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## Eligibility Decisions Reviewable by Court Not Commission: MBCA

A victim may challenge a decision of MPIC under s. 79(1) of *The Manitoba Public Insurance Corporation Act*, but only by way of appeal to the Court of Queen's Bench according to the Court of Appeal in [Automobile Injury Compensation Appeal Commission v. Constantin](#), 2010 MBCA 76. In answer to a stated case on a question of law brought by the Automobile Injury Compensation Commission the court found:

When MPIC makes a decision under s. 79(1) of the Act, the claimant or victim does not have a choice between:

- (a) a right of review under s. 172 of the Act (and subsequent appeal under s. 174); and
- (b) an appeal to the Court of Queen's Bench under s. 79(3) of the Act.

As a result, MPI's decision to deny compensation for what it believed were self-inflicted injuries could not be internally reviewed or appealed to the Commission.

## Courts Constrained in Arbitration Disputes: MBCA

The decision in [Chrysler Canada Inc. v. Eastwood Chrysler Dodge Ltd.](#), 2010 MBCA 75 confirms the "very constrained" role courts have in resolving disputes which fall within the ambit of arbitration rules agreed to by the parties. The Court of Appeal found that the motions judge erred in not dismissing the defendant's counterclaim, given the parties' agreement to resolve their issues through the arbitration process, and the limited ability of the court to intervene in such matters as set out in ss. 6 and 7 of [The Arbitration Act](#). The court also reiterates the finding in [Hnatiuk v. Court](#), 2010 MBCA 20 that s. 7(6) of *The Arbitration Act* is not intended to bar appellate intervention when material misdirection occurs in first instance.

## When a Golf Cart is an Automobile: MBQB

In [\*Hruska v. Bridges Golf Club Ltd.\*](#), 2010 MBQB 191 the court considered whether a passenger injured while riding a golf cart was covered under the no fault compensation scheme in Part II of *The Manitoba Public Insurance Corporation Act*, C.C.S.M., c. P215 and thus statute barred from bringing a civil action. The court rejected MPI's argument that since golf carts cannot be insured under the Act no benefits can flow from injuries caused through their operation. The court found that there are different definitions of "automobile" in Parts I and II of the Act, and that on a plain reading of the broader Part II definition a golf cart is clearly an automobile.

## New Rules

2010 has been the year of procedural rule changes across Canada, with Ontario, British Columbia, Nova Scotia and Newfoundland and Labrador all enacting extensive changes to their rules. In addition, the first full revision of the [\*Alberta Rules of Court\*](#) in more than 40 years will come into force this November. The September issue of [\*Civil Writes\*](#), the CBA Civil Litigation newsletter, is devoted to examining these changes. It contains articles from all jurisdictions detailing the amendments.

## Recent Litigation Publications

Author Thora Sigurdson offers practical advice on how to conduct a cross-examination in her paper [Cross-examination](#), posted June 2010 on CLE BC's [Practice Points](#).

The Supreme Court of Canada will hear two appeals from the controversial Ontario Court of Appeal decision in *Van Breda v. Village Resorts Limited*, 2010 ONCA 84, which reformulated the assumed jurisdiction test. In [\*Revising the Assumed Jurisdiction Test in Muscutt v. Courcelles\*](#) author Christine Kellowan reviews the new test and concludes that there is a compelling case for the Supreme Court to uphold the decision.

## Remedies From Dollars to Sense? - 2010 Isaac Pitblado Lectures

The [2010 Isaac Pitblado Lectures](#) will explore developments in the law of remedies in both the traditional courts and administrative bodies. Keynote speakers include The Hon. Mr. Justice Cromwell of the Supreme Court of Canada, Dame Hazel Genn, Faculty of Laws, University College, London, and Professors John McCamus, Kent Roach and Gerald Heckman. The lectures will be held November 26 and 27 at the Fort Garry Hotel. [Register](#) before October 1 to take advantage of the early bird discount.

## Fall CPD Programs: LSM

Be sure to register soon for these upcoming continuing professional development programs offered by the Law Society of Manitoba this fall:

[Privacy Law Update](#) - Presenter Brian Bowman of Pitblado LLP will discuss the latest developments in privacy law, including new case law and upcoming legislative changes. The program takes place on October 5, 2010, from 12:00 noon to 1:30 p.m. at the Law Society classroom.

[Examinations for Discovery](#) - Find out all you need to know about conducting exams for discovery and using them in court at the latest Bench & Beer Series program for junior lawyers, to be held October 7, 2010 from 5:00 -7:00 p.m. The Honourable Madam Justice Deborah McCawley, chair, and presenters Shauna McCarthy and Jeff Hirsch, will answer all your questions at this informal after work program complete with beer and pizza. Use this [registration form](#) to reserve your spot.

[Writing to Win: Results-Oriented Writing for Busy Solicitors](#) and [Speaking to Win](#) - The Law Society is pleased to have nationally acclaimed lecturer and writer Steven Stark present these two programs on October 20, 2010. Registrants can attend either the morning or afternoon

program, or register for both at a discount. Further savings can be had by registering by the early bird deadline of September 20, 2010.

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