

Cross Country Check-up British Columbia

Canadian Bar Association – Construction Section
2010 National Construction Law Conference
Quebec City

BLG
Borden Ladner Gervais

Tercon Contracting

- *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4
- You heard about this from Logan yesterday
- British Columbia government purchasing policy
- Impracticality of declaratory relief or judicial review

McVie v. Lombard

- *McVie v. Lombard Insurance Co.*, 2010 BCSC 1025
- Rumours of death of doctrine of fundamental breach, greatly exaggerated
- Doctrine lives on, in determining whether a non-breaching party may treat a contract as being at an end

Progressive Homes - SCC

- *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, 2010 SCC 33
- Duty to defend was in issue
- Whether broad-form CGL policies respond to construction defect claims
- *Swagger* case
- Divergence of law in BC from that in other provinces
- Water ingress / building envelope claims

Progressive Homes - issues

- **Definition of property damage**
- **Definition of occurrence / accident / event**
- **Work performed (own work) exclusion**
- **“Not a performance bond” argument rejected**
- **Complex structures theory – “that particular part”**
- **How small can the element be?**

Progressive - implications

- **Are construction defects property damage in themselves?**
- **More coverage for contractors**
- **More pots of money in building envelope and other construction defect claims**
- **Interpretation of course of construction policies**

Budget Rent-A-Car v. YVR

- *Budget Rent-A-Car of B.C. Ltd. v. Vancouver International Airport Authority*, 2009 BCCA 22
- RFP documents stipulated that no Contract A formed
- Budget sued YVR over results of rental car concession procurement
- No contract = no claim
- No free-standing duty of fairness by owner

New Rules of Court

- **Supreme Court Civil Rules and Supreme Court Family Rules replace Rules of Court on July 1, 2010**
- **Influence of the *Woolf Report* and subsequent reforms in England**
- **Principle of proportionality**

New Rules of Court

- Rules renumbered and recast
- All forms changed
- Limitations on examinations for discovery
- Limitations on document discovery
- New formal requirements for expert evidence including increased service requirements

Prospective Changes to Limitations Act

- **Currently at the stage of a White Paper from the Ministry of Attorney-General**
- **A 2-year limitation for all civil claims, replacing the 6-years limitation now applicable in most commercial disputes (subject to discoverability)**
- **The ultimate limitation to be reduce to 10 or 15 years from the current 30 years**
- **Will have implications for late-manifesting construction deficiencies**

THANK YOU!

