



In this issue:

1. [Recent Q.B. Rule Changes](#)
 2. [Change of Address for Q.B. Registry in Portage la Prairie](#)
 3. [S.C.C. Removes Plaintiff Counsel](#)
 4. [Punitive Damages: S.C.C.](#)
 5. [Review of Laches Defence: C.A.](#)
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1. Recent Q.B. Rule Changes

Effective July 4, 2006, a number of Queen's Bench Rules were amended, including:

- [Rule 8.10](#) - clarifying rules applicable to an association that has the legal capacity to sue, be sued or be a party in a proceeding
- [Rule 42.01](#) - revising the process to obtain a pending litigation order
- [Rule 76](#) - permitting parties and/or witnesses to attend a small claims hearing or appeal via telephone, video conference or other means of communication

See [Manitoba Regulation 120/2006](#) for the complete amendments and the [June 12, 2006 Notice](#) from the Court of Queen's Bench for a summary.

2. Change of Address for Q.B. Registry in Portage la Prairie

The Court of Queen's Bench Registry Office in Portage la Prairie has relocated to the Provincial Building at 25 Tupper Street North in Portage la Prairie effective September 5. The new fax number will be (204) 239-3402. Court sittings will continue to be held in the courthouse located at 20-3rd Street South East.

3. S.C.C. Removes Plaintiff Counsel

[Celanese Canada Inc. v. Murray Demolition Corp.](#), 2006 SCC 36 is a recent decision of the Supreme Court removing counsel for the plaintiffs who had obtained an *Anton Piller* order in an industrial espionage claim, and came into possession of materials subject to solicitor client privilege. The unanimous court found that:

This appeal thus presents a clash between two competing values - solicitor client privilege and the right to select counsel of one's choice. The conflict must be resolved, it seems to me, on the basis that no one has the right to be represented by counsel who has had access to relevant solicitor-client confidences in circumstances where such access ought to have been anticipated and, without great difficulty, avoided and where such counsel has failed to rebut the presumption of a resulting risk of prejudice to the party against whom the *Anton Piller* order was made.

The court sets out guidelines for preparing and executing *Anton Piller* order, summarizing that:

The protection of the party against whom an *Anton Piller* order is issued ought to be threefold: a carefully drawn order which identifies the material to be seized and sets out safeguards to deal, amongst other things, with privileged documents; a vigilant court appointed supervising solicitor who is independent of the parties; and a sense of responsible self-restraint on the part of those executing the order.

4. Punitive Damages: S.C.C.

In [*Fidler v. Sun Life Assurance Co. of Canada*](#), 2006 SCC 30, the Supreme Court deals with the issue of punitive and compensatory damages resulting from a denial of long term disability benefits, where the insurer reinstated the payments and agreed to pay arrears just before trial. The court clearly states that the test for compensatory damages in cases of breach of contract is that set out in *Hadley v. Baxendale*, (1854), 9 Ex. 341, 156 E.R. 145: "such as may fairly and reasonably be considered either arising naturally ... from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties." The court goes on to examine when punitive damages may be appropriate and states that:

...to attract punitive damages, the impugned conduct must depart markedly from ordinary standards of decency - the exceptional case that can be described as malicious, oppressive or high-handed and that offends the court's sense of decency....It is important that punitive damages be resorted to only in exceptional cases, and with restraint.

5. Review of Laches Defence: C.A.

In [*Rivergate Properties Inc. v. West St. Paul*](#), 2006 MBCA 76, the Court of Appeal considers whether the statutory limitations of [*The Limitations of Actions Act*](#) apply to arbitrations under [*The Arbitration Act*](#) and if so, whether the defence of laches is available where there is a statutory limitation period. The court finds that the limitations legislation does apply and then finds that "all equitable defences are available to defendants regardless of the presence of a prescribed limitation period." The court also reviews in some detail the definition and requirements for raising the defence of laches.

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