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1. Leaky Condo Decision Creates Coverage Uncertainty

The BC Court of Appeal released its 2-1 split decision in [Progressive Homes Ltd. v. Lombard General Insurance Co.](#), 2009 BCCA 129 on March 26, 2009. The court affirmed the lower court decision that the insurer had no duty to defend Progressive, a general contractor facing a claim for the defective workmanship of its subcontractors. The court found that "the policies in question do not contain the clear language necessary to overcome the implied assumption that insurance is designed to transfer fortuitous contingent risk." As discussed in the following articles, the decision is inconsistent with appellate level decisions in other jurisdictions and thus creates uncertainty for those using commercial general liability policies.

- [Same policy, same insured, different coverage: BC Court of Appeal takes one step forward and two steps back in Progressive Homes](#), a McCarthy Tétrault article from April 17, 2009
 - [Implied exclusions create uncertainty for contractors](#) from the May 8, 2009 issue of *The Lawyers Weekly*
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2. Spoliation Decision Confirmed: MBCA

In [Commonwealth Marketing Group Ltd. v. The Manitoba Securities Commission](#), 2009 MBCA 33 the Court of Appeal confirmed the [QB decision](#) (discussed in Update No. 27) that allegations of spoliation should be dealt with at trial rather than by striking the statement of defence. For a look at how spoliation cases have become more common as electronic evidence has increased see: [Law of spoliation enjoys resurgence in Canada](#).

3. Pension Indexing Formula Discretionary

In [Dinney v. Great-West Life Assurance Co.](#), 2009 MBCA 29 the Court of Appeal affirmed the decision of the trial judge that Great West Life had a discretion under s.30 of its pension plan to change the formula for determining the amount of the annual pension increments. The court disagreed, however, with the trial judge's decision to substitute his own discretion for that of GWL, and referred the matter back to GWL for calculation of the pension increments using the approved formula.

4. Private International Law Report: MLRC

Private International Law, Manitoba Law Reform Commission Report #119, is now available in [Full Report PDF](#) and [Executive Summary](#) format on the Commission's website. This report deals with two matters arising out of the Supreme Court of Canada decision in *Tolofson v. Jensen*; *Lucas v. Gagnon*, namely choice of law for tort and the characterization of limitation periods. It also examines jurisdiction *simpliciter* and the concept of real and substantial connection pertaining thereto.

5. More on E-Discovery

The [Ontario E-Discovery Implementation Committee](#) (EIC) recently released eight [model e-discovery precedents](#) and several other documents providing guidance on e-discovery best practices. The committee invites comment on the precedents.

The article [E-Discovery Update: E-Discovery in the \\$50,000 Case](#) by Conrad J. Jacoby, published April 27, 2009 on [LLRX](#), considers how to simplify e-discovery and keep preservation costs down in smaller legal disputes.

6. Judges' Book of Authorities

As announced in a [Notice](#) dated March 30, 2009, all Court of Appeal judges now have a Judges' Book of Authorities containing copies of authorities frequently relied upon in appeals. A current list, which will be amended from time to time, is appended to the notice. Counsel need no longer include these cases in their case books, but extracts should be included where appropriate.

7. MBA CLE Programs

The [Civil Litigation section](#) of the Manitoba Bar Association is presenting the following programs this month:

- *Demystifying the Federal Court - its Proceedings and Practices* - The Honourable Chief Justice Allan Lutfy, The Honourable Russel W. Zinn, and Prothonotary Roger Lafrenière, all of the Federal Court, will discuss the evolution and impact of case management in Federal Court proceedings. This program will be held on Monday, May 11, 2009 at 12:00 noon.
- *How to Avoid Rejection in the Court of Appeal* - The Honourable Justices Barbara Hamilton and Martin Freedman and Patricia Gough, Registrar of the Court of Appeal will discuss upcoming changes in procedure and rules in the Court of Appeal, practice directions and compliance issues, and will comment on standard of review. This program will be held on Tuesday, June 2, 2009 at 12:00 noon.

The [Alternative Dispute Resolution section](#) is presenting *Dispute Resolution in Labour Relations* on Tuesday, May 12, 2009 at 12:00 noon. Presenter Grant Mitchell, Q.C. will discuss the history of conciliation and mediation in labour disputes and legislated arbitration schemes.

All programs will be held in the Law Society classroom at 219 Kennedy Street. Contact the [MBA](#) for further details.

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