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This release features updates to the case law and commentary in Chapters 1 (Parties), 2 (Pleadings), 6 (Certificates of Pending Litigation and Caveats), 8 (Discovery), and 9 (Evidence).

Highlights

- **CHAPTER 2—PLEADINGS**—In *Wolastoqey Nations v New Brunswick and Canada, et al.,* 2024 CarswellNB 632 (Gregory J.) (under appeal) the Court addressed the proper approach to pleadings in the context of the defendants' application to strike the pleadings under New Brunswick Rules 23, 27 and 37. In granting their application to strike, the Court described the approach to pleadings as functional, practical and pragmatic. The Court also observed that "[w]hile pleadings are important in all litigation, they are exceedingly important in claims for Aboriginal title because of the complexity and duration of the litigation process." [para 43]. Further, Gregory J. noted that *Tsilhqot'in* stands for the proposition that special considerations apply and that leeway must be granted to pleadings in these types of cases [para 75-76].
- **CHAPTER 9—EVIDENCE—9.24 Protection of Secrecy**—The issue of the protection of secret information arose in *Malii v. British Columbia*, 2025 CarswellBC 381 (Stephens J.) where the plaintiff Gitanyow Nation sought a pre-trial order to protect and limit use and dissemination of access to sacred cultural information. In this Aboriginal title and rights case, Gitanyow applied for a publication ban, sealing order, and protective order over what they described as Gitanyow sacred cultural information. The sacred cultural information for which protective orders were sought took the form of several documents: excerpts from the plaintiff's depositions, excerpts from one of the plaintiff's expert reports, and video and audio recordings produced by the plaintiff. Gitanyow argued that they anticipated that they would rely sacred cultural information at trial as proof of the existence of a system of land tenure law internal to Gitxsan (including Gitanyow), as well as evidence of Gitanyow's historical use and occupation of its lax'yip, or territories. However, there were strict rules in Gitxsan law regarding the recitation of the adaawk, the display of the ayuuks and the performance of the limx'oy. The Court addressed the appropriate approach to the protective and other orders sought in the application. Stephens J. noted that he was mindful that the orders sought engaged the principle of court openness, and that there was a strong presumption in favor of openness in all court proceedings. However, he found that the availability of protective orders also required the court to be sensitive to the Indigenous plaintiff's perspective as to the need to protect their Indigenous culture in the litigation process. In granting the orders sought by Gitanyow, Stephens J. found that they had established a real and substantial risk to the cultural information.