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1. Holistic Approach to *Forum non Conveniens*: S.C.C.

In [Teck Cominco Metals Ltd. v. Lloyd's Underwriters](#), 2009 SCC 11, the Supreme Court rejected Teck's bid to have a B.C. action against it stayed on the basis that an American court had already asserted jurisdiction over the matter. The court found that

blind acceptance of a foreign court's prior assertion of jurisdiction carries with it the risk of declining jurisdiction in favour of a jurisdiction that is not more appropriate. A holistic approach, in which the avoidance of a multiplicity of proceedings is one factor among others to be considered, better serves the purpose of fair resolution of the *forum non conveniens* issue with due comity to foreign courts. (para.30)

While sympathetic to the difficulties presented by parallel proceedings, the court found that "the desire to avoid them cannot overshadow the objective of the *forum non conveniens* analysis, which is 'to ensure, if possible, that the action is tried in the jurisdiction that has the closest connection with the action and the parties.'" (para.38) See the following articles for comments on the decision:

- [SCC Allows Proceedings in Multiple Jurisdictions, Leaves Problem of Multiple Judgments](#) by Julian Ho, posted February 23, 2009 on The Court
- [Teck dealt blow by Supreme Court of Canada](#) by Jim Middlemiss, FP Legal Post

2. Recent Manitoba Decisions

[Lumsden v. Manitoba](#), 2009 MBCA 18 deals with, among other things, the appropriate approach ("sensible and realistic") to assessing damages for mental distress in "peace of mind" contract cases.

In [B.W. v. Child and Family All Nations Coordinated Response Network](#), 2009 MBCA 21 the court sets out the test for when an appeal hearing will be expedited.

In [232 Kennedy Street Ltd. v. King Insurance Brokers \(2002\) Ltd.](#), 2009 MBCA 22 the court finds that there is no principled reason to deny self-represented litigants costs solely because they are self-represented, and reviews the purposes served by an award of party and party costs. The court also provides "preliminary guidance" on the concept of lost opportunity at para.37.

In [Basaraba v. Government of Manitoba](#), 2009 MBQB 28 the self-represented applicant appealed

the striking of his application for an order to unseal his personal medical records under *The Mental Health Act*. The court dismissed the appeal, holding that where the legislature has stipulated remedies or a procedure, an applicant cannot avoid the roadmap set out in the legislation and bring action against the government. In this case, the applicant had not used the access procedures outlined in the Act.

3. Ten Years of the Supreme Court of Canada

A special edition of the Supreme Court of Canada's [Bulletin of Proceedings](#) provides a statistical overview of the court's work from 1998 to 2008. The summary is broken down into five categories: cases filed, applications for leave submitted, appeals heard, appeal judgments, and average time lapses.

4. Litigation Resources

The following articles may be of interest to litigation lawyers:

- [Judicial Review Fundamentals: How-to Tips, With a Focus on Federal Court](#), recently published on CLE BC's [Practice Points](#), covers the fundamentals of judicial review applications
 - [Dispute resolution in the recession](#) by Barry Leon, from the February 13, 2009 issue of *The Lawyers Weekly*
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5. Program Reminders

There is still time to register for the Law Society's [Intensive Trial Advocacy Workshop](#), which takes place April 15-18, 2009 at the Lakeview Resort in Gimli, Manitoba. Presented in partnership with The Advocates' Society, this year's workshop features a new case file focusing on trial advocacy from start to finish. [Contact Legal Studies](#) for further information and to register.

The [Administrative Law Section](#) of the Manitoba Bar Association has rescheduled its program, *Deference to Lay Tribunals and the Problem of Expertise*, to April 17, 2009 at the Law Society classroom from noon to 1:30 p.m. The Hon. A. Kerr Twaddle, Anita L. Southall, and T. David Gisser will present.

6. Supreme Court Hearing Webcasts and Appeal Factums Now Online

The Supreme Court of Canada implemented its new [Policy for Access to Supreme Court of Canada Court Records](#) on February 9, 2009 and is now providing online access to webcasts of appeal hearings and appeal factums filed on or after February 9, 2009. For details on how to access records and the applicable restrictions see the SCC [announcement](#).

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