

Index

ACCESS TO JUSTICE; see also DIVERSITY IN LEGAL SYSTEM

culture shift, professional responsibility, 283
definitions
 academic, 272
 jurisprudential, 274
 political, 272
elements of accessible justice system, 277
generally, 271, 287
public perception of, 281

APPEAL RIGHTS, WAIVER OF

arbitration clauses, 26
common law provinces, 33
 American courts, 34, 35
 context, 34
 express clause, 35
 historical overview, 34
 partial or conditional waivers, 36
 remedy, 39
 Sattva Capital v. Creston Moly Corp., 34
 Smerchanski v. Mnr., 34
 unilateral waiver, 36
consent judgements, 26
doctrinal considerations, 51
 exceptions, 54
 public policy, 51
drafting, 44
federal courts, 28
 arbitrability, 30
 Burg Properties v. Canada, 31
 Granbury Developments v. Canada, 32
 Halterm v. National Harbour Board, 29
 Murphy v. Amway Canada, 30
 non-tax cases, 29
 partial or conditional waivers, 31
 Smerchanski v. Mnr., 28
 tax cases, 28
generally, 25, 58
civil judgments, 25
interlocutory decisions, 25
litigation, 46
 disclosure to court, 46
 edge cases, 49
 enforcement, 48
model appeal waiver clause, 51
Québec civil law, 39
 arbitration, 42
 Code of Civil Procedure, 39, 42

contractual appeal waivers, 41
 Smerchanski v. Mnr., 40
costs, 42
 tax cases, 40
reasons for, 27
settlement agreements, 26

BREACH OF CONFIDENCE

cause of action
 development of, 157, 181
 scope of, 157
 sui generis action, 157, 180
 tort, 157, 180
defences, 173
 consent, 173
 delay, 173
 lack of damages, 173
 public interest, 173
 required at law, 173
employment agreements, 162
generally, 157, 180
other causes of action, comparison to, 179
 breach of contract, 179
 public disclosure of private facts, 179
parties, 171
 person suing, 171
 third party, 171
product specific information, 163
remedies, 174
 accounting of profits, 178
 aggravated damages, 176
 compensatory damages, 175
 constructive trusts, 174
 injunctive relief, 178
 punitive damages, 177
tort, elements of, 161
 confidential communication, 164, 180
 confidential information conveyed, 161, 180
 misuse to detriment, 167, 180

CLASS ACTION LAWSUITS, CORPORATE

banks, 206
British Columbia, 210
Canadian context
 accountability, 211
 disclosure, 211
 social issues, 212
COVID-19, 197, 210, 213

data privacy, 202, 212
 Equifax, 203
 Yahoo, 202
 environmental disasters, 303
 generally, 195
 Ontario, 208
 balance between interests, 210, 212
 certification, Ontario, 196, 208
 Class Proceedings Act, 1992, Ontario, 196, 208, 210
 harm or damages/losses suffered, 209
 pharmaceutical companies, 199
 settlements, securities, 195
 Uber, 206
 unattractive jurisdiction, 210
 #metoo/harassment, 199

CORPORATE GOVERNANCE

environmental items, 184
 climate change, 184
 greenhouse gas emissions, 190
 stay-on-climate proposals, 192
 generally, 184
 social items, boardrooms, 193
 diversity, 194
 ethnicity, 193
 females, 193
 United States, 195

COVID-19, *see* CLASS ACTION LAWSUITS, CORPORATE; FORCE MAJEURE, COVID-19 PANDEMIC; DOCUMENTARY EVIDENCE IN DIGITAL TIME

DEFENCE OF MULTIJURISDICTIONAL SECURITIES CLASS ACTIONS

certification, 140
 provinces, Canada, 140
 U.S. federal court, 145
 damages, 136
 provincial law, Canada, 136
 U.S. law, 139
 defences, 126
 provincial legislation, Canada, 126
 U.S. law, 131
forum non conveniens, 104
 British Columbia, 104
 Ontario, 104
 Quebec, 104
 U.S., 105
 generally, 101, 155

jurisdiction, 102
 British Columbia, 103
 jurisdiction simpliciter, 102
 Ontario, 102
 Quebec, 103
 U.S., 103
 misrepresentation, statutory causes of action, 105
 issuer's disclosure, provincial legislation, 105
 issuer's disclosure, U.S. law, 118
 motions, 149
 Canada, 149
 U.S., 152

DERIVATIVE ACTION

class actions, 342
 brought as derivative action, 345
 concurrent proceedings, 345
 differences, 343
 similarities, 342
 commencement of, 326
 complainant, 326
 leave requirement, 330
 corporate remedy, 318
 definition, 317
 generally, 317, 348
 history of, 319
 Dickerson Committee, 321
 Foss v. Harbottle, rule, 319, 348
 reform, need for, 320
 leave test, 317, 348
 legislation, 322
 Business Corporations Act, Ontario, 323
 Canada Business Corporations Act, 322
 common law jurisdictions, 324
 federal statutes, 324
 introduction of, 322
 Quebec, 324
 oppression remedy, compared
 overlapping claims, 338
 personal v. corporate remedy, 318, 336, 348
 Rea v. Wildeboer, 338

DIRECTORS, PERSONAL LIABILITY, *see* OPPRESSION REMEDY

DIVERSITY IN LEGAL SYSTEM; *see also* ACCESS TO JUSTICE
 culture shift, professional responsibility, 283
 demographics

- Canada, 277
 - legal profession, Canada, 278
 - legal profession, United States, 280
- employment, 290
- generally, 271, 287
- law schools, 288
 - LSAT, 288
 - Ontario's Mathematics Proficiency Test, 288
- mentorship, 289
- promotion of, law societies, 285

DOCUMENTARY EVIDENCE IN DIGITAL TIME

- admissibility, 4, 15
 - best evidence rule, 6, 17
 - hearsay, 7
 - legislation, 6
 - necessity and reliability, 5
 - relevance, 5, 16
- audience, 8, 18
- authenticity, 20
- COVID-19 pandemic, 14
- electronic documents, 14
- generally, 1, 24
- historical overview, 8
- inherent value, 3
- online hearings, 2, 24
- photographs, 9, 14, 22
- planning, 10, 19
- "real" documentary evidence, 2
- social media, 15
- video, 23

DUTY OF HONESTY AND GOOD FAITH, BANKING INDUSTRY

- anti-money laundering rules, 219
 - caselaw, 221
 - Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, 219
 - Financial Transactions and Reports Analysis Centre of Canada, FINTRAC, 219
 - Bhasin v. Hrynew*, 215, 224
 - Callow*, 224, 229
 - Canlanka*, 226
 - Wastech*, 224
- duties to customers, 216
 - duty of care, 216
 - negligent or intentional infliction of pure economic loss, 217
 - pure economic loss, 216

- duty of good faith, 224
 - bank-customer relationship, 227
 - Bhasin v. Hrynew*, 224
- generally, 215
- "reasonable banker" standard, 215

FORCE MAJEURE, COVID-19 PANDEMIC

- application of clauses, COVID-19, 305
 - Canadian jurisprudence, 307
 - generally, 305
 - policy analysis, 314
- contemporary developments, 296
 - force majeure, 297
 - frustration, 296
 - frustration v. force majeure, 300
- definition, 298
- frustration, 296
- generally, 293, 316
- government shutdowns, 315, 316
- non-performance clauses, historical origins, 293
 - common law, English, 295
 - doctrine of frustration, 296
 - Roman origins, 293
- origins, 297

LOOTED ART, RETURN OF

- civil litigators, practical suggestions for, 370
- defences, 359
 - generally, 359
 - good faith purchaser, 359
 - laches, 363
 - limitation periods, 362
- generally, 351, 375
- Nazi-looted art, 351, 352
 - examples of restitutions, 352
 - moral grounds, 354
 - museums, responsibility of, 355
- plaintiff's claims, 355
 - burden of proof, 357
 - conversion, 358
 - evidence, 356
 - generally, 355
 - replevin, 357
- plaintiff's response to defences, 364
 - criminal law, Canadian, 364
 - limitation periods, 364
 - no good faith, 364
- reform suggestions, 366

OFFICERS, PERSONAL LIABILITY, *see* OPPRESSION REMEDY

OPPRESSION REMEDY

- creditors as claimants, 397, 408
- “complainant”, definition, 397
- creditor, including in complainant definition, 397
- reasonable expectations, 398
- status as creditor at time of oppression, 404
- transfer of assets to benefit controlling directors, 402
- transfer of funds to defeat, delay or prejudice creditors, 399
- officers and directors, personal liability, 383, 407
 - application of *Budd* in *Alharayeri*, 384
 - Budd* and *Alharayeri*, test, 383, 406
- overview, 379
 - Canada Business Corporations Act*, s. 241, 381
 - courts’ interpretation of, 382
 - generally, 379
 - statutory provisions, 381

SEALING ORDERS, APPROVAL MOTIONS

- approval motions
 - overview, 236
 - Sherman Estate v. Donovan*, 256
- generally, 231, 268
- minor, 232, 235,
- motion to approve fees, 233
- online proceedings and information, 234
- open court presumption
 - Courts of Justice Act*, Ontario, s. 135, 251
 - generally, 232, 233, 235, 243
 - legislative framework, 251
 - Rules of Civil Procedure*, R. 37.11, 252
 - Sherman Estate v. Donovan*, 249, 253, 256
- parens patriae* jurisdiction, 231
 - best interests, 238, 240, 242, 244
 - foundations, 238
 - international human rights law, 242
 - open court presumption, 243
 - person under disability, 232, 235, 244
 - primary, overriding principle, 240
- Rules of Civil Procedure*, R. 7.08, Ontario, 231

SUPREME COURT OF CANADA INTERVENERS

- Brandeis, Louis, 63

- future considerations, 96
- historical overview, 63
- need for intervention, 64, 68, 69, 80
- number of interveners, 97, 99
- public interest intervener, 65
 - business interveners, 69
 - definition, 65
 - reasons for allowing, 67
- quantitative analysis, 70
 - administrative cases, 80
 - annual results, 75
 - constitutional cases, 79
 - criminal cases, 79
 - data overview, 71
 - i-index, 72, 96
 - private cases, 80
 - subject matter, 78
- R. v. Comeau*, 68, 83
- sample cases, 82
 - appellant wins, 98
 - equal alignment of interveners, A wins, 91
 - equal alignment of interveners, R wins, 94
 - more interveners align with A, A wins, 82
 - more interveners align with A, but R wins, 86
 - more interveners align with R, but A wins, 89
 - more interveners align with R, R wins, 84
 - respondent wins, 98
- theory, 81
 - non-public interveners, 81
 - party capability theory, 81
 - political intervention theory, 81
- Trinity Western* cases, 67, 85

TRINITY WESTERN CASES, see SUPREME COURT OF CANADA INTERVENERS; DIVERSITY, ACCESS TO JUSTICE AND PUBLIC CONFIDENCE IN THE LEGAL SYSTEM