun* — interpretation — bequest to living grandchildren and any grandchild born later — effect of attempt to include grandchildren born later — 4 pp. — Deniset, J. — Aug. 2.

#140 — *Famous Players Ltd. v. Winnipeg, City of* — compensation — Pembina drive-in theatre property — market value — highest and best use of land — residential development — access to subject property — 27 pp. — Wright, J. — Dec. 29.

*Manitoba County Court and Surrogate Court*

#64 — *Bliss estate, re* — administration — motion to pass accounts for administration of estate — legal fees — executor's fee — delays alleged in administration of estate — 13 pp. — Jewers, S.C.J. — Sept. 11.

#67 — *Roberts estate, re* — probate — application to court *re* division of assets — will leaving whole estate to deceased's mother — application to have court provide for common law wife and children of deceased — 4 pp. — Barkman, S.C.J. — Sept. 22.

#83 — *Johnston v. The Queen* — costs — successful appeal by claimant — Act, s. 43(1) — counsel's bill of costs — expert witness fees — 4 pp. — Barkman, C.C.J. — Nov. 15.

#86 — *Stieben estate, re* — costs — decision that will invalid — whether estate to pay costs on solicitor-client or party and party basis — 4 pp. — Barkman, S.C.J. — Nov. 27.

#93 — *Shkolny estates, re* — intestacy — administration — petition to pass accounts — distribution of property from intestacy into widow's estate — time of operation of *Devolution of Estates Act* — change in land values — 13 pp. — Jewers, S.C.J. — Dec. 6.

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