

### Hot Tub Turns Chilly After Pipes Burst!

<b>Reported Case:</b>	<i>Trapp v. Wawanesa Mutual Insurance Company</i>
<b>Citation:</b>	2010 SKQB 165
<b>The Court:</b>	Saskatchewan Queen’s Bench
<b>Judgment Rendered:</b>	May 4, 2010
<b>At Issue:</b>	Was the loss excluded under the terms of the plaintiffs’ policy of insurance?
<b>Factual Summary:</b>	The plaintiffs brought a claim against the defendant for breach of contract claiming their policy covered losses they sustained when they suffered water damage in their home as a result of frozen and burst water pipes in the hot tub room. The terms of the plaintiffs’ insurance policy included an exclusion clause that loss or damage caused by freezing during the “usual heating season” within an “unheated portion” of the dwelling was not insured.
<b>At Trial:</b>	<p>The claim was allowed.</p> <p>In interpreting the insurance policy, the trial judge applied the <i>contra proferentum</i> rule, the principle that coverage provisions should be construed broadly and exclusion clauses narrowly, and the desirability, at least where the policy is ambiguous, of giving effect to the reasonable expectations of the parties.</p> <p>The trial judge took judicial notice that March was within the “usual heating season” in Regina. But after closely examining the evidence in relation to the existence of heat in the hot tub room, the trial judge found that although the hot tub was drained, the hot water line was still connected, and was a source of some heat. The Court concluded there was nothing in the contract to indicate what the source of heat should be and found that the exclusion did not apply to the hot tub room.</p>