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Litigation Delay an "Embarrassing Spectacle": MBCA

In [*Dubois v. Manitoba Lotteries Corporation*](#), 2009 MBCA 108 the court conducts a thorough review of the law on dismissal for delay, including the appropriate standard of review on such appeals. Although finding that the motion's judge erred in not considering the issue of prejudice in respect of the damage claim, the court upheld her refusal to dismiss the plaintiff's 14-year-old personal injury action for delay. Acknowledging the overriding principle that essential justice be done between the parties and the fact that the plaintiff was only partially at fault for the delay, the court dismissed the defendant's appeal and ordered that the action be allowed to continue.

Criteria for Perfecting Appeals: MBCA

In [*TDL Group v. Zabco*](#), 2009 MBCA 116 the court dismissed with costs the applicants' motions to amend their notices of appeal and to extend the time for filing their factums and appeal books, finding that they had failed to satisfy any of the criteria for extension set out in [*Conversions By Vantasy Ltd. et al. v. General Motors of Canada Ltd.*](#), 2005 MBCA 114. The applicants had not filed any material to show a continuous intention to prosecute the appeal or to explain the delay, despite ample opportunity to do so. They also failed to show how they wished to amend their notices or their grounds for doing so.

Complex Case Rule Upheld: ONCA

In [*Legroulx v. Pitre*](#), 2009 ONCA 760 the Ontario Court of Appeal confirms the constitutionality of the complex case rule, holding that the common law power to strike civil juries in complex civil cases does not breach s.7 or s.15 of the *Charter*. The court rejected the defendant insurer's argument that the civil damages award they faced amounted to an interference with

"life, liberty and security of the person" under s.7 of the *Charter*. They also rejected the s.15 equality rights argument that the rule demeans or stereotypes jurors by preferring a judge over a lay jury in complex cases. For more detail see the [lower court decision](#) and the following article which discusses its import for personal injury litigators and insurers:

- [*Dismissing the jury: Insurers may find their request for a jury set aside by the court*](#), *The Lawyers Weekly*, October 24, 2008.

Recent Litigation Publications

In [*The Duty to Disclose After Juman v. Doucette: Or Why the Rules Still Rule*](#), by Scott B. Stewart and Michael Wilhelmsen, the authors discuss whether [*Juman v. Doucette*](#), 2008 SCC 8 expands the scope of the "implied undertaking rule" or merely restates the law. The article, written for a BC CLE program on Defending Personal Injury, was posted November, 2009 on Practice Points.

[*McCarthy Tétrault Co-Counsel: Litigation*](#), published November 13, 2009, contains articles on the limits on the powers of self-governing professional bodies, contract interpretation and consumer class actions.

Upcoming Law Society CPD

The Law Society and Seminar Partners Inc. are co-sponsoring the program [*Advanced Cross-examination Techniques*](#), which takes place January 25, 2010 at the Delta Winnipeg. Acclaimed presenters Larry Pozner and Roger Dodd will cover leading questions, controlling witnesses, cross-examination sequences, loops and trilogies, and the chapter method of cross-examination in this intensive day long seminar. For a sneak preview of some of January's content, check out Roger Dodd's newly released article on use of blackberries and other technological devices during cross-examination at <http://www.doddlaw.com/books-dvds-cds/technology-in-cross-examination/>.

Human Rights Commission staff and experienced practitioners will review important developments in the area of human rights law and provide practical tips concerning all levels of the process in [*Let Me Get This Right: A How-To Session for the Human Rights Commission Process*](#). The noon hour program will be held February 4, 2010 at the Law Society classroom.

Mark your calendars now for [*E-Discovery - A Primer*](#), a half-day program designed to help you understand the implications e-discovery issues will have for your practice. Presenters include Sedona Conference Institute 2009 Faculty members Susan Wortzman and James Swanson, who will provide an overview of the Sedona Canada Principles. The program takes place March 25, 2010 from 12:00 noon to 4:00 p.m. at the Law Society classroom.

Mid-Winter 2010

The Manitoba Bar Association's [*2010 Mid-Winter Meeting*](#) takes place January 21-23 at the Fort Garry Hotel. Programs that may be of interest to litigators include:

- Making Sense of Statutory Interpretation - a primer on the theoretical, practical and judicial perspectives on interpreting statutes
- Compensation for Impacts on Aboriginal & Treaty Rights - an expert panel on justifying compensation and quantifying impacts
- Damages - up-to-date information on the law of damages
- French Language Advocacy in Manitoba - a practical overview on invoking a client's language rights.

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