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### Plead Your Claim: ONCA

The Ontario Court of Appeal makes some pointed comments on the adequacy of pleadings in [Link v. Venture Steel Inc.](#), 2010 ONCA 144, a wrongful dismissal/shareholders' agreement interpretation case in which the employer argued (among other things) that the trial judge erred in granting relief that was not pleaded. The court disagreed, reading the "very general pleadings" "generously" and concluding that "the claim as pleaded was sufficient and that no trial unfairness resulted from the way in which it was pleaded." The court stressed the importance of clear pleadings, however, in the following paragraphs:

It is well accepted that the parties to an action are entitled to have a resolution of their differences based on the pleadings. The trial judge cannot make a finding of liability and award damages against a defendant on a basis not pleaded in the statement of claim because it deprives the defendant of the opportunity to address that issue....

I would not interfere with the trial judge's award in relation to Link's common shares on the basis of the inadequacy of Link's pleadings. In my view, the basis of liability on which the trial judge made the award can be supported by the pleadings, albeit with a generous and liberal interpretation of those pleadings. In this case, a generous and liberal interpretation of the pleadings is appropriate. Venture conducted the trial with the evident understanding that Link was claiming an amount equal to nine per cent of the sale proceeds for his common shares. Venture was not misled and no unfairness resulted from Link's general pleadings. (paras.35 and 36)

### Causation Theory Unsupported by Evidence: MBQB

In [Daniels v. McKelvey](#), 2010 MBQB 18 the court dismissed an occupier's liability claim against

the owners of a house which had been set on fire, resulting in the death of a young visitor. The boy's parents argued that the house owners were negligent in failing to ensure they had working smoke alarms and in boarding up a second entrance to the house. Their claim was dismissed because they failed to prove a causal link between the malfunctioning smoke alarm and the death, or to present evidence that the lack of a second entrance contributed to the death. To the contrary, the court found that "(t)he evidence established that the injuries would have occurred virtually instantly and would have been the same regardless of the actions of the defendants."

## Court of Appeal Notice re: Rules Amendment

The Court of Appeal notice [Requirements for Filing and Serving Documents](#), issued March 1, 2010, charts the filing and serving requirements under the new civil rules which came into force this week ([Man. Reg. 200/2009](#)).

## New Civil Rules in Both Ontario and B.C.

Both Ontario and B.C. have enacted new civil rules this year. [R.R.O. 1990, Reg. 194](#) (438/08 and 394/09), made under the [Courts of Justice Act](#), comes into force January 1, 2010. The changes, aimed at simplifying court processes and increasing access, apply to ongoing matters. This [chart](#), prepared by Taran Virtual Associates, compares the old and new rules. In British Columbia, Supreme Court Civil Rules, B.C. [Reg. 168/2009](#), replaces the Supreme Court Rules, B.C. Reg. 221/90 effective July 1, 2010. The B.C. Justice Review Task Force summarizes the changes on their [website](#), and this [Table of Concordance](#) lists each 2009 rule and sets out the closest corresponding 2010 rule.

## UK Report on Jury Fairness

Juries in the UK are "fair, effective and efficient" and "racially balanced juries are not needed to ensure fair decision-making in jury trials" according to a comprehensive report ([Are juries fair?](#)) prepared by Professor Cheryl Thomas, University College London and recently issued by the UK [Ministry of Justice](#).

## Litigation Fundamentals

[Solicitor and Client Privilege](#) and [Direct Examination](#) are topics all civil litigators should be familiar with, but it doesn't hurt to review the basics once in a while and these two papers, recently posted on CLE BC's Practice Points, are a good starting point.

## Don't Let Your Mongo Loose

The ABA Journal occasionally reprints articles written by Jim McElhaney, a litigation lawyer, scholar, and popular columnist, in [McElhaney on Litigation](#). The February 2010 article [Meet Mongo - Unleashing your inner beast in court hurts you, not the other side](#) was originally published in 1995, but its lessons are still relevant and entertaining today. See the [ABA Journal website](#) for further articles by the same author.

## March Education Programs

[E-Discovery - A Primer](#) - a half-day program designed to help you understand how e-discovery issues will affect your practice. Presenters include Sedona Conference Institute 2009 faculty members Susan Wortzman and James Swanson, who will provide an overview of the Sedona Canada Principles. The program takes place March 25, 2010 from 12:00 noon to 4:00 p.m. at the Law Society classroom.

[Winning Presentation Skills: In the Courtroom and Beyond](#) - an online webinar presented by the Canadian Bar Association on March 29, 2010. See the [registration form](#) for further information.

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