

Index

ABORIGINAL RIGHTS AND TITLE

See also Actions; Parties; Evidence;
Injunction; Pleadings; Certificate of
Pending Litigation; Caveats; Judicial
Review

Generally, **9:2**

Appropriateness of judicial review, **4:14, 4:15**

Appropriateness of representative
proceedings, **1:5**

Assertion of
authority to assert, **1:3**
by groups, **1:10, 1:13**
by individuals, **1:6, 1:11, 1:12**

Evidentiary issues raised by, **9:1**

Federal common law, **3:16**

Importance/ramifications of, **4:1, 4:8**

Infringements of, **2:25**

International, **1:34**

Irreparable harm to, **5:18**

Jurisdiction, **3:21, 4:18**

Nature of
communal, **1:3, 1:6, 1:11**
economic aspect, **5:18**
frontier quality, **2:14, 2:19**
novelty, **2:2, 2:14, 2:20**
site/fact specific nature, **2:6, 2:19, 4:1, 4:7, 7:1, 9:2**
unique nature, **1:1, 7:1**

Onus and standard of proof, **9:7, 9:8**

Proof of, **9:2, 9:7, 9:8**

Registration of claim to, **6:6, 6:16**

Serious question to be tried, **5:10, 5:15**

ABORIGINAL SOVEREIGNTY

See Jurisdiction; Forum; Aboriginal
Rights and Title-Jurisdiction

ACCESS TO INFORMATION

Generally, **8:10**

ACTIONS

See also Parties; Relief; Pleadings; Sever-
ance of Issues; Consolidation;
Declaratory Relief; Representative
Proceedings; Discovery of Docu-

ACTIONS—Cont'd

ments; Examination for Discovery;
Evidence; Style of Cause

Class proceedings, **1:3, 1:19**

Consolidation of, **2:28**

Declaratory relief, **2:20**

Derivative, **1:6**

Discovery, **8:1 et seq.**

Evidence at trial, **9:1 et seq.**

Fiat prerequisite, **2:2**

Novelty of, **2:2, 2:14, 2:20**

Personal, **1:6**

Pleadings, **2:1 et seq.**

Representative proceedings, **1:3**

Severance, **2:33**

Style of cause, **1:17**

Trial one after the other, **2:31**

ACTS

Access to Information Act, **8:10**

Canada Evidence Act, **8:13, 8:33**

Class Proceedings Act, 1992, **1:27**

Constitution Act, 1867, **3:1**

Constitution Act, 1982, **1:1, 1:19**

Crown Liability Act, **1:20**

Crown Liability and Proceedings Act,
1:20, 3:4, 5:34

Crown Proceeding Act, **1:22, 5:34**

Evidence Act, **8:31**

Indian Act, **1:4**

Judicial Review Procedure Act, **4:13**

Land Title Act, **6:3, 6:4**

Proceedings Against the Crown Acts,
1:21, 5:34

Registry Act, **6:4**

ADDING PARTIES

See Parties-Addition of; Parties-Joiner

ADMINISTRATIVE TRIBUNALS

See Provincial Tribunals

ADMISSIBILITY

See Evidence-Ancient Documents; Evi-
dence-Oral History

AFFIDAVIT

See Evidence-Affidavit

AGENTS

See Parties-Crown Officers/Servants/
Agents; Examination for
Discovery-Of Whom-Agents of
Aboriginal Group

AMENDMENT OF PLEADINGS

See also Pleadings; Parties-Addition of;
Parties-Joiner; Style of Cause; Par-
ties-Substitution
Grounds for, **2:14**
complexity/expense as grounds, **2:15**
novelty as grounds, **2:14**
Rules of Court, **2:13**
Timing of, **2:16**

ANCIENT DOCUMENTS

See Documents-Ancient Documents; Evi-
dence-Ancient Documents

APPLICATIONS

See also Judicial Review; Summary
Proceedings; Summary Judgment
Generally, **4:1, 4:10**
Authorized by Rules of Court or statute,
4:17
Conversion to trial, **4:11**
Evidence, **4:1, 4:10**
Judicial Review, **4:13**
Rules of Court, **4:10**
Summary judgment, **4:1, 4:2**

ARCHIVES

See National Archives; Historical
Research-National Archives;
Discovery of Documents-Documents
in Public Archives; Documents-Ac-
cess To

ATTORNEYS GENERAL

See also Parties-Attorneys General;
Intervention-Attorneys General
Intervention by, **1:36**

BAND COUNCIL

See also Parties-Band Council
As party to proceedings, **5:39**
Representatives of, as parties, **1:6**

BIAS

See also Evidence-Expert
Apprehension thereof, **9:46**

BIAS—Cont'd

Of experts, **9:48**

BURDEN OF PROOF

See Evidence-Burden of Proof

BUSINESS RECORDS

See Evidence-Ancient Documents

CANADA

See Federal Crown

CAPACITY

See also Parties-Capacity; Indian Band-
Capacity/Lack of
Indian Band, **1:4**

CAVEATS

See also Real Property
Generally, **6:1, 6:2**
Aboriginal title to land
generally, **6:10**
British Columbia, **6:12**
Ontario, **6:10**
Saskatchewan, **6:11**
Availability, **6:1, 6:4**
Certificate of pending litigation, distinc-
tions from, **6:5**
Delgamuukw, impact of, **6:13**
Effect of, **6:5**
Legislation, **6:4**
Registrability of rights claim, **6:16**
Registrability of title claim, **6:6, 6:10,**
6:13, 6:14
Registration, **6:4**
Unpatented Crown land
generally, **6:14**
legislative differences, **6:14**
no provisions for, **6:15**

**CERTIFICATE OF PENDING
LITIGATION**

See also Real Property
Generally, **6:1, 6:2**
Aboriginal title to land
generally, **6:7**
British Columbia, **6:7**
New Brunswick, **6:9**
Ontario, **6:8**
Availability, **6:1, 6:3**
Caveats, distinctions from, **6:5**
Delgamuukw, impact of, **6:13**
Effect of, **6:5**

CERTIFICATE OF PENDING

LITIGATION—Cont'd

Jurisdiction, **6:5**
 Legislation/Rules of Court, **6:3**
 Registrability of title claim, **6:6, 6:7, 6:13, 6:14**
 Registration, **6:2**
 Unpatented Crown land
 generally, **6:14**
 legislative differences, **6:14**
 no provisions for, **6:15**

CHANGE OF PARTIES

See Parties-Addition of; Parties-Joiner;
 Parties-Substituting

CHIEF OF BAND

See Indian Band-Chief; Parties-Chief of
 Band; Examination for Discovery-Of
 Whom-Chief

CLAIM

See Actions-Consolidations; Pleadings;
 Parties; Aboriginal Rights and Title

CLASS PROCEEDINGS

See also Parties-Class or Representative
 Proceedings; Representative
 Proceedings
 Defendant's class proceedings, definition
 of, **1:27**
 Plaintiff's class proceedings, **1:9**

COMPANIES

See Parties-Aboriginal Corporations/
 Foundations/Societies

CONSOLIDATION

See also Actions; Pleadings; Severance of
 Issues
 Approach to, **2:32**
 Grounds for, **2:29, 2:30**
 Of actions, **2:28**
 Rules of Court, **2:28**
 Severance, **2:33**
 Trial one after the other, **2:31**

CONTEMPT OF COURT

See also Injunction-Breach of
 Civil contempt, **5:42**
 Criminal contempt, **5:42**

CORPORATIONS

See Parties-Aboriginal Corporations/
 Foundations/Societies

CROWN

See also Jurisdiction; Forum; Parties;
 Federal Crown; Provincial Crown;
 Injunction; Historical Research-
 Archives-Departmental Records
 As defendant, **1:19**
 Co-defendants of, **3:7**
 Crown Liability Act, **1:20**
 Crown Liability and Proceedings Act,
 1:20, 3:4, 5:34
 Crown officers/servants/agents, **5:10,**
 5:37
 Crown Proceeding Act, **1:22, 5:34**
 Discovery of, **8:29**
 Government Departments, **5:40**
 Injunctions, **5:32, 5:40**
 relief from undertaking as to damages,
 5:5
 Inter-governmental disputes, **3:19**
 Jurisdiction over, **1:20, 1:21, 3:3, 3:19**
 Ministers of, **5:40**
 Proceedings Against the Crown Acts,
 1:21, 5:34
 Public interest immunity, **8:13**
 Public servants, **5:40**
 Records of, **7:11, 7:12**

CULTURAL AND RELIGIOUS SITES

Aboriginal interest in, **5:17 to 5:19**

CULTURE

See Practice/Custom/Tradition; Cultural
 and Religious Sites; Spiritual
 Sanctuaries

DAMAGES

See also Injunction-Undertaking as to
 Damages
 Undertaking as to, **5:5**

DECLARATORY RELIEF

See also Actions; Injunction-Against
 Crown; Relief-Declaratory; Striking
 Out Pleadings-Declaratory Relief
 Interim relief, **5:48**
 Requirements for, **2:21**
 claim for consequential relief, **2:24**
 extrajudicial claims, **2:24**
 pleading infringements, **2:25**
 presently existing controversy, **2:22**
 real issues, **2:21**
 true interest to oppose, **2:21**

DEFENCE

See Actions; Pleadings

DEFENDANT

See also Parties-Defendant

Proper Defendant, **1:1, 1:19, 1:28**

DEFENDANT'S CLASS PROCEEDING

See Parties; Class Proceedings

**DEPARTMENT OF INDIAN AFFAIRS
AND NORTHERN
DEVELOPMENT**

See Historical Research-Archives-
Departmental Records

DISCOVERY OF DOCUMENTS

See also Interrogatories; Historical
Research-Archives; Documents; Evi-
dence-Ancient Documents; Histori-
cal Research-Primary Documents

Document list, **8:8**

Documents in possession of non-parties,
8:6

Documents in public archives, **8:4**

Documents not in party's possession or
control, **8:4**

Expert reports, **8:12**

Form of, **8:8**

Identification of documents, **8:8**

Interrogatories

generally, **8:17**

addressees, **8:23**

answers to, **8:25**

duty to inform, **8:23**

Rules of Court, **8:17**

scope of

British Columbia Supreme Court,
8:19

Federal Court, **8:20**

historical facts, **8:18**

Location of documents, public archives,
8:4

Privilege, **8:9**

basis of report, **8:12**

Crown as trustee, **8:10**

documents in expert's possession, **8:12**

documents in possession of counsel,
8:15

documents seen by expert, **8:12**

expert-counsel communications, **8:12**

land claim settlement documents, **8:11**

waiver of, **8:14**

DISCOVERY OF DOCUMENTS

—Cont'd

Public interest immunity, **8:13**

Rules of Court, **8:1, 8:2, 8:6, 8:8, 8:17,
8:26, 8:27, 8:32, 8:34**

Scope of, **8:3, 8:7.50, 8:18, 8:22**

Unique features, **8:1, 8:3**

Waiver of privilege, **8:14**

release to Lands Registry, **8:14**

unilateral disclosure, **8:14**

DOCUMENTS

See also Evidence-Ancient Documents;
Discovery of Documents; Historical
Research-Primary Documents

Access to, **7:14**

Ancient documents, **9:25**

admissible hearsay, **9:25, 9:29, 9:31,
9:32**

as business records, **9:29**

as public documents, **9:31**

cultural perspectives on, **9:3**

management of, **9:34**

types of, **7:4, 9:25**

use of, **7:14, 9:32**

Discovery of documents

generally, **8:2**

form of, **8:8**

privilege

generally, **8:9**

counsel's possession, documents in,
8:13

Crown's possession, documents in,
8:10

expert's possession, documents in,
8:12

public interest immunity, **8:14**

settlement documents, **8:11**

waiver, **8:14**

Rules of Court, **8:17**

scope of

non-party's possession, documents
in, **8:6**

ongoing duty to produce documents,
8:5

public archives, documents in, **8:4**

underlying legal propositions, **8:7.50**

Documentary record, **9:5**

Location of, **7:4**

Management of, **9:34**

Privilege, **8:9**

INDEX

DOCUMENTS—Cont'd

Unpublished primary documents, 7:4

DUTY TO CONSULT/NEGOTIATE

Generally, 4:14, 4:15, 5:14, 5:15, 5:50

ENVIRONMENTAL REVIEW

Generally, 4:18, 5:24

EVIDENCE

See also Historical Research; Documents;
Discovery of Documents; Examination
for Discovery; Interrogatories;
Historical Treatises; Judicial Notice;
Practice/Custom/Tradition

Act, 8:33

Admissibility, 9:9

Affidavit, 4:1, 4:10, 4:15

Ancient documents, 9:25, 9:33

admissible hearsay, 9:25, 9:29, 9:30,
9:32

as business records, 9:29

as public documents, 9:31

types of, 7:4, 9:25

use of, 7:14, 9:32

Document management, 9:34

Documentary record, 9:5

Examination for discovery, 8:26

Experts

bias of, 9:48

conflict of interest, 9:49

cross-examination, 9:59

discovery of, 8:12, 8:24, 8:33

foundation of opinion, 9:50, 9:55

historian's discipline, litigation foreign
to, 9:6

methodology, 9:52, 9:53

qualifications of, 9:47

reports of, 9:50, 9:55

types of, 9:46

ultimate issue, 9:54

Genealogy, 9:15

Hearsay

ancient documents, 9:25

exceptions to rule, 9:12

expert reports, 9:50, 9:55

oral history, 9:11, 9:12

Historical treatises, 7:3, 9:36

judicial notice, 9:39

relevance as evidence, 9:40

use as direct evidence, 9:37

use for cross-examination, 9:38

EVIDENCE—Cont'd

History as Evidence, Problems of
generally, 9:2

documentary record, 9:5

historians, expert, 9:6

oral history, 9:4

proof of fact, 9:2

unconventional evidence, 9:3

Interrogatories, 8:17

Judicial notice

doctrine, 9:41

judicial historical research, 9:44

legislative facts, 9:43

Nature of, 9:2, 9:3

Onus of proof

aboriginal rights claims, 9:7

distribution of, 9:7

treaty rights claims, 9:7

Opinion

See Experts

Oral history, 9:10

admissible hearsay, as reputation evi-
dence, 9:11, 9:12

protection of secrecy, 9:24

reputation of family history, 9:15

reputation of notorious historical
facts, 9:14

reputation of public/general rights,
9:13

secrecy, 8:16.50

cultural perspectives on, 9:3, 9:4

form of, 9:23

nature of, 9:10, 9:16

sources of, 9:11, 9:22

types of, 7:1, 9:4

weight of, 9:16

Delgamuukw, 9:16

fixed or changing record, 9:16

suspicious references, 9:16

Practice/custom/tradition, 9:2

Pre-trial examination of witnesses, 8:32

Privilege, 8:9

Standard of proof, 9:8

injunction applications, 5:10, 5:17,
5:20

trial: two possible standards, 9:8

Summary judgment, 4:1

Viva voce, 4:14

EX PARTE PROCEEDINGS

See Injunction-Ex Parte

EXAMINATION FOR DISCOVERY

See also Discovery of Documents; Interrogatories; Representative Proceedings

Generally, **8:26**

Aboriginal party representative, **8:28**
agents of, **8:28**

Chief, **8:28**

Against whom answers admissible, **8:35**

Crown representative, **8:29**

Duty to inform self, **8:34**

Of whom, **8:27**

aboriginal party, **8:28**

agents of aboriginal group, **8:28**

Chief, **8:28**

Crown, **8:29**

experts, **8:33**

independent contractors, **8:29**

representative proceedings, **8:29**

unwilling, former employees, **8:29**

Pre-trial examination of witness, **8:32**

Representative proceedings, **8:28, 8:35**

Rules of Court, **8:26, 8:27, 8:32, 8:34**

Scope of, **8:31**

facts relied on by experts, **8:33**

historical facts, **8:31, 8:34**

Will say statements, **8:32**

EXAMINATION OF WITNESS

See Examination for Discovery-Pre-trial
Examination of Witness

EXPERT REPORTS

See Evidence-Experts

EXPERTS

See Evidence-Experts

FACTS

See also Pleadings-Material Facts

Disclosure of, **5:31**

Historical nature of, **7:1, 9:2**

Material facts, **2:2, 2:19**

Site/fact-specific nature of, **2:9, 2:19, 4:1, 4:4, 7:1, 9:2**

FEDERAL BOARD, COMMISSION OR OTHER TRIBUNAL

See Forum; Jurisdiction

FEDERAL COMMON LAW

Generally, **3:16**

FEDERAL COURT

See Forum-Federal Court; Jurisdiction

FEDERAL CROWN

See also Forum-Federal Court; Jurisdiction; Parties; Crown

As defendant, **1:19, 1:20**

Jurisdiction over, **1:20, 3:3**

Responsibilities of, **1:1, 1:19**

FEDERAL JURISDICTION

See Forum-Federal Court; Federal
Crown-Responsibilities of

FIRST NATION

See also Parties-First Nations and Tribes

Generally, **1:4**

As plaintiffs, **1:6, 1:11**

FORUM

See also Jurisdiction; Provincial Tribunals

Canadian courts, **3:21**

civil proceedings, **3:21**

criminal proceedings, **3:21**

English courts

generally, **3:1, 3:21**

jurisdiction of, **3:21**

Federal Court

generally, **3:1, 3:2, 3:22**

Crown officers/servants/agents, **3:18**

inter-governmental disputes, **3:19**

jurisdiction of, **3:1, 3:2**

concurrent, **3:1, 3:5**

exclusive, **3:1**

statutory, **3:1**

jurisdiction test, **3:2**

existing body of federal law, **3:2**

aboriginal title is federal common
law, **3:2**

lacuna consideration, **3:17**

statutory grant, **3:2**

actions in two courts, **3:5**

Crown's co-defendants, **3:7**

claims in name only, **3:14**

constitutional questions, **3:14**

possession of reserve land, **3:14**

provincial Crown land, **3:14**

Federal Crown litigation, **3:4**

fresh sources of jurisdiction test,
3:15

independent jurisdiction test, **3:9**

intimately intertwined test, **3:14**

INDEX

FORUM—Cont'd

- Federal tribunals, **3:20**
- Provincial superior courts
 - generally, **3:1, 3:22**
 - jurisdiction of, **3:1, 3:2**
 - concurrent, **3:1, 3:5**
 - inherent, **3:1**
- Provincial tribunals
 - generally, **3:1, 3:20**
 - jurisdiction, **3:20**

GENEALOGY

- See Evidence-Oral History-Genealogy;
Evidence-Oral History-Admissible
Hearsay-Reputation of Family History

HEARSAY

- See Evidence-Hearsay

HISTORICAL RESEARCH

- See also National Archives; Evidence-Ancient Documents; Discovery of Documents-Documents in Public Archives; Documents-Ancient Documents
- Ancient documents, **7:4, 7:14, 9:25, 9:26**
- Archives
 - definition and organization of, **7:4**
 - Departmental records, **7:11, 7:12**
 - finding aids, **7:6**
 - inventories, guides and references, **7:6, 7:14**
 - Hudsons Bay Company archives, **7:12**
 - location of, **7:5**
 - National Archives, **7:7**
 - provincial archives, **7:7**
 - public libraries, **7:7, 7:13**
 - research plan, **7:7**
- Existing scholarship, **7:3, 9:36**
- Location of documents, **7:4**
- Preliminary steps, **7:2, 7:3**
- Primary documents, **7:4**
- Unpublished documents, **7:4**
- Use of documents, **7:14, 7:15**

HISTORICAL TREATISES

- See also Historical Research-Existing Scholarship; Evidence-Historical Treatises
- Judicial notice, **9:39**
- Relevance as evidence, **9:40**
- Use as direct evidence, **9:37**

HISTORICAL TREATISES—Cont'd

- Use for cross-examination, **9:38**

HUDSONS BAY COMPANY

- See Historical Research-Archives-Hudsons Bay Company Archives

INDIAN BAND

- See also Parties; Capacity
- Agents of, **8:28**
- Capacity/lack of to bring action, **1:4**
- Chief, **8:27**
- Nature of:
 - as beneficiary of trust, **8:10**
 - as corporation/foundation/society, **1:13**
 - as employer, **5:19**
 - as legal entity, **1:4**
 - as statutory body, **1:4**
 - as unincorporated association, **1:4, 2:3**
 - as unique body, **1:4**
 - not same as First Nation, **1:4**

INDIAN TITLE

- See Aboriginal Rights and Title

INJUNCTION

- See also Damages-Undertaking as to Damages; Parties; Contempt of Court; Crown-Injunction; Declaratory Relief
- Against Crown
 - Crown agents, **5:37**
 - generally, **5:32, 5:40**
 - Government departments, **5:41**
 - Ministers of Crown, **5:41**
 - rule against, **5:33**
 - generally, **5:33**
 - legislation, **5:34**
 - where available against, **5:38**
- Alternative frameworks, **5:45**
 - duty to consult, **5:50**
 - remedies, **5:55**
 - test, how Crown duty triggered
 - difference between injunction and Haida motions, **5:54**
 - infringement/proof of Crown's failures, **5:53**
 - knowledge of the Crown, **5:52**
 - interim declaratory relief, **5:48**
 - introduction, **5:45**
- Balance of convenience, **5:23**
 - examples, **5:30**

INJUNCTION—Cont'd

- Balance of convenience, **5:23**—Cont'd
 - public interest, **5:24, 5:30**
 - special factors, **5:29**
 - status quo, **5:26, 5:30**
 - strength of applicants' case, **5:28**
 - uniqueness, **5:29**
- Breach of, **5:42**
- Clean hands, **5:7**
- Common law, **5:2**
- Definition, **5:1**
- Duty to consult, **5**
 - generally, **5:45**
 - adverse effect of Crown decision/
 - conduct, **5:53**
 - declaratory relief, interim, **5:48**
 - evidence, **5:45**
 - Haida motion vs. injunction, **5:54**
 - interim relief, **5:48**
 - knowledge of the Crown, **5:52**
 - parties, **5:46**
 - remedies, **5:50**
 - test for, **5:51**
- Ex parte, **5:2, 5:31**
 - advantages of, **5:31**
 - disclosure of material facts, **5:31**
 - Rules of Court, **5:31**
- Interlocutory, **5:2**
- Irreparable harm, **5:16**
 - aboriginal people, **5:18**
 - cumulative effects, **5:18**
 - delay/inconvenience, **5:18, 5:22**
 - destruction of cultural sites, **5:18, 5:22**
 - disturbance to animals, **5:18**
 - economic aspect of title, **5.4(f)(ii), 5:18**
 - interference with spiritual sanctuaries, **5:18**
 - corporate interest, **5:19**
 - business activities, disruption to, **5:20**
 - examples, **5:21, 5:22**
 - government interest, **5:20**
 - public interest, **5:20, 5:22**
 - property interests, **5:19**
 - standard of proof, **5:17, 5:20**
 - timing, **5:17**
- Legislation, **5:2**
- Mandatory, **5:2**

INJUNCTION—Cont'd

- Parties to
 - generally, **5:14, 5:39**
 - Crown, **5:40**
 - unknown respondents, **5:41**
- Prohibitory, **5:2**
- Public interest, **5:17, 5:24**
- Remedies, **5:55**
- Rules of Court, **5:3, 5:5, 5:31**
- Serious question to be tried
 - generally, **5:15**
 - examples, **5:2**
 - exceptions, **5:11**
 - final determination of case, **5:11**
 - jurisdictional challenges, **5:14**
 - necessary parties, **5:14**
 - particular activities, **5:14**
 - prematurity, **5:14**
 - question of law alone, **5:12**
 - standard of proof, **5:10**
- Standard of proof, **5:10, 5:17, 5:20**
- Status quo, **5:26, 5:30**
- Test for, **5:6**
- Timing, **5:8, 5:17**
- Undertaking as to damages, **5:5**
 - relief from undertaking requirement, **5:5**
- Unknown respondents, **5:41**

INTER-GOVERNMENTAL DISPUTES

- See also Forum-Federal Court-Inter-governmental Disputes
- Jurisdiction over, **3:19**

INTERLOCUTORY INJUNCTION

- See Injunction

INTERNATIONAL ABORIGINAL RIGHTS

- See Aboriginal Rights and Title-International

INTERROGATORIES

- See also Discovery of Documents; Examination for Discovery
- By whom answered, **8:24**
- Duty to inform self, **8:23**
- Purpose of, **8:17**
- Rules of Court, **8:17, 8:24**
- Scope of, **8:18, 8:22**
 - general principles, **8:22**
 - historical facts, **8:18**

INDEX

INTERROGATORIES—Cont'd

- Scope of, **8:18, 8:22**—Cont'd
 - questions of mixed fact and law, **8:22**
- To whom addressed, **8:24**

INTERVENOR

- See Intervention

INTERVENTION

- Generally, **1:29**
- Aboriginal people, **1:35**
- Added party/friend of court, **1:30**
 - added party in civil cases by aboriginal people, **1:35**
 - added party in rights cases, **1:36**
 - criteria/grounds for, **1:31**
 - features of, **1:30**
 - private vs public interest, **1:32**
 - public interest intervention in rights cases, **1:34**
 - public interest test, **1:33**
- Attorneys General, **1:36**
- Definition of intervenor, **1:29**
- Rights cases, **1:1, 1:34, 1:36**
- Rules of Court, **1:29**
- Timing of, **1:37**
 - prejudice, **1:37**
 - prematurity, **1:37**
- Types of, **1:29**

JUDICIAL NOTICE

- See also Evidence-Judicial Notice
- Doctrine of, **9:41**
- Judicial historical research, **9:44**
- Legislative facts, **9:43**

JUDICIAL REVIEW

- See also Applications-Judicial Review;
Forum-Federal Court-Jurisdiction
Test-Federal Crown Litigation; Juris-
diction-Federal Boards/
Commissions/Tribunals; Summary
Proceedings
- Application for, **4:13**
- Appropriateness of, **4:13**
 - aboriginal rights cases, **4:14**
 - treaty rights cases, **4:15**
- Conversion to trial, **4:11**
- Evidence, **4:1, 4:10**
- Jurisdiction: federal boards/commissions/
tribunals, **3:1**

JURISDICTION

- See also Forum; Summary Proceedings
- Canadian courts, **3:21**
 - civil proceedings, **3:21**
 - criminal proceedings, **3:21**
- Concurrent, **3:1, 3:5, 3:18**
- Crown's co-defendants, **3:7**
- English courts, **3:21**
- Exclusive, **3:1**
- Federal boards/commissions/tribunals,
3:1
- Federal Court, **3:2**
- Inherent, **3:1**
- Injunctions, **5:14**
- Inter-governmental disputes, **3:19**
- Over aboriginal people, **3:21, 4:18**
- Over Crown, **3:1, 3:3, 5:14**
- Over Crown officers/servants/agents, **3:16**
- Provincial Crown land, **3:14**
- Provincial tribunals, **3:20, 4:18**
- Reserve land, **3:14**
- Statutory, **3:2**
- Test for, **3:2**

LEGISLATION

- See Acts

LIS PENDENS

- See Certificate of Pending Litigation

NATIONAL ARCHIVES

- See also Historical Research-Archives
- Government Archives Division, **7:8, 7:9**
 - Record Groups, **7:9**
 - RG-10, **7:9**
- Manuscript Division, **7:8, 7:10**
 - Manuscript Groups, **7:10**
- Types of records, **7:9**

NATIVE SOVEREIGNTY

- See Aboriginal Rights and Title-Jurisdic-
tion

NOTICE TO INTERESTED PARTIES

- Generally, **1:22**

NOVELTY

- See Pleadings; Particulars; Amendment of
Pleadings; Striking out Pleadings;
Actions; Aboriginal Rights and Title-
Nature of

ONUS OF PROOF

- See Evidence-Onus of Proof

OPINION

See Evidence-Expert

ORAL HISTORY

See Evidence-Oral History

PARTICULARS

See also Pleadings

Grounds for, **2:4 to 2:6**

novelty of claims, **2:8**

site/fact-specific nature of claims, **2:7**

Instrument of delay, **2:12**

Response to demand, **2:10**

document list, **2:10**

Rules of Court, **2:4**

Standard of compliance, **2:11**

Statements of law, **2:8**

Test for, **2:5**

Timing of demand for, **2:9**

PARTIES

See also Intervention; Forum; Representative Proceedings; Style of Cause; Crown; Federal Crown; Provincial Crown; Indian Band; Jurisdiction

Aboriginal corporations/foundations/societies, **1:9**

Addition of, **1:16**

Attorneys General, **1:19 to 1:21, 1:36, 3:7, 3:18, 5:32, 5:40**

Band Council, **1:6, 5:39**

Capacity, **1:1, 1:3, 1:4, 1:12**

Chief of Band, **1:6**

Class or representative proceedings, **1:6, 1:9, 1:27**

Crown, **1:19 to 1:21, 3:7, 3:18, 5:32, 5:40**

Crown officers/servants/agents, **5:10, 5:37**

Deceased persons, **1:11**

Defendant

generally, **1:1, 1:19**

Canada, **1:20**

class proceedings, **1:27**

interested parties, **1:22**

provinces, **1:21**

Definition of, **1:2**

First Nation and Tribes

authority to act, **1:6**

plaintiff in reserve claim, **1:11**

plaintiff in rights claim, **1:11**

Government departments, **5:40**

PARTIES—Cont'd

Indian Bands, **1:3, 1:4**

Individual Aboriginal people, **1:12**

Injunctions, **5:14**

Interested persons, **1:2, 1:22**

Intervenors, **1:29**

Joinder, **1:2, 1:20, 1:22 to 1:24**

Ministers of Crown, **5:40**

Necessary, **1:1, 1:2**

Plaintiff

generally, **1:1, 1:3**

Aboriginal subgroups, **1:13**

addition of party, **1:16**

capacity of Indian Bands, **1:4**

class members, **1:7**

class proceedings, **1:9**

corporations, **1:14**

foundations, **1:14**

individual Aboriginal persons, **1:12**

nations, **1:11**

proper, **1:10**

representative proceedings, **1:5**

representatives, **1:6**

societies, **1:14**

solicitors, **1:8**

style of proceeding, **1:17**

treaty rights claimants, **1:15**

Privies, **1:2**

Public servants, **5:40**

Representative proceedings, **1:6, 1:27**

Respondents to Judicial Review, **1:25**

Substituting, **1:6**

Third Party Proceedings, **1:26**

Timing, **1:37**

Treaty Right Claimants, **1:15**

Unborn or unascertained persons, **1:7**

Unknown or fictitious persons, **5:41**

PLAINTIFF

See also Parties-Plaintiff

Proper plaintiff, **1:1, 1:10, 1:18, 1:28**

PLEADINGS

See also Actions; Style of Cause; Amendment of Pleadings; Particulars; Striking out Pleadings; Consolidation; Parties; Severance of Issues; Declaratory Relief

Amendments

generally, **2:13**

complexity, **2:15**

INDEX

PLEADINGS—Cont'd

Amendments—Cont'd

grounds for, **2:14**

novelty, **2:14**

Rules of Court, **2:13**

timing, **2:16**

Appropriate approach to, **2:2**

Confusion about law, **2:26**

Consolidation

generally, **2:28**

consecutive trials, **2:31**

flexible approach, **2:32**

grounds for order, **2:29**

Rules of Court, **2:28**

Declaratory relief, **2:17**

Defective, **2:2, 2:13**

Factual threshold, **9:39**

Fiat prerequisite, **2:2**

Material facts, **2:2, 2:19**

No special rules, **2:1, 2:2**

Novelty, **2:1, 2:8, 2:14, 2:20**

Particulars

generally, **2:4**

fact-specific nature of claims, **2:7**

grounds for, **2:6**

instrument of delay, **2:12**

novelty of claims, **2:8**

response to demand, **2:10**

Rules of Court, **2:4**

standard of compliance, **2:11**

test, **2:5**

timing, **2:9**

Requirements of, **2:1**

Rules of Court, **2:4, 2:13, 2:17, 2:28, 2:33**

Service, 2:3

on Indian Band, **2:3**

Severance

generally, **2:33**

effect on discovery process, **2:34**

Rules of Court, **2:33**

Site/fact specific nature of facts, **2:6, 2:19**

Strategies, **2:26**

Striking out

generally, **2:17**

confusion about law, **2:26**

consequential relief need not be claimed, **2:24**

declaratory relief, requirements of, **2:26**

PLEADINGS—Cont'd

Striking out—Cont'd

existence of controversy must be present, **2:22**

factual threshold, **2:19**

grounds for order, **2:18**

infringement must be pleaded, **2:25**

no vs. novel claims, **2:20**

Rules of Court, **2:17**

strategic considerations, **2:27**

threshold, legal, **2:20**

Style of cause, **1:17**

PRACTICE/CUSTOM/TRADITION

See also Cultural and Religious Sites

Generally, **9:2, 9:4, 9:5, 9:10, 9:16**

PRE-TRIAL EXAMINATION OF WITNESSES

See Examination for Discovery-Pre-trial Examination of Witnesses

PRIVILEGE

See Discovery of Documents-Privilege; Public Interest Immunity

PROCEEDINGS

See Actions; Representative Proceedings; Style of Proceedings; Summary Proceedings; Judicial Review

PROOF

See Evidence-Onus of Proof; Evidence-Standard of Proof

PROVINCE

See Provincial Crown

PROVINCIAL ARCHIVES

See Historical Research-Archives

PROVINCIAL CROWN

See also Forum; Crown; Parties; Jurisdiction

As defendant, **1:19, 1:21**

Jurisdiction over, **1:21**

Provincial Crown land, **3:14**

Responsibilities of, **1:1, 1:19**

PROVINCIAL JURISDICTION

See Forum-Provincial Superior Court; Provincial Crown-Responsibilities; Provincial Tribunals; Forum-Provincial Tribunals

PROVINCIAL SUPERIOR COURTS

See Forum-Provincial Superior Court;
Jurisdiction

PROVINCIAL TRIBUNALS

See also Forum-Provincial Tribunals;
Summary Proceedings; Jurisdiction-
Provincial Tribunals

Generally, **4:1, 4:18**

Evidence, **4:1**

Jurisdiction over aboriginal people, **4:18**

PUBLIC ARCHIVES

See National Archives; Historical
Research-Archives; Discovery of
Documents-Documents in Public
Archives

PUBLIC DOCUMENTS

See Evidence-Ancient Documents

PUBLIC INTEREST

Generally, **5:20, 5:24, 5:30**

PUBLIC INTEREST IMMUNITY

Generally, **8:13**

REAL PROPERTY

See also Caveats; Certificate of Pending
Litigation; Forum; Jurisdiction

Crown lands, **3:14, 6:14**

Registry system, **6:2**

Reserve land, **3:14**

Torrens system, **6:2, 6:7, 6:16**

Unpatented Crown land, **6:14**

REGISTRATION

See Caveats-Registration; Certificate of
Pending Litigation-Registration;
Real Property

REGISTRY

See Caveats; Certificate of Pending Liti-
gation; Real Property

RELIEF

See also Forum; Declaratory Relief; Strik-
ing Out Pleadings; Injunction

Declaratory, **2:20**

Injunctive, **5:1**

Interim, **5:38**

Possession of reserve land, **3:14**

REPRESENTATIVE PROCEEDINGS

See also Parties-Representative Proceed-
ings; Examination for Discovery-

REPRESENTATIVE PROCEEDINGS

—Cont'd

Representative Proceedings

Generally, **1:9**

Appropriateness of, **1:5**

Authority to act as representative, **1:6**

Availability of, **1:5**

Class members, **1:7**

Deceased persons, **1:12**

Discovery witness, **8:23, 8:28**

Duty to inform, **8:23, 8:34**

Interrogatories, **8:23, 8:24**

Representatives, qualifications of, **1:6**

Rules of Court, **1:5**

Style of cause, **1:17**

Substitution of representative plaintiff,
1:6

Unborn or unascertained persons, **1:12**

RESEARCH

See Historical Research

RESERVES

See also Forum-Jurisdiction Test-Statu-
tory Grant-Crown's Co-Defendants-
Possession of Reserve Land; Juris-
diction-Reserve Land

Jurisdiction over, **3:14**

SCHOLARSHIP

See Evidence-Historical Treatises;
Historical Research-Existing
Scholarship

SERVICE

See Pleadings-Service

SEVERANCE

See also Pleadings-Severance; Actions-
Severance of Issues; Consolidation;
Severance of Issues

Grounds, **2:33**

Rules of Court, **2:33**

Separate trials, **2:33**

Sequential trial of issues, **2:33**

SOLICITOR-CLIENT PRIVILEGE

See Discovery of Documents-Privilege

SOVEREIGNTY

See Aboriginal Rights and Title-Jurisdic-
tion

INDEX

SPIRITUAL SANCTUARIES

See Injunction-Irreparable Harm to
Aboriginal People; Cultural and
Religious Sites; Practice/Custom/
Tradition

SPLIT TRIAL

See Pleadings-Severance of Issues;
Actions-Severance of Issues

STANDARD OF PROOF

See Evidence-Standard of Proof

STATEMENT OF CLAIM

See Pleadings

STATEMENT OF DEFENCE

See Pleadings

STATUS QUO

See Injunction-Balance of Convenience

STRIKING OUT PLEADINGS

See also Pleadings-Striking Out; Declara-
tory Relief-Requirements for; Relief-
Declaratory

Declaratory relief, **2:21**

requirements for, **2:21**

claim for consequential relief, **2:24**

extra judicial claims, **2:24**

Interest in Opposing the Declaration
Sought, **2:23**

pleading infringements, **2:25**

presently existing controversy, **2:22**

real issues, **2:21**

true interest to oppose, **2:21**

Factual threshold, **2:19**

Grounds, **2:18**

Legal threshold, **2:20**

Novel claims, **2:20**

Rules of Court, **2:17**

Test, **2:18**

STYLE OF CAUSE

See also Pleadings-Style of Cause; Parties

Avoiding confusion, **1:10**

Representative proceedings, **1:10**

SUMMARY JUDGMENT

See also Summary Proceedings;

Aboriginal Rights and Title-Site/Fact
Specific Nature of

Generally, **4:1**

Applications for, **4:10**

SUMMARY JUDGMENT—Cont'd

Appropriateness of, **4:7 to 4:9**

importance of issues, **4:8**

site/fact specific nature of facts, **4:7,**
4:9

Evidence, **4:1**

Rules of Court, **4:2, 4:4, 4:9, 4:10**

SUMMARY PROCEEDINGS

See also Summary Judgment; Provincial
Tribunals; Judicial Review

Applications/Petitions

generally, **4:10**

Aboriginal rights cases, **4:14**

authorized by legislation, **4:17**

conversion to trial, **4:11**

duty to consult, **4:14, 4:15**

judicial review, **4:13**

Rules of Court, **4:10**

test for conversion to trial, **4:12**

treaty rights cases, **4:15**

Appropriateness of, **4:1, 4:9, 4:13, 4:17,**
4:18

Motion to Strike Pleadings, **4:21**

Other Summary Proceedings, **4:19**

Special Case, **4:20**

Summary Judgment

generally, **4:2**

Alberta, **4:9**

bona fide claim, absence of, **4:5**

bona fide defence, absence of, **4:5**

British Columbia, **4:4**

defence to claim, absence of, **4:6**

importance of issues, **4:8**

merit to claim, absence of, **4:6**

Ontario, **4:9**

Rules of Court, **4:2, 4:4**

site-specific facts, **4:7**

Tribunals, **4:18**

SUMMARY TRIAL

See also Summary Proceedings; Summary
Judgment Treaty Rights; Aboriginal
Rights and Title

Document list, **8:8**

Documents in possession of non-parties,
8:6

Documents in public archives, **8:4**

Documents not in party's possession or
control, **8:4**

Expert reports, **8:12**

SUMMARY TRIAL—Cont'd

- Form of, **8:8**
- Identification of documents, **8:8**
- Interrogatories, **8:17**
 - answers to, **8:25**
- Location of documents, public archives, **8:4**
- Privilege, **8:9**
 - basis of report, **8:12**
 - Crown as trustee, **8:10**
 - documents in expert's possession, **8:12**
 - documents in possession of counsel, **8:15**
 - documents seen by expert, **8:12**
 - expert-counsel communications, **8:12**
 - land claim settlement documents, **8:11**
 - waiver of, **8:14**
- Public interest immunity, **8:13**
- Rules of Court, **8:1, 8:2, 8:6, 8:8, 8:17, 8:24, 8:26, 8:27, 8:32, 8:34**
- Scope of, **8:3, 8:18, 8:22**
- Unique features, **8:1, 8:3**
- Waiver of privilege, **8:14**
 - release to Lands Registry, **8:14**
 - unilateral disclosure, **8:14**

TRIAL

- See Evidence

UNDERTAKING AS TO DAMAGES

- See Injunction-Undertaking as to Damages

UNIQUENESS

- See Injunction-Balance of Convenience; Aboriginal Rights and Title-Nature of-Unique Nature

UNPATENTED CROWN LAND

- See Caveats-Unpatented Crown Land; Certificate of Pending Litigation-Unpatented Crown Land; Forum-Federal Court-Jurisdiction Test-Statutory Grant-Provincial Crown Land; Real Property-Unpatented Crown Land

WAIVER OF PRIVILEGE

- See Discovery of Documents-Waiver

WILLS

- Generally, **7:12**