

**DIGEST OF UNREPORTED MANITOBA CASES  
JULY - DECEMBER 1979\***

**Administrative Law**

*Manitoba Court of Appeal*

—none—

*Manitoba Court of Queen's Bench*

#97 — *Bartlett v. Manitoba Health Services Commission* — judicial review — bias — Medical Review Committee — meeting and decision re pattern of physician's practice — meeting attended by sub-committee member who investigated physician and recommended review hearing — 9 pp — Nitikman J. — Oct. 10.

*Manitoba County Court*

—none—

**Agency**

—none—

**Business Organization**

*Manitoba Court of Appeal*

—none—

*Manitoba Court of Queen's Bench*

#91 *Proulx v. Montford* — partnership — operation of hotel beverage room — claims by one partner against the other for misappropriation of partnership funds — 16 pp. — Nitikman J. — Sept. 10.

*Manitoba County Court*

—none—

**Civil Liberties**

*Manitoba Court of Appeal*

#150 — *R v. Roulette* — aboriginal rights — Indians hunting for food on reserve — whether "lawful excuse" for hunting game birds out of season contrary to *Migratory Birds Convention Act* — 3 pp. — Freedman C.J.M., Hall & O'Sullivan JJ. — Dec. 21.

*Manitoba Court of Queen's Bench*

—none—

*Manitoba County Court*

—none—

**Civil Procedure**

*Manitoba Court of Appeal*

#72a — *Apple Meadows Limited v. Quail Ridge Properties Limited* — appeal — application to extend time for bringing appeal — intention to appeal — 2 pp. — Freedman C.J.M., Matas & O'Sullivan J.J.A. — Aug. 23.

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

#78 — *Pearlman v. City of Winnipeg* — motion to strike out statement of claim — 2 pp. — Monnin, Hall & O'Sullivan J.J.A. — Sept. 4.

#84 — *Flanders Installations Limited v. Emec Trading Limited* — appeals — stay of proceedings — cross-examination on affidavit — security for costs — 2 pp. — Monnin, Matas & O'Sullivan J.J.A. — Sept. 13.

#124 — *Manitoba Securities Commission v. Winnipeg Mortgage Exchange Ltd.* — motion to stay order giving leave to certain parties to bring action against receiver — 3 pp. — Freedman, C.J.M., Monnin & Huband J.J.A. — Nov. 8.

#125 — *John Kehler Enterprises Ltd. v. Diamond* — motion to set aside default judgment — defendants' counsel inadvertently missing extended time limitation for filing defence — 3 pp. — Freedman, C.J.M., Hall & Huband J.J.A. — Nov. 12.

#135 — *Eva v. Eva* — appeal — motion to extend time for filing appeal — multiplicity of prior proceedings between parties — 8 pp. — Huband J. (in chambers) — Nov. 30.

#144 — *Pesto v. Pesto* — want of prosecution — motion to dismiss — no transcript ordered — 2 pp. — Freedman C.J.M., Monnin & Huband J.J.A. — Dec. 13.

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

#113 — *Bank Canadian National v. Krause* — motion to set aside default judgment — delay in bringing motion — whether irreparable injury caused to plaintiff — whether death of co-defendant is irreparable injury — worthiness of defence — 14 pp. — Kroft J. — Nov. 6.

#### *Manitoba County Court*

#127 — *Richmond Plumbing & Heating Co. v. Kindred Industries Limited* — defence of tender — whether claim for interest should be deemed to expand amount claimed to beyond what was tendered — 17 pp. — Coleman C.C.J. (orally) — Nov. 22.

### **Commercial and Consumer Transactions**

#### *Manitoba Court of Appeal*

#103 — *Easton's Cleaners, Dyers & Furriers Ltd. v. Marv-Eon Signs Ltd.* — erection of sign — building contract — applicability of *Sale of Goods Act* — reasonable fitness for purpose — exclusion clause — 4 pp. — Monnin, O'Sullivan & Huband J.J.A. — Oct. 16.

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

—none—

#### *Manitoba County Court*

#105 — *National Trust Co. v. Wiltshire* — repossession of car bought on time sale — attempt by loan co. to recover balance against debtor after having repossessed car — *Cons. Protection Act*. ss. 53, 66(4), 69(1) — 8 pp. — Thompson C.C.J. — Sept. 21.

#109 — *Hunter v. Simpson Sears Ltd.* — alleged defect in ladder which caused sudden collapse — expert evidence re soundness of ladder — 10 pp. — Jewers C.C.J. — Oct. 9.

#137 — *Freeway Sales and Distributors Limited v. Hogan* — boat and motor older than represented by seller — “merchantable quality” — *Consumer Protection Act*, ss. 58(1)(e), 58(5) — 7 pp. — Barkman C.C.J. — Dec. 18.

### Constitutional Law

*Manitoba Court of Appeal*

—none—

*Manitoba Court of Queen's Bench*

—none—

*Manitoba County Court*

#81a — *Roulette v. The Queen — Migratory Birds Convention Act — Natural Resources Act* — Indian hunting rights — 6 pp. — Patrick Ferg C.C.J. — June 25.

### Contracts

*Manitoba Court of Appeal*

#101 — *Stewart Smith Canada Ltd. v. Bubbs* — terms — sale of salvage rights by insurance company — right of enforcement by holder of salvage rights — estoppel — 8 pp. — Freedman C.J.M., Hall & O'Sullivan J.J.A. — Oct. 12.

#103 — *Easton's Cleaners, Dyers & Furriers Limited v. Merv-Eon Signs Limited* — building contract — implied term of reasonable fitness — applicability of *Sale of Goods Act* — 4 pp. — Monnin, O'Sullivan & Huband J.J.A. — Oct. 16.

#130 — *Gannon v. Leaf Rapids Town Properties Limited* — repudiation — acceptance of repudiation — personal service contract — damages — mitigation — no loss of earnings — 2 pp. — Freedman C.J.M., Hall & O'Sullivan J.J.A. — Nov. 21.

#145 — *CKJS Ltd. v. Royal Tower Limited* — fundamental breach — commercial lease — failure by landlord to make promised renovations — *consensus ad idem* — 27 pp. — Hall, Matas & Huband J.J.A. — Dec. 14.

*Manitoba Court of Queen's Bench*

#72 — *Thompson v. Goertzen* — unconscionable transaction — undue influence — transfer of land occasioned by plaintiff's financial difficulties — value of land in comparison to consideration paid by defendants — 17 pp. — Morse J. — July 10.

#115 — *Parkinson v. Nephesh Theatre Company* — terms — breach — suit claiming damages for breach of contract — motion to stay — arbitration clause in contract — whether settlement reached by parties — 8 pp. — Nitikman J. — Nov. 8.

#132 — *Weight Watchers of Manitoba Ltd. v. Peters* — restrictive covenant — employee agreeing not to work in similar fields of endeavor — breach alleged — application by employer for interim injunction — 7 pp. — Solomon J. (orally) — Dec. 5.

*Manitoba County Court*

#84 — *Girardin v. LeBrun* — illegality — alleged contravention of *Lord's Day Act* — affirmation of contract made on Sunday — 6 pp. — Dureault C.C.J. — June 28.

#90 — *Cenit Construction Ltd. v. Huta* — mechanic's lien — validity — date of completion of original contract — counterclaim by homeowner for allegedly defective work done by sub-contractor — claim for indemnification against Homeowners Association — 18 pp. — Barkman C.C.J. — Aug. 7.

#94 — *Csath Construction Limited v. Schlosser* — terms — breach — construction of custom-made home — suit for balance of purchase price — counterclaim for defects in construction — compliance with specifications — 14 pp. — Philp C.C.C.J. — Sept. 11.

#95 — *Johnson v. Saniuk* — sale and purchase of home — defects alleged — innocent misrepresentation — warranty — caveat emptor — 13 pp. — Kennedy C.C.J. — Sept. 11.

#96 — *Vojic v. Hunter Memorial Hospital* — terms — breach — painting contract — dispute between parties — termination of contract — suit for balance of purchase price — counterclaim for delay — 11 pp. — Kennedy C.C.J. — Sept. 11.

#99 — *Lipchen v. Hallwood Builders' Limited* — terms — breach — construction of house — defects in construction alleged — 7 pp. — Thompson C.C.J. — Sept. 19.

#114 — *Rogers v. Harvey* — *non est factum* — promissory note — suit against guarantor — whether guarantor intended to sign as witness — 9 pp. — Kennedy C.C.J. — Oct. 16.

#118 — *Lythle v. McClune* — building contract — termination by homeowners — allegation that work not progressing quickly enough — failure to communicate urgency of time — 15 pp. — Kennedy C.C.J. — Oct. 26.

#127 — *Richmond Plumbing & Heating Co. v. Kindred Industries Limited* — service contract — replacement of sink strainers — reasonableness of charge — 17 pp. — Coleman C.C.J. (orally) — Nov. 22.

#132 — *Boden v. Lac du Bonnet Air Park Limited* — terms — employment contract — termination — settlement — 4 pp. — Barkman C.C.J. — Dec. 4.

#138 — *Holiday Chevrolet - Oldsmobile Limited v. Paramount Kenworth Ltd.* — terms — breach — termination — leasing of automobiles — whether termination of leases justified — fundamental breach — damages — 13 pp. — Patrick Ferg C.C.J. — Dec. 20.

**Creditors' Rights***Manitoba Court of Appeal*

#83 — *Contrusco Realty Limited v. Marwood Development Limited* — receivership — motion for stay of order appointing receiver — 3 pp. Huband J.A. (in chambers) — Sept. 13.

#138 — *Manitoba Securities Commission v. Winnipeg Mortgage Holdings* — receivership — leave sought by certain creditors to sue receiver — manager — 2 pp. — Freedman C.J.M., Monnin & Huband J.J.A. — Dec. 10.

*Manitoba Court of Queen's Bench*

#87 — *Collins v. Keystone Credit Union Limited* — bankruptcy — motion by trustee to declare void a chattel mortgage signed by the bankrupt — mortgage registered in wrong county court — subsequent creditors aware of mortgagee's interest — "equitable mortgage" — *Bills of Sale Act*, s. 4(1) — 7 pp. — Solomon J. — Sept. 7.

#93 — *Kelleher v. Westoba Credit Union Ltd.* — bankruptcy — application to disallow status as secured creditor — hypothecation of title document — equitable mortgage — parol evidence — 6 pp. — Hewak J. — Sept. 19.

#98 — *Zucawich v. Resendes* — *Judgments Act* — application for sale of land — requirement for registration of over one year — whether requirement met by re-registration of judgment after expiry date — 2 pp. — Wright J. — Oct. 10.

*Manitoba County Court*

#90 — *Cenit Construction Limited v. Huta* — mechanics' lien — validity — date of completion of original contract — counterclaim by homeowner for allegedly defective work done by sub-contractor — claim for indemnification against Homeowners Association — 18 pp. — Barkman C.C.J. — Aug. 7.

#110 — *Dominion Lumber Winnipeg Ltd. v. Cyr* — builders and workers lien — validity — registration of delivery slips and invoices — whether slips and invoices form the "contract in writing" — *Act*, s. 11 — whether s. 11 contemplates registration after execution of contract — 5 pp. — Dureault C.C.J. — Oct. 10.

#125 — *Calmakov v. Sim* — judgment debt — right of creditor to examine third party as to property, means and whereabouts of judgment debtor — *Q.B. Rule 518* — 6 pp. Kennedy C.C.J. — Nov. 22.

#129 — *Moodoo v. Sankar* — lien — demand for repayment — whether money advanced by way of loan or gift — 7 pp. — Jewers C.C.J. — Nov. 26.

#135 — *Moroz v. Riesmeyer* — construction work — contract terminated before completion of work — delays — quality of work — 8 pp. — Lorne Ferg C.C.J. — Dec. 12.

**Criminal Law, Procedure and Sentencing***Manitoba Court of Appeal*

#75 — *R v. Davis* — bail application — previous convictions for failure to appear — 2 pp. — Freedman C.J.M. (in chambers) — Aug. 30.

#76 — *R v. Stevenson* — bail application — charge of threatening to cause death or injury — accused potentially violent — 2 pp. — Freedman C.J.M. (in chambers) — Aug. 30.

#80 — *R v. Appleyard* — sentencing — manslaughter — 2 pp. — Freedman C.J.M., Monnin, Hall, Matas, & O'Sullivan J.J.A. — Sept. 10.

#82 — *R v. Passante* — sentencing — trafficking — Crown appeal of 2 month sentence — prior record — 2 pp. — Freedman C.J.M., Monnin, Hall, Matas & O'Sullivan J.J.A. — Sept. 10.

#90 — *R v. Hotte* — statement — statement differing from defence at trial — effect of demerol injections on reliability of statement — 4 pp. — Freedman C.J.M., O'Sullivan & Huband J.J.A. — Sept. 20.

- #95 — *R v. Ashdown* — welfare fraud — imprisonment — probation — restitution — 2 pp. — Monnin, Hall & Matas J.J.A. — Sept. 27.
- #96 — *R v. Cournoyea* — sentencing — probation — early release of accused — 2 pp. — Monnin, Hall, Matas, O'Sullivan & Huband J.J.A. — Sept. 27.
- #116 — *R v. McIntyre* — sentencing — rape — gross indecency — crown appeal — 2 pp. — Freedman C.J.M., Monnin, Hall, Matas & O'Sullivan J.J.A. — Oct. 30.
- #120 — *R v. Hickey* — sentencing — break, enter, & theft — Crown appeal of suspended sentence — 3 pp. — Freedman C.J.M., Monnin, Hall, Matas & Huband J.J.A. — Nov. 6.
- #127 — *R v. Hudson* — sentencing — uttering forged cheques — female offender — first offence — 4 pp. Freedman C.J.M., Monnin & Matas J.J.A. — Nov. 19.
- #128 — *R v. Bloomfield* — sentencing — manslaughter — Crown appeal — 2 pp. — Freedman C.J.M., Monnin & Matas J.J.A. — Nov. 19.
- #136 — *R v. Calles* — theft — accused a store employee — alleged shortage of inventory — absence of explanation — 5 pp. — Freedman C.J.M., Matas & O'Sullivan J.J.A. — Dec. 6.
- #148 — *R v. Klusoczky* — identification evidence — line-up — composite sketch — descriptions of accused by victims — 11 pp. — Freedman C.J.M., Hall, Matas, O'Sullivan & Huband J.J.A. — Dec. 19.
- #149 — *Pearlman v. Kirkham* — assault — private prosecution — application by complainant for leave to appeal — question of law — 9 pp. — Freedman C.J.M., Monnin & Matas J.J.A. — Dec. 21.
- #152 — *R v. Duczminski* — sentencing — book-making — 3 pp. — Hall Matas & Huband J.J.A. — Dec. 27.
- #153 — *R v. Proulx* — robbery — fingerprint evidence — appeal — inadvertent destruction of exhibits after trial — motion for new trial — 4 pp. — Freedman C.J.M., O'Sullivan & Huband J.J.A. — Dec. 27.

*Manitoba Court of Queen's Bench*

—none—

*Manitoba County Court*

- #92 — *R v. Cunningham; R v. Ritchie* — unlawful confinement — passenger cruise ship — apprehension by accused crew members of juvenile throwing projectiles at ship — confinement on ship — whether accused mistreated juvenile — 18 pp. — Jewers C.C.J. — Aug. 10.
- #97 — *R v. Rinas* — double jeopardy — dismissal of charge at preliminary hearing — Crown laying second charge based on same facts — 4 pp. — Thompson, C.C.J. — Sept. 14.
- #100 — *Gowenlock v. The Queen* — appeal — application for trial de novo — allegation of bias against trial judge — allegedly excessive interference in conduct of trial — 9 pp. — Kennedy C.C.J. — Sept. 20.
- #106 — *Danielson v. The Queen* — motion to quash information — wrong section number of code cited — particulars of offence set out correctly — breathalyzer — road side screening device — whether established as approved by Crown — power of court to take judicial notice of Reg. approving machine — “reasonable excuse” — whether request for test reasonable excuse for refusal to give roadside sample — 6 pp. — Barkman C.C.J. — Sept. 25.

- #115 — *Jackson v. The Queen* — breathalyzer — refusal to take test — “reasonable excuse” — standard of proof required of accused — 4 pp. — Dureault C.C.J. — Oct. 18.
- #119 — *R v. Nerbas* — breathalyzer — Crown appeal — “evidence to the contrary” — another party blowing into machine at about same time as accused — doubt re accuracy of test results — 6 pp. — Lorne Ferg C.C.J. — Oct. 29.
- #126 — *R v. Kalyn* — summary conviction offence — trial — failure to take transcript of proceedings — motion to quash conviction — motion for trial de novo. — 7 pp. — Jewers C.C.J. — Nov. 22.
- #131 — *R v. Peters* — breathalyzer — “evidence to the contrary” — attempt to show accused drank less than suggested by machine readings — credibility — 7 pp. — Lockwood C.C.J. — Dec. 3.
- #133 — *R v. Presonka* — breathalyzer — refusal to take test — demand allegedly made by “special constable” — whether a peace officer within meaning of Code — 2 pp. — Keith, C.C.J. — Dec. 5.
- #134 — *R v. Thompson* — breathalyzer — “evidence to the contrary” — evidence re quantity of alcohol consumed by accused — evidence re time of consumption unclear — whether doubt cast on machine readings — 9 pp. — Lockwood C.C.J. — Dec. 5.
- #136 — *Chapman v. The Queen* — breathalyzer — refusal to take test — “reasonable excuse” — accused claiming to have lung problem — accused offering blood sample as substitute — police accepting blood sample — 9 pp. — Lorne Ferg C.C.J. — Dec. 14.
- #141 — *R v. Nichol* — breathalyzer — refusal to comply with request for roadside alert test — accused allegedly incapable of providing test because of weak lung condition — whether accused’s explanation could reasonably have been true — 5 pp. — Lockwood C.C.J. — Dec. 28.
- #142 — *R v. Gillespie* — breathalyzer — charge of refusal to take test — sufficiency of information — whether request for “sample” acceptable — whether allegation of refusal to accompany peace officer acceptable — 9 pp. — Lockwood C.C.J. — Dec. 31.

### Evidence

#### *Manitoba Court of Appeal*

- #148 — *R v. Klusoczky* — identification evidence — criminal charge — lineup — composite sketch — descriptions of accused by victims — 11 pp. — Freedman C.J.M., Hall, Matas, O’Sullivan & Huband J.J.A. — Dec. 19.
- #90 — *R v. Hotte* — statement — effect of demerol injections on reliability of statement — 4 pp. — Freedman C.J.M., O’Sullivan, Huband J.J.A. — Sept. 20.

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

—none—

#### *Manitoba County Court*

- #99 — *Lipchen v. Hallwood Builders Limited* — examination for discovery — answers read in at trial — evidence unfavourable to party reading in answers — whether answers adopted — 7 pp. — Thompson C.C.J. — Sept. 19.
- #106 — *Danielson v. The Queen* — judicial notice — breathalyzer — whether proof required of Reg. approving roadside device — 6 pp. — Barkman C.C.J. — Sept. 25.

## Family Law

*Manitoba Court of Appeal*

#72 — *Ferencaba v. Ferencaba* — marital property — distribution — property purchased by spouses — whether husband unjustly deprived of equitable interest in property — maintenance — access — 8 pp. — Monnin, Matas & O'Sullivan J.J.A. — Aug. 1.

#77 — *Children's Aid Society of Eastern Manitoba v. Beaulieu* — guardianship — motion for non-suit — statutory authority to grant 6-month supervision order re child not in need of protective guardianship — 2 pp. — Monnin, Hall & Huband J.J.A. — Sept. 4.

#94 — *Smith v. Smith* — adoption — motion to adjourn adoption proceedings in County Court — custody dispute in Queen's Bench — 2 pp. — Monnin, Matas & Huband J.J.A. — Sept. 25.

#112 — *Burshtein v. Burshtein* — maintenance — failure by husband to disclose certain assets to the court — lump sum award — arrears of interim maintenance — occupational rent for marital home — costs — 6 pp. — Monnin, Hall & O'Sullivan J.J.A. — Oct. 26.

#114 — *Iwanchuk v. Iwanchuk* — divorce — maintenance — lump sum payment to wife — relevance of existing separation agreement — 3 pp. — Freedman C.J.M., Hall & Matas J.J.A. — Oct. 29.

#122 — *Roschuk v. Roschuk* — custody — interim custody — motion by father to vary custody award pending hearing of appeal — 3 pp. — Monnin J.A. (in chambers) — Nov. 7.

#126 — *Pizyckyj v. Pizyckyj* — maintenance — interim maintenance — other actions pending — 4 pp. — Monnin, Matas & Huband J.J.A. — Nov. 12.

#132 — *D v. D* — judicial separation — maintenance — application for partition and sale of matrimonial home — 8 pp. — Freedman C.J.M., Monnin & Huband J.J.A. — Nov. 23.

#147 — *Simcoe v. Simcoe* — maintenance — application in Prov. Judges' Court under Family Maintenance Act — similar and more complete action pending in Q.B. — whether Prov. Judges' Court action should proceed — 3 pp. — Monnin, Matas & Huband J.J.A. — Dec. 18.

*Manitoba Court of Queen's Bench*

#71 — *Kurchaba v. Kurchaba* — divorce — three-year separation — maintenance — distribution of marital property — farm property — lump sum ordered — 19 pp. — Kroft J. — July 6.

#78 — *Strothman v. Strothman* — custody — extra — jurisdictional battle for children — wife in Manitoba — husband relying on California courts — 15 pp. — Nitikman J. — July 19.

#79 — *Roschuk v. Roschuk* — divorce — physical and mental cruelty — condonation — custody — maintenance — division of assets — *Marital Property Act* — 16 pp. — Deniset J. — July 20.

#80 — *Jandrisch v. Jandrisch* — divorce — custody — criteria for awarding custody — children's preferences re custody — 21 pp. — Hewak J. — July 26.

#81 — *Lesyk v. Lesyk* — divorce — maintenance — effect of separation agreement — tax consequences of maintenance payments — custody — access — 8 pp. — Kroft J. — July 26.



#106 — *Public Trustee of Manitoba v. Province of Manitoba* — social allowance — payments for children — obligation of Director to consider trust moneys held for children — effect on *Trustee Act* Application for payment out of trust funds — 9 pp. — Deniset J. — Oct. 23.

#111 — *Roy v. Roy* — divorce — maintenance — lump sum payment — power of court under *Divorce Act* to extinguish joint interest of respondent in matrimonial home — 3 pp. — Hewak J. — Nov. 2.

#123 — *Fenwick v. Fenwick* — divorce — maintenance for wife — wife owning company shares — lump sum payment — monthly maintenance — 5 pp. — Hunt J. — Nov. 23.

#126 — *Golden v. Golden* — divorce — adultery — sufficiency of proof — 2 pp. — Wright J. — Nov. 28.

#133 — *Newman v. Newman* — divorce — maintenance — wife seeking alteration of existing separation agreement re maintenance — 9 pp. — Hewak J. — Dec. 6.

#### *Manitoba County Court*

#103 — *Tycholiz v. Tycholiz* — *Family Maintenance Act* — claim by wife for maintenance for children — *Marital Property Act* — claim by husband for equal division of assets — whether fault a factor in disposing of either claim — 6 pp. — Lockwood C.C.J. — Sept. 20.

### Insurance

#### *Manitoba Court of Appeal*

#101 — *Stewart Smith Canada Limited v. Bubbs* — salvage — sale of salvage rights by insurer — right of enforcement by holder of salvage rights — estoppel — 8 pp. — Freedman, C.J.M., Hall & O'Sullivan J.J.A. — Oct. 12.

#115 — *Lechman v. Fireman's Fund Insurance Co.* — property — indemnification — claim for loss based on vandalism — exclusion clauses re vacancy — whether premises vacant at time of loss — 3 pp. — Freedman, C.J.M., Monnin & Huband J.J.A. — Oct. 29.

#137 — *Major v. M.P.I.C.* — automobile — indemnification — accident involving driver whose license had been suspended — whether employer made reasonable inquiries re status of license — 3 pp. — Freedman C.J.M., Hall & Matas J.J.A. — Dec. 10.

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

#74 — *Copp v. M.P.I.C.* — automobile — second party — refusal by insurer to pay for certain damage to car — “direct and accidental loss or damage” — failure of insured to protect vehicle from further damage — 10 pp. — Dewar C.J.Q.B. — July 17.

#101 — *South Park Mercury Sales Ltd. v. M.P.I.C.* — automobile — whether insured authorized repair of damaged automobile — indemnification to insured — 20 pp. — Morse J. — Oct. 15.

#121 — *Derkach v. Barrs* — automobile — *Act*, ss. 33(2), 33(5) — whether applicable to third party liability insurance — “benefits” — “insurance money” — 2 pp. — Solomon J. — Nov. 22.

#135 — *Duthie v. Ilderton* — automobile — compensation for injuries suffered in car accident — damages agreed upon — defendants demanding reduction of award due to payments of benefits to plaintiff — *Act*, s. 33 — whether third party liability claim involved — 5 pp. — Dewar C.J.Q.B. — Dec. 12.

#140 — *Rockwood Enterprises Ltd. v. Grain Insurance & Guarantee Company* — fire — indemnification — fraud — whether amounts claimed in proof of loss were grossly exaggerated — whether fire deliberately set by shareholders of plaintiff — co-insurance clause — interest — 55 pp. — Morse J. — Dec. 21.

#### *Manitoba County Court*

#113 — *Baker v. M.P.I.C.* — automobile — indemnification — injuries suffered by insured while riding in his own vehicle — driver alleged by insurer to be intoxicated — 8 pp. — Thompson C.C.J. — Oct. 15.

#123 — *Yellow Cab 1971 Ltd. v. M.P.I.C.* — automobile — all perils coverage — insurer claiming breach of condition — driver's license suspended — whether insured "permitted, suffered or allowed" unlicensed driver to drive — 10 pp. — Lockwood C.C.J. — Nov. 21.

### Labour Law

#### *Manitoba Court of Appeal*

#85 — *Persad v. Rollock* — *Payment of Wages Act* — appeal by employer from Board decision — effect of failure of employer to pay disputed amount into court — 5 pp. — Monnin, Matas & O'Sullivan J.J.A. — Sept. 13.

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

#102 — *City of Winnipeg v. United Fire Fighters of Wpg., Local 867* — arbitration — judicial review — interim arbitration award — whether arbitration board acted within jurisdiction in deciding issues of exercise equipment, living conditions, and manning — management's rights in compulsory arbitration situation — 24 pp. — Kroft J. — Oct. 16.

#103 — *Manitoba Forestry Resources Ltd. Woodlands Division v. International Woodworkers of America, Local 1-324* — arbitration — judicial review — error of law on face of record — interpretation by arbitration board of collective agreement — whether specific question of law referred to board — reasonableness of board's interpretation of agreement — 17 pp. — Morse J. — Oct. 17.

#119 — *Seven Oaks School Division No. 10 v. McCaw* — arbitration — judicial review — board deciding that employee's contract wrongfully terminated — refusal by court to interfere — 3 pp. — Hunt J. — Nov. 21.

#### *Manitoba County Court*

#88 — *Thiessen v. Children's Aid Society of Winnipeg* — overtime — suit by social workers for overtime wages — *Employment Standards Act* — "employee" — whether social workers are employees as defined by Act — "professional employee" — 25 pp. — Jewers C.C.J. — July 24.

#104 — *Benhamou v. Dent's Home-Improvement* — holiday pay entitlement — *Employment Standards Act* — 3 pp. — Philp C.C.C.J. — Sept. 21.

### Landlord and Tenant

#### *Manitoba Court of Appeal*

#73 — *Dominion Shopping Centre Limited v. A&W Restaurants of Manitoba Ltd.* — commercial lease — clause in lease restricting landlord's right to lease nearby property to party having business similar to tenant's — whether nearby property a "building which stands separate and apart from any other building" — 6 pp. — Freedman C.J.M., Matas & O'Sullivan J.J.A. — Aug. 24.

#145 — *CKJS Limited v. Royal Tower Limited* — commercial lease — failure by landlord to make promised renovations — fundamental breach of contract — 27 pp. — Hall, Matas & Huband J.J.A. — Dec. 14.

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

—none—

#### *Manitoba County Court*

#111 — *Solid Investments Limited v. Nelson* — residential tenancy — order for possession — application — validity of service of Notice of Termination of Tenancy — 3 pp. Barkman C.C.J. (in chambers) — Oct. 10.

#128 — *Toronto Dominion Bank v. Lai* — distress — claim for legal costs and disbursements out of sale proceeds — whether *Distress Act* tariff varied by agreement — bailiff's costs — auctioneer's costs — 8 pp. — Kennedy C.C.J. — Nov. 22.

### Legal Ethics

—none—

### Local Government Law

#### *Manitoba Court of Appeal*

#72a — *Apple Meadows Limited v. Quail Ridge Properties Limited* — appeal by City of Winnipeg — application to extend time — alleged failure by city to show proper authority for launching of appeal — 2 pp. — Freedman C.J.M., Matas & O'Sullivan J.J.A. — Aug. 23.

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

#90 — *M.S.T.W. Planning District Board v. Wiens* — *Planning Act* — interim development control orders — failure to specify time limits — whether void — effect on prior injunction granted by Q.B. judge — 4 pp. — Solomon J. — Sept. 7.

#110 — *Wiebe v. Rural Municipality of De Salaberry* — waste disposal ground — nuisance action by adjoining landowner — defence of statutory authority — whether statute mandatory or permissive — inevitable consequence — 32 pp. — Kroft J. — Oct. 30.

#120 — *Stonewall Three Links Inc. v. Town of Stonewall* — school tax — claim for exemption from assessment — whether appellant a "service club" — 4 pp. — Dewar C.J.Q.B. — Nov. 21.

#### *Manitoba County Court*

—none—

### Negotiable Instruments

*Manitoba Court of Appeal*

—none—

*Manitoba Court of Queen's Bench*

—none—

*Manitoba County Court*

#114 — *Rogers v. Harvey* — promissory note — suit against guarantor — *non est factum* — whether guarantor actually contented to sign as witness — 9 pp. — Kennedy C.C.J. — Oct. 16.

### Personal Property

—none—

### Real Property

*Manitoba Court of Appeal*

—none—

*Manitoba Court of Queen's Bench*

#70 — *Man. Housing & Renewal Corp. v. Gauthier* — mortgage — intention to enter mortgage agreement — no *Real Property Act* mortgage executed — whether Plaintiff entitled to equitable mortgage — 3 pp. — Hamilton J. — June 29.

#84 — *Chupryk v. Haykowski* — remainder interest — dispute between holders of remainder interest — application to authorize borrowing for capital improvement — power of Court to vest land in trustee — 11 pp. — Kroft J. — Aug. 21.

*Manitoba County Court*

—none—

### Restitution

—none—

### Taxation

*Manitoba Court of Appeal*

—none—

*Manitoba Court of Queen's Bench*

#112 — *City of Winnipeg v. Pantec Properties Ltd.* — business tax — assessment — leasing of storage space in subdivided premises — whether storage space should be included in assessment — 4 pp. — Dewar C.J.Q.B. — Nov. 2.

#120 — *Stonewall Three Links Inc. v. Town of Stonewall* — school tax — assessment — claim for exemption from taxation for school tax purposes — whether appellant a "service club" — 4 pp. — Dewar C.J.Q.B. — Nov. 21.

*Manitoba County Court*

—none—

### Torts

#### *Manitoba Court of Appeal*

#139 — *Hildebrand v. Szalai* — negligence — car-motorcycle accident — uncontrolled intersection — effect of motorcyclist's failure to wear helmet — 15 pp. — Monnin, Matas & Huband J.J.A. — Dec. 11.

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

#110 — *Wiebe v. Rural Municipality of De Salaberry* — nuisance — waste disposal ground adjoining plaintiff's land — defence of statutory authority — whether municipality's statutory obligations mandatory or permissive — inevitable consequence — injunction — damages — 32 pp. — Kroft J. — Oct. 30.

#124 — *Steiman v. Steiman* — conversion — intention to deprive rightful owner of dominion over goods — whether transporting goods constitutes conversion — 23 pp. — Hewak J. — Nov. 27.

#137 — *Ashton v. Brown* — negligence — quantum of damages — hunting accident — testicle damage — infertility — scarring — femur fracture — vascular problems — possibility of amputation — 6 pp. — Hunt J. — Dec. 17.

#138 — *Huff v. Mireault* — negligence — fatal car accident — driver at fault intoxicated and not licensed to drive — whether owner and custodian of car negligent in lending car to driver at fault — 6 pp. — Hunt J. — Dec. 17.

#141 — *Hudson v. Riverdale Colony of Hutterian Brethren — Rylands v. Fletcher* — negligence — *novus actus interveniens* — defendants negligently allowing fire to spread — whether actions of volunteer fire department also negligent and therefore a *novus actus* — 13 pp. — Hamilton J. — Dec. 28.

#### *Manitoba County Court*

#109 — *Hunter v. Simpson Sears Limited* — products liability — injuries caused by fall from ladder — *res ipsa loquitur* — expert evidence re structural soundness of ladder — 10 pp. — Jewers C.C.J. — Oct. 9.

#116 — *Wery v. Wery* — replevin — suit by widow against brother of deceased — deceased going to live with brother after breakdown of marriage — dispute re chattels moved by deceased — 10 pp. — Dureault C.C.J. — Oct. 18.

#122 — *Fingas v. Sommerfeld Colony of Hutterian Brethren* — nuisance — negligence — *Rylands v. Fletcher* — herbicidal spray damage to adjoining crops — damages — 15 pp. — Patrick Ferg C.C.J. — Nov. 12.

### Transportation and Communication Law

—none—

### Trusts

#### *Manitoba Court of Appeal*

—none—

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

#85 — *Lerner v. Society for Crippled Children and Adults of Manitoba* — validity — uncertainty — bequest in will that trustee hold land in order to commemorate three people — no provision for funds with which to improve land — 5 pp. — Dewar C.J.Q.B. — Aug. 31.

#106 — *Public Trustee of Manitoba v. Province of Manitoba (Dept. of Health and Social Development)* — trust fund held for children — application to use funds for maintenance of children — *Trustee Act*, s. 32 — obligation to consider trust funds in determining social allowance payments — 9 pp. — Deniset J. — Oct. 23.

#125 — *Chin v. Quon* — accounting — financial dispute between former business partners — 4 pp. — Hunt J. — Nov. 28.

*Manitoba County Court*

—none—

**Wills**

*Manitoba Court of Appeal*

#105 — *Shrumeda v. City of Winnipeg* — validity — findings of inquiry of officer under *Act* — attempt by landowners to set aside expropriation — 4 pp. — Freedman C.J.M., Hall & Matas J.J.A. — Oct. 17.

*Manitoba Court of Queen's Bench*

#129 — *Inkster v. Canada Trust Co.* — interpretation — bequest to testator's nephew — beneficiary predeceasing testator — whether bequest lapsed — 5 pp. — Solomon J. — Dec. 3.

*Manitoba Surrogate Court*

#121 — *Faryna v. Faryna* — testamentary capacity — undue influence — family feud — conflicting evidence from lawyers re testator's state of mind — 12 pp. — Barkman Surr. Ct. J. — Nov. 6.