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### 1. Ambiguous Restrictive Covenants Unreasonable and Unenforceable: S.C.C.

The Supreme Court of Canada decided [Shafron v. KRG Insurance Brokers \(Western\) Inc.](#), 2009 SCC 6 on January 23, 2009, allowing the employee's appeal from the B.C. Court of Appeal decision ([2007 BCCA 79](#)) and holding that neither severance nor rectification could be used to cure or rewrite a defective restrictive covenant in an employment contract. The court found that the term "Metropolitan City of Vancouver" in the non-competition clause had no legally defined meaning and was therefore ambiguous and unenforceable.

The article [Beware Ambiguity: The Doctrine of Severance in Employment Contracts](#) by Rebecca Ross, posted January 27, 2009 on The Court, succinctly summarizes the facts and the court's analysis.

See also, [Overly broad restrictive covenant nixed by SCC](#) by Cristin Schmitz, [The Lawyers Weekly](#) online.

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### 2. Deemed Undertaking Rule Application Clarified: Ont. C.A.

As summarized by Justice Doherty in his written reasons in [Kitchenham v. Axa Insurance Canada](#), 2008 ONCA 877, "this appeal examines the application of the deemed undertaking rule where a plaintiff, who obtained (video surveillance footage and medical) information from a defendant in one action, seeks to withhold that information from another defendant in the discovery process in a second action also commenced by the plaintiff." Ontario Rule 30.1 is similar to [Queen's Bench Rule 30.1](#). The court disagreed with the plaintiff's argument that she was bound by the deemed undertaking rule, holding that:

...the Rule exists to protect the privacy interest of the party compelled by the rules of disclosure to provide that information to another party to the litigation. The Rule provides that protection by prohibiting the party who obtained the information through compelled disclosure from using that information outside of the litigation, except where certain exceptions apply or the court makes an order permitting its use.

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### 3. Federal Court Rule Amendment Proposed

The rules committee of the Federal Court of Appeal and the Federal Court invites interested persons to make representations with respect to the proposed [Rules Amending the Federal Courts Rules \(Summary Judgment and Summary Trial\)](#), published January 24, 2009 in the *Canada Gazette* Part I, Vol. 143, No. 4. The amendments will change current [Rules 213 to 219](#) to allow parties to move for, and the court to grant, summary judgment in a greater range of circumstances than under current [Rule 216\(3\)](#). They will also create a summary trial proceeding allowing the court to determine an issue or action by way of summary trial in certain circumstances.

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#### **4. Recent Manitoba Decisions: Q.B.**

In [The Western Paint & Wallcovering Co. Ltd. v. Benjamin Moore & Co. Limited](#), 2009 MBQB 1 the court, after weighing the relative harm to the parties, granted the plaintiff's application for an interlocutory injunction preventing the defendant from terminating its authorized retailer agreement until trial and determination of a reasonable notice period.

In [Grant Design Group Inc. v. Neustaedter](#), 2008 MBQB 336 the court dismissed the defendants' motion for summary judgment dismissing the plaintiff's claims for breach of contract, unjust enrichment and copyright infringement.

In [Demetriooff v. Demetriooff](#), 2008 MBQB 313 the court granted the plaintiffs' motion for partial judgment of their claims against the defendant based on admissions in his statement of defence.

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#### **5. Beta Site Legislation on CanLII**

CanLII has [announced](#) an improvement to its legislative information system: a beta site for federal, Saskatchewan, Ontario and Quebec legislation which offers point-in-time access and searching, version comparison, weekly updates and RSS feeds. See the CanLII [help page](#) for further information and examples of the new features.

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#### **6. E-Discovery**

The [e-Discovery reading list](#) on the [practicePRO website](#) was updated January 8, 2009 and contains several new links to e-discovery resources. Another starting point for research on the topic of e-discovery in Canada is the website of [ForEDis](#), an e-discovery service developed by an Ontario law firm, [Wires Jolley LLP](#), and a security consulting firm, [OPSEC Risk Management Services](#). The site summarizes and links to e-discovery rules and obligations across Canada, the Sedona Canada principles, case summaries, and the [model e-discovery precedents](#) developed by the Ontario Bar Association.

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#### **7. Medical Research Online**

Health law practitioners, medical malpractice lawyers and legal researchers will find the article [Researching Medical Literature on the Internet - 2008](#), published on [LLRX](#), useful. The article, written by law librarian and researcher Gloria Miccioli, reviews and provides links to medical databases, metasites, medical libraries, search engines, journals, visuals and much more.

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