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**1. C.A. Rule Amendments**

The rules of procedure in the Court of Appeal were amended as of October 1, 2006. The amendments were published in [Man. Reg. 177/2006](#) and the updates have been made to the [Court of Appeal Rules, Reg. 555/88 R.](#)

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**2. Bullock Order: C.A.**

In [Knock v. Dumontier et al.](#), 2006 MBCA 99 (CanLII) the plaintiff cross-appeals the trial judge's dismissal of her request for a Bullock order with respect to the costs of the successful defendant. In allowing the cross-appeal, the court reviews the circumstances in which the court may exercise its discretion to make a Bullock order and states that:

So long as the threshold test of reasonableness is met, it is the principle of fairness that should predominate in the exercise of the court's discretion. In this particular case, even if it could be said that the action against the two defendants was independent or separate, nevertheless, it would still be fair that the responsible defendant be called upon to pay for the costs of the innocent defendant. This is because a Bullock order is appropriate where a plaintiff is in doubt as to which of two parties is responsible for the act that caused the injury.

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**3. Mareva Injunctions: C.A.**

The Court of Appeal reviews the requirements for issuance of a Mareva injunction and a prejudgment attachment order in its recent decision in [Clark et al. v. Nucare PLC](#), 2006 MBCA 101 (CanLII). A discussion of the application of this decision is included in the paper, *Prejudgment Collection Remedies* by Senior Master F.A. Lee and David Wright, from the materials for recent Law Society CLE program, [Show Me the Money! 21st Century Collection Law in Manitoba.](#)

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**4. Negligent Misrepresentation: Q.B.**

The court in [Northern Goose Processors Ltd. v. Canadian Food Inspection Agency](#), 2006 MBQB 198 (CanLII) considers whether the defendant public agency was negligent in carrying out its duties to the plaintiff and finds that it was, stating that:

These acts (or omissions) of negligence would properly be described as negligent misrepresentation. Overall, these breaches of duty amount to either negligent performance of a service or independent liability of a statutory authority (if what is meant by the latter is negligence, rather than misfeasance in public office), or both.

The court declines to order exemplary or punitive damages, and does not address general or special damages as the parties came to an agreement as to quantum of these.

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## **5. Punitive Damages for Wrongful Dismissal: ON C.A.**

The Ontario Court of Appeal, in [\*Keays v. Honda Canada Inc.\*](#), 2006 CanLII 33191, a wrongful dismissal case, reduces the \$500 000 punitive damages award of the lower court to \$100 000. The majority holds that:

...while the appellant's conduct was sufficiently outrageous to warrant an award of punitive damages, the quantum needs to be reconsidered....Bearing in mind the trial judge's findings that can be supported by the evidence, and in particular the findings that the conduct by the appellant was planned and deliberate and designed to intimidate and ultimately terminate the employment of a particularly vulnerable employee and that the appellant was aware of its continuing duty to accommodate, an award in excess of those awarded in other wrongful dismissal cases is appropriate. But, given the compensatory damages awarded, especially the *Wallace* damages, and that there were no special factors requiring deterrence such as a pattern of abuse or the kind of conduct found in *Whiten*, as well as the relatively short duration of the misconduct, in my view, an award of no more than \$100,000 can be justified.

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## **6. Forum on *R. v. Jenkinson***

The Manitoba Bar Association's Aboriginal Law Section is holding a forum on the recent decision in [\*R. v. Jenkinson and R. v. Creekside Hideaway Motel Ltd.\*](#), 2006 MBQB 185 (CanLII) on November 9, 2006 at noon. Speakers will be Art Stacey of Thompson Dorfman Sweatman LLP, Brenda Johnston of D'Arcy & Deacon LLP and Aimee Craft of the Public Interest Law Centre. For details and to register [contact the MBA](#).

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