

## INDEX

All references are to page number.

### Aboriginal law

aboriginal title

- continuity, 8
- infringement, 8-9
- occupation and exclusivity, 8
- parties, 9-10
- sample notice of civil claim, 11-15

litigation

- generally, 3
  - procedure, uncertainty in, 3-4
  - *Royal Proclamation of 1763*, importance of, 4
  - typical litigation, 4-5
- pleadings under s. 35
- functional approach, 5
  - *Sparrow* analysis, 6-7
  - statement of claim, 7-8
  - statement of defence, 8
  - technical approach rejected, 5-6

precedents

- notice of application — *Charter* challenge to customary laws of a First Nation, 29-31
- notice of application — failure to consult regarding s. 35 rights, 15-18
- notice of civil claim — trespass to a reserve; action for ejectment, 25-29
- petition — inadequate consultation on “strategic, higher level decision”, 18-25
- statement of claim — breach of fiduciary duty by Chief and Council, 31-32

### Arbitration

*ad hoc* vs. institutional, 38-40, 55

agreement defined, 37

arbitral institutions, list, 66-70

arbitrators

- appointment, 43-44, 59
- qualification, 48-49, 58-59
- replacement, 44

award

- draft, 55
- sample notice of application to appeal, 61-66

confidentiality, 47-48, 58

contract

- governing law, 42, 59
- multicontract arbitration, 52-53, 57

costs and fees, allocation, 48, 57-58

document production, 46-47, 59-61

finality of arbitration, 50-51

generally, 35-36

language of proceedings, 44-45, 59

limitation of liability clauses, 53, 62-63

location of arbitration, 42

multi-party arbitration, 52

multi-tier dispute clauses, 51-52, 55-57

online arbitrations, 54

preservation measures, 45-46, 61

punitive damages, 53-54, 63

rules

- generally, 40-41
  - *lex arbitri*, 42
- sample clauses, 55-63

scope of dispute, 41

time limits, 49-50, 61-62

treaty requirements, 38

### Aviation

baggage claims against air carriers

- defences, 86
- documentary requirements, 88-89

## CANADIAN PRECEDENTS OF PLEADINGS

### **Aviation** — *Continued*

baggage claims against air carriers —  
*Continued*

- generally, 85
- liability for destruction, loss, damage, 86
- limitation of liability, 87-88
- special declaration of interest, 87-88
- timely notice, 86-87

cargo claims against air carriers

- contributory negligence, 91-92
- defences, 90-91
- documentary requirements, 93-94
- forms
  - • claim, 107-109
  - • defence, 109-112
- generally, 89
- liability for destruction, loss, damage, 89-90
- limitation of liability, 92-93
- special declaration of interest, 92-93
- timely notice, 92
- who may sue, 90

delay claims against air carriers

- forms
  - • claim, 102-103
  - • defence, 103-107
- generally, 84
- liability limits, 84-85

international treaties

- convention, which applies, 75-76
- generally, 74-75
- jurisdiction, 79
- limitation/prescription periods, 77-78
- punitive damages, 78
- “strong “exclusivity of conventions in Canada, 76-77

personal injury claims against air carriers

- accident, concept of, 80-82
- bodily injury defined, 82-83

- contributory negligence, 84
- embarkation/disembarkation, 79-80
- forms
  - • claim, 94-99
  - • defence and cross-claim, 99-102
- liability limits for bodily injury, 83
- strong exclusivity, 76-77, 78, 81

**Bankruptcy**, *see* **Insolvency**

**Class Actions**, *see also* **Competition Law, Private Litigation**

class proceeding defined, 116

generally, 116, 147

history in Canada, 117

precedents

- affidavit of corporate officer in opposition to certification, 184-198
- affidavit of lawyer in support of certification, 173-179
- affidavit of proposed representative plaintiff, 168-173
- issued certification order, 207-209
- notice of intent to defend, 157-158
- notice of motion for leave to appeal, 198-206
- notice of motion seeking certification, 164-167
- plaintiff’s litigation plan, 179-184
- statement of claim, 147-157
- statement of defence, 158-164

procedure

- adjudication of individual claims, 137-138
- appeals, defence, discovery and decertification, 135-137
  - • cause of action disclosed, 121-123
  - • class proceeding preferable procedure, 129-133
  - • common issues raised by claim, 126-129
  - • generally, 117-121
  - • identifiable class, 123-125

## INDEX

### **Class Actions — Continued**

#### *procedure — Continued*

- • representative plaintiff must adequately represent class, 133-134
- common issues trials, adjudication of individual claims, 137-138
- costs, 138-140
- decertification, 136, 137
- discovery, 136, 137
- national class actions, 144-147
- notice of class certification, 135
- pre-certification, 118
- private international law, 144-147
- settlement, 141-144

### **Companies' Creditors Arrangement Act Proceedings, see Insolvency**

### **Competition Law, Private Litigation**

#### *civil reviewable practices*

- exclusive dealing, 220
- market restriction, 220
- price maintenance, 219-220
- refusal to deal, 220-221
- tied selling, 220

#### *class actions*

- certification, 229-231
- costs, 233
- damages, 232-233
- evidence, 232
- generally, 228-229
- jurisdiction, 232
- sample filings
- • notice of motion for certification, 249-252
- • statement of claim, 252-260
- • statement of defence, 246-248

#### *criminal offences*

- bid-rigging, 218
- conspiracy, 216-217
- criminal misleading representations, 218-219

generally, 214-216

#### *private actions for damages*

- arbitrability of claims, 227-228
- costs, 227
- damages, 227
- elements, 223-224
- equitable relief, 226
- forum, 226
- generally, 221-222
- interim/permanent injunctions, 227
- limitation period, 225-226
- relation to common law causes of action, 223
- sample statement of claim, 240-245

#### *private applications*

- appeals, 239-240
- application for leave — process, 235-237
- application for leave — standard, 234-235
- costs, 239
- generally, 233-234
- hearings, 237
- interim injunctions, 238
- remedies, 238
- sample filings
- • affidavit in support of application for leave, 271-273
- • notice of appeal, 277-279
- • notice of application for leave, 264-269
- • notice of application on the merits, 269-271
- • response to application for leave, 273-276
- settlements, 238

### **Construction Claims**

#### *bidding and tendering*

- basis of claim, 287
- remedies, 287

#### *claims in tort, 290*

#### *delay claims, 288*

## CANADIAN PRECEDENTS OF PLEADINGS

### **Construction Claims — Continued**

extra work, changed work, defective work, 289

forms of contract, 286-287

generally, 284-285

insurance, 291

liens, 292-293

parties, 285-286

payment

- concepts, 289

- payment, 289-290

precedents

- construction lien, defence and counterclaim of owner, 339-347

- defence and counterclaim, 327-339

- reply and defence to counterclaim, 368-369

- statement of claim

- • bid bond, 370-374

- • contractor against owner, 304-306

- • contractor against owner and architect/engineer, 298-304

- • general contractor against owner and architect, 293-298

- • L&M bond, 392-394

- • lien — general contractor against owner, 349-353

- • lien — subcontractor against owner and general contractor, 347-349

- • lien — supplier, 355-361

- • owner against architect/engineer, 306-315

- • owner against contractor and engineer, 315-323

- • performance bond, 379-386

- • subcontractor against general contractor, 323-327

- statement of defence

- • bid bond, 374-379

- • general contractor defending against subcontractor, 362-363

- • L&M bond, 394-396

- • performance bond, 386-392

- third party claim, 363-368

- third party claim — contractor against subcontractor and architect, 353-355

request for proposals, 288

risk management cases, 291

surety bonds, 291

trusts, 293

### **Contracts**

assignment, 427

bibliography, selected, 476-478

breach

- anticipatory, 424

- doctrine of fundamental breach, 425-426

- generally, 423-424

capacity to contract

- corporations, 408

- Crown, 408

- minor, 407

- person of unsound mind, 407-408

- unincorporated associations, 408

case law

- English contracts cases, 448-449

- Supreme Court of Canada contracts cases, 1959 to present, 434-447

cause of action, overlapping or

alternative, 432-433

collateral contracts, 420

conditions precedent, 414-415

consensus ad idem, 403

consideration, 405-407

contract defined, 402-403

defences, 454-456

duress, 413

enforcement, criteria, 405

exclusion clauses, 419

forms

- form 14A: statement of claim (general), 457-459

## INDEX

### **Contracts** — *Continued*

#### forms — *Continued*

- form 14E: notice of application, 459-460
- form 18A: statement of defence, 461
- frustration, 426
- illegality, 413-414
- misrepresentation
  - fraudulent misrepresentation, 411-412
  - innocent misrepresentation, 412
  - negligent misrepresentation, 412
  - non-disclosure, 412-413
- mistake, 410-411
- offer and acceptance, 403-405
- performance
  - dependency of performance, 421
  - discharge of duty to perform, 422-423
  - duty to perform, 420-421
  - incomplete performance, 421
  - modification of performance, 421-422
  - time of performance, 421
- practical tips, 449-451
- precedents — application
  - agreement of purchase and sale of land — binding agreement; declaration; specific performance; damages, 525-528
  - change of control agreement — breach; money owed, 523-525
- precedents — statement of claim
  - banking — loan default; non-payment by borrower and guarantors, 492-495
  - bulk cable services agreement — breach; injunction; declaration; damages, 499-502
  - car rental agreement — car damaged, 479-480
  - condominium construction — deficiencies, 517-519
  - consumer contract — breach; unfair practices, 495-499
  - defective consumer goods — insurer's subrogated claim; negligence; breach of contract/warranty; negligent misrepresentation, 482-484
  - driveway construction contract — deficiencies, 480-482
  - franchise and sub-lease agreements — default, 490-492
  - oral contract for services — services not provided, 478-479
  - partnership agreement — breach; attempted unilateral dissolution, 506-508
  - pharmacy licence agreement — breach; interference with obligations; improper solicitation, 502-506
  - post-retirement benefits entitlement — money owed, 512-516
  - property insurance contract — insurer's and agent's breach of contract and negligence, 519-523
  - share purchase agreement — damages; rescission, 508-512
  - storage of goods — goods destroyed, 484-485
  - supply and delivery of goods — partial payment, 485-488
  - unpaid construction services — breach of contract; unjust enrichment; breach of trust under *Construction Lien Act*, 488-490
- precedents — statement of defence
  - sale of goods — non-payment because of defective goods and failure to honour warranty, 528-529
- privity, 408-409

## CANADIAN PRECEDENTS OF PLEADINGS

### **Contracts** — *Continued*

remedies for breach

- damages
- • aggravated (“mental distress”), 430
- • compensatory (“actual”), 428-429
- • general (“non-pecuniary”), 429
- • liquidated, 429-430
- • nominal, 431
- • pecuniary (“special damages”), 429
- • punitive (“exemplary”), 430-431
- options, 427
- principles to consider in drafting pleading, 431-432
- range of remedies, 428
- void or voidable, 427-428

*Sale of Goods Act*, 409-410

scope of relationships covered by contract law, 457

Small Claims Court

- forms
- • form 7A: plaintiff’s claim, 464-467
- • form 9A: defence, 468-471
- • form 10A: defendant’s claim, 472-475
- generally, 461-463, 475-476
- sources of contract law, 433
- statement of claim
- matters that must be specifically pleaded, 453-454
- outline, 452-453

*Statute of Frauds*, 409

terms

- express terms interpreted, 415-418
- implied terms, 418
- term defined, 415
- variety of terms, 419

unconscionability, 413

undue influence, 413

### **Copyright**

application for copyright and moral right infringement or TPM

circumvention

- notice of application, 1808-1809

counterclaim

- costs and disbursements, 1807
- invalidity of copyright, 1806
- location of trial, 1807
- non-infringement, 1806
- parties, 1806
- plaintiff by counterclaim’s business and activities, 1806
- prayer for relief, 1806

defined, 1790

jurisdiction, 1790

litigation, types, 1789

moral rights as civil law tradition, 1791

precedents

- application for copyright and moral right infringement
- • notice of application, 1853-1877
- • • applicant with rely on, 1876
- • • applicant’s copyright, 1861-1868
- • • applicant’s moral rights, 1868-1870
- • • application will be supported by, 1876-1877
- • • parties, 1860-1861
- • • prayer for relief, 1853-1860
- • • proceedings by way of application, 1876
- • • remedies, 1870-1876
- • • technological protection measures, 1870
- copyright and moral right infringement
- • counterclaim, 1848-1849
- • • declaration of invalidity of copyright registration, 1848-1849

## INDEX

### **Copyright** — *Continued*

precedents — *Continued*

- • • miscellaneous, 1849
- • defence to counterclaim, 1852-1853
- • • acceptance of admissions, denials and/or no knowledge of, 1852
- • • miscellaneous, 1852-1853
- • reply, 1849-1852
- • • acceptance of admissions, denials and/or no knowledge of, 1849-1850
- • • copyright, 1850-1851
- • • moral rights, 1851
- • • plaintiff entitled to equitable remedies, 1851-1852
- • reply to defence to counterclaim, 1853
- • • acceptance of admissions, denials and/or no knowledge, 1853
- • • reply and miscellaneous, 1853
- • statement of claim, 1809-1831
- • • parties, 1816
- • • plaintiff's copyright, 1817-1823
- • • plaintiff's moral rights, 1824-1825
- • • prayer for relief, 1809-1815
- • • remedies, 1826-1831
- • • technological protection measures, 1825
- • statement of defence, 1831-1848
- • • admissions, denials and/or no knowledge of allegations, 1831-1832
- • • defences, 1832-1837
- • • defendant did not infringe plaintiff's moral rights, 1842
- • • defendant not aware activities were infringement, 1839-1841
- • • denial of circumvention of TPM, 1843
- • • denial of infringement conclusion, 1843
- • • no copyright infringement, 1837-1839
- • • no moral infringement, 1841-1842
- • • parties, 1832
- • • plaintiff not entitled to remedies, 1843-1848
- reply
  - acceptance of admissions, admissions, denials, no knowledge of allegations, 1807
  - reply, 1807
- reply and defence to counterclaim
  - acceptance of admissions, admissions, denials, no knowledge of allegations, 1807
  - costs and disbursements, 1808
  - defence to counterclaim, 1808
  - location of trial, 1808
  - reply, 1807
- reply to defence to counterclaim
  - admissions, denials, no knowledge of allegations, 1808
  - reply, 1808
- rights protected, 1790
- statement of claim — copyright and moral right infringement
  - costs and disbursements, 1799
  - generally, 1791
  - location of trial, 1799
  - parties, 1794
  - plaintiff's copyright and standing to sue for relief
- • assignment of copyright, 1796
- • copyright registration, 1795
- • defendant's infringing acts, 1796-1798

## CANADIAN PRECEDENTS OF PLEADINGS

### **Copyright** — *Continued*

statement of claim — copyright and moral right infringement — *Continued*

- • original expression of idea protected, 1795-1796
- • ownership of work/chain of title, 1795
- • term of copyright, 1796
- plaintiff's moral rights, 1798-1799
- prayer for relief, 1792-1794
- relief sought and *quantum*, 1799
- technological protection measures (TPMs), 1799
- statement of defence — copyright and moral right infringement
- admissions, denials, assertions of no knowledge, 1800
- defences, 1800-1801
- defendant's business and activities, 1800
- disentitlement to relief claimed, 1805
- limitation period, 1805-1806
- location of trial, 1806
- no infringement
- • defence of consent, 1801
- • defence of fair dealing, 1802-1803
- • network services or information location tools, 1803
- • other defences, 1803-1805
- parties, 1800
- unenforceability of moral rights, 1805
- technological protection measures (TPMs)
- application for circumvention, 1808
- defences, 1804, 1805
- defined, 1799
- generally, 1790, 1791, 1793, 1796

### **Corporate Pleadings**

corporate parties, 535-536

derivative action

- cause of action, 551
- costs, 551-552
- generally, 546
- leave, requirements for
- • good faith, 548-549
- interest of the corporation, 549-550
- notice to board of directors, 546-548
- standing, 548
- procedure
- • action, 550
- • applicable court, 550
- • limitation period, 551
- • seeking leave, 550
- remedies, 551
- generally, 534-535
- limitations issues, 536-537
- misrepresentation, securities class actions for
- common law pleadings, 554-555
- statutory claims for primary market misrepresentation, 560-561
- statutory claims for secondary market misrepresentation
- • right of action, 556-557
- • statutory protection for defendants
- • • damages calculations and liability limits, 558-559
- • • leave requirement, 557
- • • statutory defences, 559-560
- oppression remedy
- damages, 544
- elements of claim
- • corporate conduct, 543
- • reasonable expectations, 543
- • standard of conduct, 544
- governing statute, 537
- procedure
- • action or application, 541-542



## INDEX

### **Corporate Pleadings — Continued**

#### oppression remedy — *Continued*

- applicable court, 541
- arbitration clauses, 542
- class proceedings, 542
- proper defendants and respondents, 540-541
- remedies, 544-546
- standing, 537-540
- oppression remedy vs. derivative action, 552-554
- precedents — notice of application
  - derivative action — leave to commence action, 566-568
- precedents — notice of motion
  - securities class actions — leave to commence action under Pt. XXIII.1 of Ontario *Securities Act*, 571-573
- precedents — statement of claim
  - derivative action, 569-570
  - oppression remedy, 561-566
  - securities class actions — under Pt. XXIII.1 of Ontario *Securities Act*, 573-575

### **Debtor and Creditor**

- alias* writ, 583-585
- competing interests, 586-587
- debtor's estate, 585-586
- debtor's name, amending
  - generally, 591
- withdrawal of an execution, 592-593
- direction to enforce writ of seizure and sale (form 60F)
  - generally, 588
  - sale of real property under execution, 588-591
- generally, 580-581
- issuance, 581-582
- Mareva* injunctions
  - availability, 623
  - fraud exception, 630-632

- generally, 618-619
- jurisdiction, 621-622
- purpose, 620
- statement of claim 637-641
- test
  - balance of convenience/irreparable harm, 628-629
  - balance of convenience/risk of dissipation, 627-628
  - generally, 624-626
  - prima facie case, 626-627
- undertakings as to damages, 632-633
- variation, 633-637
- precedents — garnishment
  - affidavit in support of a garnishment motion, 612-618
  - garnishee's statement, 608-609
  - garnishment affidavit, 606-608
  - garnishment motion, 609-612
  - requisition for garnishment, 605-606
- precedents — *Mareva* injunctions
  - affidavit in support, 646-659
  - motion for injunction, 641-646
  - motion to vary order, 659-664
- precedents — writ of seizure and sale
  - direction to enforce writ of seizure and sale, 603-604
  - requisition, 602-603
  - request to renew writ of seizure and sale, 604-605
  - writ of seizure and sale, 600-602
- privacy concerns
  - garnishment, 594-596
  - garnishment hearing, 598-600
  - generally, 593-594
  - procedure at court counter, 596-597
  - termination, 597-598
- renewal, 582-583
- requisition, 588

## CANADIAN PRECEDENTS OF PLEADINGS

### **Domain Name Dispute Resolution Policy**

bad faith

- establishing
- • burden of proof, 1891-1892
- • intention, 1892-1893
- • registration, 1891
- • what must be established, 1889-1891
- • whose bad faith, 1891
- factors to be considered
- • attracting internet users, 1899-1900
- • blocking complainant, 1895-1896
- • disrupting business of complainant, 1896-1898
- • purpose of transfer, 1893-1895

basis for complaint

- confusing similarity with mark of complainant, 1885-1886
- what must be established, 1885

Canadian Internet Registration Authority (CIRA), 1880

Canadian Presence Requirements (CPR), 1881, 1882-1884

CIRA Domain Name Dispute Resolution Policy (CDRP)

- bad faith established under, 1889-1893
- basis for complaint under, 1885
- complainant commencing proceeding, 1881-1882
- definitions
- • bad faith, 1890
- • confusingly similar, 1889
- • mark, 1886-1887, 1888
- generally, 1881
- legitimate interest under, 1900-1901
- purpose, 1880, 1885
- registrant, 1884-1885

CIRA Dispute Resolution Rules, 1880, 1881, 1882, 1884

confusing similarity, 1889

dot-ca domain names, 1882, 1884, 1885, 1886, 1912

dot-ca registry, 1880

eligible complainant

- Canadian presence requirements, 1882-1884

- generally, 1881-1882

generally, 1880-1881

legitimate interest

- absence of, 1902-1903
- burden of proof, 1902
- factors

- • descriptive name, 1903-1904

- • generic name, 1904

- • geographical location, 1906

- • name, 1905-1906

- • non-commercial activity, 1904-1905

- • use as mark, 1903

- generally, 1900-1902

- good faith, 1903

mark

- definition, 1886-1887

- exclusions, 1887-1888

- names of individuals, 1888

- statutory protected marks, 1888-1889

precedents

- complaint, 1906-1915

- response, 1915-1921

respondent, 1884-1885

Uniform Dispute Resolution Policy (UDRP), 1880, 1896

WHOIS domain database, 1881, 1884

**Employment Law Injunctions, see**

**Labour and Employment Law Injunctions**

**Employment Standards Litigation —**

***Employment Standards Act, 2000***

enforcement, administrative

## INDEX

### **Employment Standards Litigation — *Employment Standards Act* — *Continued***

enforcement, administrative — *Continued*

- appeal to Ontario Labour Relations Board, 885
- discussion with employer, 883-884
- generally, 883
- investigation by employment standards officer, 884-885
- enforcement, civil litigation
  - aggravated and punitive damages, 880-883
  - draft pleadings
    - aggravated and punitive damages, 882-883
    - greater right or benefit, defence, 870
    - notice periods, 877-878
    - termination and severance pay, entitlement, 879-880
  - generally, 869
  - greater right or benefit, 869-870
  - notice periods at common law, 870-878
  - termination and severance pay, entitlement, 878-880
- generally, 867-868
- precedents
  - reply, 892-893
  - statement of claim, 885-888
  - statement of defence, 888-892
- scheme of Act, 868

### **Environmental Law**

*Charter* issues

- unreasonable delay: s. 11(b), 908
- unreasonable search and seizure: s. 8, 904-905
- defending environmental prosecutions
  - defences
    - due diligence, 901-902

- mistake of fact, 903
- officially induced error, 902-903
- establishing the offence, 901
- generally, 899-900
- laying an information
  - Crown disclosure, 906
  - limitations, 906
  - *R. v. Kienapple*, rule from 906-907
  - unreasonable delay: s. 11(b) of *Charter*, 908
- offences, 900-901
- penalties, 903-904
- procedure
  - unreasonable search and seizure: s. 8 of *Charter*, 904-905
- environmental torts
  - administrative law
    - administrative decision-makers, 917-918
    - administrative monetary penalty (AMP), 917
    - judicial review, 918-920
    - generally, 916-917
  - defences
    - caveat emptor, 914
    - due diligence, 914
    - landlord not responsible for torts of tenant, 915
  - generally, 908-909
  - negligence, 911
  - nuisance
    - private nuisance, 909-910
    - public nuisance, 910
  - remedies
    - damages, 915-916
    - injunctions and other orders, 916
  - *Rylands v. Fletcher*/strict liability, 911-912
  - statutory claims 913-914
  - strict liability, 911-912
  - trespass, 913
  - generally, 898-899

## CANADIAN PRECEDENTS OF PLEADINGS

### **Environmental Law — Continued**

#### precedents

- contaminated land action
- • statement of claim, 920-927
- • statement of defence, 927-931
- environmental prosecution
- • agreed statement of facts, 936-937
- environmental review tribunal
- • motion for particulars, 935-936
- • motion for stay, 933-935
- • notice of appeal, 931-933

*R. v. Kienapple*, rule from 906-907

*Rylands v. Fletcher*/strict liability, 911-912

### **Equitable Remedies**

#### account of profits

- generally, 984-986
  - precedents
  - • breach of covenant against competition, claim, 988-990
  - • lawyer's trust funds, claim, 990-993
  - • wrongful dismissal, claim, 986-987
  - where remedy available, 985
- #### appointment of receiver
- generally, 993-995
  - powers granted to receiver, 994
  - precedents
  - • appointment of receiver and manager over motion pictures, claim, 999-1003
  - • breach of indemnity agreement, claim, 997-999
  - • winding up company's affairs and distributing its property, claim, 995-996

- Standard Form Template Receivership Order (Model Order), 994

- where remedy available, 993-994
- #### declaration

- generally, 1003-1004
- precedents
- • account as constructive trustees; contract void, claim, 1009-1014
- • no right, title or interest in real property, claim, 1004-1006
- • unjust enrichment from wrongful conduct, claim, 1007-1009
- principles guiding grant of remedy, 1004

generally, 942-945

#### injunction

- common types, 945-946
- generally, 945-948
- permanent injunction
- • criteria for granting, 946-947
- • situations where granted, 948
- precedents
- • breach of dealership agreement, claim, 948-950
- • preventing lawyer from acting, 952-954
- • trespass, claim, 950-951

#### rectification

- common mistake, proof required, 969
- generally, 967-970
- precedents
- • agreement of entitlement to pension benefit, claim, 972-975
- • asset purchase agreement, claim, 975-977
- • lease, claim, 970-972
- standard of proof, 968
- unilateral mistake, proof required, 969
- where remedy not available, 869

#### rescission

- generally, 978-979
- grounds, 978
- precedents

## INDEX

### **Equitable Remedies — Continued**

#### rescission — *Continued*

- • agreement of purchase and sale of real property, claim, 982-984
- • contract of sale of goods (mutual mistake), claim, 979-980
- • medical software agreement, claim, 980-982
- where remedy not available, 979
- specific performance
  - defences, 956-957
  - generally, 954-957
  - precedents
    - • agreement of purchase and sale, claim, 959-960
    - • employment contract, claim 957-959
    - • license agreement, claim, 960-964
    - • shareholder agreement, claim 964-967
  - where remedy available, 955
  - where remedy not available, 956

### **Family Law**

#### answer — form 10, 1035-1036

#### application — form 8

- access, 1031
- background/overview, 1030
- child support, 1031-1032
- custody, 1030-1031
- family property
  - • comparison of net family property statement — form 13C, 1035
  - • equalization, 1034-1035
  - • matrimonial home, 1035
  - • net family property statement — form 13B, 1035
- financial statement and supporting documents, 1033-1034
- other claims, 1033
- spousal support, 1032-1033
- conferences

- generally, 1023
- standard conferences
- • case conference — case conference brief form 17A, 1037-1038
- • settlement conference — settlement conference brief form 17C, 1038-1039
- • trial management conference — trial management conference brief form 17E, 1039-1040

#### Family Responsibility Office (“FRO”), 1028

#### motions for temporary orders

- motion to change
  - • form 15 — motion to change, 1042
  - • form 15A — change information form, 1042-1043
  - • form 15B — response to motion to change, 1043
- regular motion mechanics
  - • factum, 1041
  - • form 14 — notice of motion, 1040-1041
  - • form 14A — affidavit, 1040
  - • form 14B — motion form, 1040
  - • form 14C — confirmation, 1041
- urgent motion mechanics — emergency without notice (*ex parte*), 1042

#### pleadings in Canadian family law

- amendments, 1022
- application, answer and reply, 1021-1022
- conferences, 1023
- family dissolution — legislation, 1024-1025
- generally, 1020-1021
- jurisdiction, 1022-1023
- marriage
  - • annulment, 1024

## CANADIAN PRECEDENTS OF PLEADINGS

### **Family Law — Continued**

pleadings in Canadian family law —  
*Continued*

- • divorce, 1024
- reply — form 10A, 1037
- statutes
  - *Arbitration Act*, 1028
  - *Child and Family Services Act*, 1027
  - *Children's Law Reform Act*
  - • best interests of the child test, 1027
  - • generally, 1026
  - *Divorce Act*
  - • grounds for divorce, 1026
  - • paramountcy of, 1025
  - *Family Law Act*
  - • relation to *Succession Law Reform Act*, 1025-1026
  - *Family Responsibility and Support Arrears Enforcement Act*, 1028
  - *Succession Law Reform Act*, 1025-1026

### **Immigration — Leave Applications & Judicial Reviews**

- administrative decision-makers (ADMs), 1048, 1055, 1057
- certified questions, 1098-1099
- generally, 1048-1049
- inadmissibility, case law
- human or international rights violations under s. 35, 1127
  - misrepresentation under s. 40, 1127
  - organized criminality under s. 37, 1127
  - serious criminality under s. 36, 1127
- judicial review
- effective written advocacy — leave application, 1062-1068
  - stage 1 — “leave” application
    - • applicant's affidavit, 1053-1054
    - • memorandum of fact and law, 1054-1055

- • respondent's record and applicant's reply, 1061-1062
- • standard of review
  - • • *Dunsmuir (New Brunswick (Board of Management) v. Dunsmuir)*, 1058
  - • • duty of fairness, 1056-1057
  - • • jurisprudence since *Dunsmuir*, 1058-1061
- • sample memorandum of fact and law, 1068-1076
- stage 2 — further pleadings and hearing, 1080-1083
- • hearing, 1090
- • sample further memorandum of argument, 1083-1090
- • “special reasons” for costs, 1081-1082
- legislative changes affecting Federal Court proceedings
  - changes to *Immigration and Refugee Protection Act*
    - • in 2015, 1110-1113
    - • in 2016, 1114
  - changes to *Federal Court Rules*, 1114-1126
- motion for a stay of removal, 1099-1101
  - case law, 1126-1127
  - sample written representations, 1102-1110
- New Brunswick (Board of Management) v. Dunsmuir*, 1058
- oral advocacy at the Federal Court
  - before the court, 1090-1092
  - oral advocacy vs. written advocacy, 1098
  - relief requested, 1097
  - reply, 1097
  - specific legal suggestions
  - • facts, 1094-1095

## INDEX

### **Immigration — Leave Applications & Judicial Reviews — *Continued***

oral advocacy at the Federal Court — *Continued*

- opening statement/issues, 1093-1094
- other legal arguments, 1095-1097
- standard of review, 1095
- universal considerations, 1092-1093
- settlement, 1076-1080
- statutory framework, 1049-1051

### **Information Technology Disputes**

Canada's Notice and Notice system

- disclosure of identity of alleged infringer, 1168-1172
- considerations in ordering, 1169-1170
- *Norwich* disclosure order, requirements for, 1168-1169
- liability, immunity from, 1160-1161
- notice
  - assessing the notice, 1166-1167
  - example of notice letter, 1172-1174
  - form of notice, 1162-1164
- new system generally, 1159-1160, 1161-1162
- old system generally, 1159-1160
- remedies of copyright holder, 1164-1165
- checklist of issues to consider, 1165-1166
- generally, 1132-1133
- notice and takedown
  - counter notification, 1155-1156
  - sample, 1157-1159
  - generally, 1146
- liability for materially false allegations of infringement, 1153
- liability, immunity from, 1147-1148
- "red flag" knowledge, 1148-1149

- requisite knowledge by the ISP, 1148-1149
- safeguards, 1151-1153
- takedown notice
  - checklist of issues for copyright owners to consider, 1153-1154
  - contents of, 1150-1151
  - sample, 1156-1157
- terms of use
  - enforcement, 1144-1145
  - example of terms of use complaint, 1145-1146
  - generally, 1142-1144
  - legal effectiveness
    - browse wrap agreements, 1137-1142
    - click to agree, 1134-1137
    - generally, 1133-1134

### **Insolvency**

asset sales

- asset sale and approvals
  - additional factors relevant to approval of sale, 1616-1617
  - Form IX.B.1 — model approval and vesting order (Ontario), 1620-1625
  - Form IX.B.2 — model approval and vesting order (British Columbia), 1625-1632
  - Form IX.B.3 — model approval and vesting order (Alberta), 1632-1639
  - Form IX.B.4 — model approval and vesting order (Quebec), 1639-1650
  - Form IX.B.5 — certificate, 1651
- sale during course of bankruptcy proceeding, 1614-1615
- sale during course of proposal or CCAA proceeding, 1615-1616
- sale during course of receivership, 1616

## CANADIAN PRECEDENTS OF PLEADINGS

### **Insolvency — *Continued***

#### **asset sales — *Continued***

- distributions, 1617
- • Form IX.C.1 — notice of motion re distribution, 1652-1654
- • Form IX.C.2 — distribution order, 1654-1656
- sale process, 1613-1614
- • Form IX.A.1 — sale process order, 1617-1620

#### **bankruptcy**

- administration of estate
- • notice of bankruptcy and first meeting of creditors, 1187-1188
- • • Form I.B.1(a) — notice to bankruptcy of first meeting of creditors in local newspaper — form 73, 1205-1206
- • • Form I.B.1(b) — proxy — form 36, 1206-1207
- commencing proceedings
- • duties of bankrupt, 1187
- • • Form I.A.3(a) — statement of affairs (business) — form 78, 1197-1204
- • • Form I.A.3(b) — notice of examination before official receiver (corporation) — form 24, 1204-1205
- • involuntary bankruptcy
- • • burden of proof, 1186-1187
- • • Form I.A.2(a) — demand letter, 1191
- • • Form I.A.2(b) — application for bankruptcy order, 1192-1193
- • • Form I.A.2(c) — affidavit verifying application for bankruptcy order, 1193
- • • Form I.A.2(d) — notice of hearing, 1194

- • • Form I.A.2(e) — order of substituted service of application — form 89, 1195
- • • Form I.A.2(f) — notice of substituted service of application — form 90, 1195-1196
- • • Form I.A.2(g) — bankruptcy order — form 91, 1196-1197
- • • generally, 1185-1186
- • • service of bankruptcy application, 1186
- • voluntary bankruptcy, 1185
- • • Form I.A.1(a) — resolution of board of directors authorizing bankruptcy, 1188-1189
- • • Form I.A.1(b) — assignment for general benefit of creditors — form 19, 1189-1190
- generally, 1184-1185
- claims
- claims process, 1581-1582
- • Form VII.A.1 — claims procedure order, 1584-1594
- • Form VII.A.2 — model claims procedure order (Quebec), 1594-1602
- demand for repossession of goods (30-day goods claim), 1583
- • Form VII.B.3 — demand for repossession of goods (30-day goods claim) — form 75, 1607-1608
- notice by trustee requiring filing of proof of security — form 76, 1584
- • Form VII.B.4 — notice by trustee requiring riling of proof of security — form 76, 1608-1609



## INDEX

### **Insolvency — Continued**

#### **claims — Continued**

- notice of disallowance of claim, right to priority or security or notice of valuation of claim — form 77, 1584
- • Form VII.B.5 — notice of disallowance of claim, right to priority or security or notice of valuation of claim — form 77, 1609
- • Form VII.B.6 — appeal of disallowance, 1610
- proof of claim — form 31, 1582
- • Form VII.B.1 — proof of claim — form 31, 1602-1606
- reclamation of property claim, 1582
- • Form VII.B.2 — reclamation of property proof of claim — form 74, 1606-1607

#### ***Companies' Creditors Arrangement Act***

- commencement of proceedings, 1409-1410
- • Form V.A.1 — resolution of board of directors authorizing filing for CCAA protection, 1415
- • Form V.A.2 — initial affidavit, 1415-1422
- • Form V.A.3 — model initial order (Ontario), 1423-1438
- • Form V.A.4 — model initial order (Alberta), with explanatory notes, 1438-1453
- • Form V.A.5 — model initial order (British Columbia), with explanatory notes, 1453- 1474
- • Form V.A.6 — model initial order (Quebec), 1474-1489
- • Form V.A.7 — model initial order (Nova Scotia), 1490-1500

- • Form V.A.8 — model initial order (Saskatchewan), 1501-1521
- • Form V.A.9 — monitor consent to act, 1521
- creditors' committees, 1412
- • Form V.D.1 — creditors' committee guidelines, 1530-1534
- • Form V.D.2 — court order re formal creditors' committee, 1534-1537
- debtor-in-possession financing (DIP), 1411-1412
- • Form V.C.1 — debtor in possession financing order, 1524-1530
- generally, 1409
- plans of compromise or arrangement
- • approval, 1413-1414
- • Form V.E.1 — plan of compromise or arrangement, 1537-1560
- • Form V.E.2 — plan meeting and approval order, 1560-1565
- • Form V.E.3 — plan sanction order, 1565-1571
- • generally, 1412-1413
- • sanction, 1414
- stay extension, 1411
- • Form V.B.1 — notice of motion for extension of stay, 1522-1523
- • Form V.B.2 — order extending stay of proceedings, 1523-1524
- disclaimers
- Form VIII.A.1 — notice by debtor to disclaim or resiliate agreement in proposal — form 44.1, 1612
- Form VIII.A.2 — notice to lessor to disclaim or resiliate lease by commercial tenant in proposal — form 45, 1613
- generally, 1610-1611
- fees and fee approval

## CANADIAN PRECEDENTS OF PLEADINGS

### **Insolvency** — *Continued*

#### fees and fee approval — *Continued*

- bankruptcy, 1571-1572
- CCAA proceedings, 1573
- forms
- • Form VI.1 — notice of application for taxation of accounts and discharge of interim receiver — form 18, 1574
- • Form VI.2 — notice of motion re approval of fees, 1574-1577
- • Form VI.3 — affidavit of restructuring professional re fees, 1577-1578
- • Form VI.4 — affidavit of lawyer re fees, 1578-1579
- • Form VI.5 — order re fees, 1580-1581
- proposal proceedings, 1572
- receiverships
- • fees of interim receiver, 1572
- • fees of national receiver, 1573
- foreign proceedings
- commencement, 1657-1658
- • Form X.A.1 — application for recognition, 1659-1662
- • Form X.A.2 — order recognizing foreign main proceeding (Ontario), 1662-1665
- • Form X.A.3 — order recognizing foreign main proceeding (British Columbia), 1666-1669
- • Form X.A.4 — supplemental order (Ontario), 1670-1679
- • Form X.A.5 — supplemental order (British Columbia), 1680-1692
- foreign plan recognition, 1658-1659
- • Form X.B.1 — foreign plan recognition order, 1692-1696
- generally, 1656-1657

#### practice directions — Form XI.1 —

#### practice direction regarding

#### frequently cited cases, 1696-1698

#### proposals

- approval
- • court approval, 1225-1226
- • creditors' approval, 1224-1225
- • Form III.D.1 — proxy — form 36, 1252
- • Form III.D.2 — voting letter — form 37, 1252-1253
- • Form III.D.3 — report of trustee on refusal by creditors to approve proposal — form 38, 1253-1254
- • Form III.D.4 — report of trustee on proposal — form 40, 1254-1255
- • Form III.D.5 — notice of hearing of application for court approval of proposal — form 40.1, 1256
- • Form III.D.6 — report of trustee on refusal by court to approve proposal — form 41, 1256-1257
- • meeting of creditors, 1224
- • refusal, 1226
- cash-flow statements and reports, 1223
- • Form III.B.1 — trustee's report on cash-flow statements — form 29, 1243-1244
- • Form III.B.2 — report on cash-flow statement by person making proposal — form 30, 1244-1245
- • Form III.B.3 — report of trustee on non-filing of cash-flow statement or proposal — form 34, 1245-1246
- commencing proceedings, 1222-1223

## INDEX

### **Insolvency — Continued**

#### proposals — *Continued*

- • Form III.A.1 — resolution of board of directors of corporation authorizing proposal, 1227-1228
- • Form III.A.2 — notice of intention to make proposal — form 33, 1228-1229
- • Form III.A.3 — form of proposal, 1229-1242
- • Form III.A.4 — notice of proposal to creditors — form 92, 1242
- • Form III.A.5 — consent of trustee to act under proposal, 1243
- completion, 1227
- default/annulment, 1226
- • Form III.E.1 — notice of default in performance of proposal — form 43, 1257-1258
- • Form III.E.2 — report of trustee on annulment of proposal — form 43.1, 1258-1259
- • Form III.E.3 — order annulling proposal — form 43.2, 1259-1260
- extension of time to make, 1223-1224
- • Form III.C.1 — notice of motion to extend time for making proposal, 1246-1248
- • Form III.C.2 — affidavit in support of motion to extend time for making proposal, 1248-1250
- • Form III.C.3 — order extending time for making proposal, 1251
- generally, 1222
- performance of proposal
- • Form III.F.1 — certificate of full performance of proposal — form 46, 1260-1261
- receiverships
  - appointment of interim receiver, 1262
  - • Form IV.B.1 — notice of motion for appointment of interim receiver, 1266-1269
  - • Form IV.B.2 — order appointing interim receiver, 1269-1279
  - appointment of national receiver, 1262-1263
  - • Form IV.C.1 — notice of motion for appointment of receiver, 1279-1281
  - • Form IV.C.2 — receiver consent to act, 1281-1282
  - • Form IV.C.3 — model receiver order (Ontario), 1282-1294
  - • Form IV.C.4 — model receiver order (British Columbia), with explanatory notes, 1295-1325
  - • Form IV.C.5 — model receiver order (Quebec), 1325-1333
  - • Form IV.C.6 — model receiver order (Alberta), 1333-1364
  - • Form IV.C.7 — model receivership order (Nova Scotia), 1365-1376
  - • Form IV.C.8 — model receivership order (Saskatchewan), 1376-1391
  - discharge of receiver, 1264-1265
  - • Form IV.E.1 — notice of motion for discharge of receiver, 1392-1395
  - • Form IV.E.2 — receiver's final report — form 12 — statement of receipts and disbursements, 1395-1400
  - • Form IV.E.3 — model discharge order (Ontario), with explanatory notes, 1400-1401
  - • Form IV.E.4 — model discharge order (British Columbia), with explanatory notes, 1402-1405

## CANADIAN PRECEDENTS OF PLEADINGS

### **Insolvency — Continued**

#### receiverships — Continued

- • Form IV.E.5 — model discharge order (Alberta), 1406-1408
- duties of receiver, 1263-1264
- • Form IV.D.1 — notice and statement of receiver — form 87, 1391-1392
- enforcement of security, 1261
- • Form IV.A.1 — notice of intention to enforce security — form 86, 1265-1266
- generally, 1261

#### trustee

- discharge and paying final dividends
- • approval of final statement of receipts and disbursements and final dividend sheet, 1209
- • court approval of final dividend and taxation of accounts, 1209-1210
- • discharge, 1210-1211
- • final statement of receipts and disbursements and final dividend sheet, 1208-1209
- • forms
- • • Form II.A.2 — statement of receipts and disbursements — form 12, 1214-1217
- • • Form II.C.1 — notice of final dividend and application for discharge of trustee — form 11, 1219-1220
- • • Form II.C.2 — application of trustee for discharge — form 10, 1220
- • • Form II.C.3 — affidavit of mailing, 1220-1221
- • • Form II.C.4 — trustee's discharge order, 1221-1222
- • generally, 1208

- • payment of final dividend, 1210
- generally, 1207
- report of, 1207
- • Form II.A.1 — report of trustee under ss. 171(1) and (2) — form 83, 1211-1213
- substitution of, 1208
- • Form II.B.1 — application of former trustee to pass accounts — form 7, 1217-1218
- • Form II.B.2 — affidavit verifying application to pass accounts — form 8, 1218-1219

### **Insurance Coverage**

forfeiture, relief from, 1720-1721

generally, 1702

interpretation of policy

- ambiguity, 1710-1711
- consistent interpretation, 1713-1713
- *contra proferentem*, 1714
- factual matrix and standard of review, 1710, 1715-1717
- general rules of contract construction, 1709-1710
- promoting realistic results, 1712-1713
- reading insurance policies, 1710
- reasonable expectations of the parties, 1711-1712
- standard of review, 1715-1717

limitations

- duty to defend, 1708-1709, 1719-1720

- duty to indemnify, 1718-1719

precedents

- claim against broker
- • statement of claim of insured, 1762-1768
- • statement of defence of broker, 1768-1772
- commercial general liability insurance

## INDEX

### **Insurance Coverage — Continued**

precedents — *Continued*

- • statement of claim of insured, 1738-1747
- • statement of defence of insurer, 1747-1753
- duty to defend
- • affidavit of insured, 1757-1759
- • notice of application of insured, 1753-1757
- • reply affidavit of insurer, 1760-1761
- property insurance
- • statement of claim of insured, 1721-1730
- • statement of defence of insurer, 1730-1738

principles

- duty to defend, 1708-1709, 1719-1720
- fortuity, 1703-1705
- generally, 1703
- indemnity, 1707-1708
- utmost good faith, 1705-1707

### **Judicial Review**

applications, 2115-2116

defined, 2109-2110

grounds

- common law, at, 2111
- *Federal Courts Act*, 2112
- generally, 2110
- provincial statutes, 2111-2112
- *Law Society of Upper Canada v. Neinstein*, 2134, 2135, 2151
- *N.L.N.U. v. Newfoundland & Labrador (Treasury Board)*, 2129, 2134-2139

precedents

- application for *habeas corpus*, 2126-2127
- certified record of proceedings, 2124-2125

- factum of applicant, 2146-2152
- factum of respondent, 2139-2146
- notice to obtain record of proceedings, 2124
- originating application for judicial review, 2122-2123
- sample order for *habeas corpus*, 2128
- sample order for miscellaneous remedies, 2125-2126
- sample return, 2125
- procedure
- forums, 2117
- interim orders, 2120
- originating documents, 2119-2120
- returns or records, 2121
- time limits, 2117-2119
- varies from province to province, 2116-2117

recent developments

- *New Brunswick (Board of Management) v. Dunsmuir*, effect on standard of review
- • generally, 2129
- • practical effect on determining, 2131-2134
- • two standards of review — correctness and reasonableness, 2130
- reasons, requirement for, 2134-2139
- • *Clifford v. Ontario (Attorney General)*, 2135
- • inadequate reasons, 2137-2138
- • *Law Society of Upper Canada v. Neinstein*, 2134, 2135
- • *N.L.N.U. v. Newfoundland & Labrador (Treasury Board)*, 2134-2139

remedies

- declarations, 2114
- injunctions, 2114-2115
- prerogative remedies, 2113

## CANADIAN PRECEDENTS OF PLEADINGS

### **Labour and Employment Law**

#### **Injunctions**

employment injunctions against departing employees

- generally, 836-837
  - precedents
    - affidavit
    - background, 844-847
    - technical information, 847-850
  - notice of motion, 841-844
  - order, 850-851
  - statement of claim, 838-841
- generally, 835-836
- labour injunctions in strike context
- generally, 837
  - precedents
    - affidavit of management, 860-861
    - affidavit of picketing activities, 862-864
    - notice of motion, 856-859
    - order, 864-866
    - statement of claim, 852-856

#### **Libel and Slander**

apologies and retractions, 676

generally, 668-669

glossary, 669-671

jury notices, 675

limitation periods, 671-672

motions for summary judgment, 680-681

notice of motion for disclosure of true identity of defendant, 675-676

notice of motion for interim injunction, 675

notices of libel, 673

precedents

- jury notice, 693
- notice of libel
  - broadcasts, 684-685
  - publication 683-684
- notice of motion

- disclosure of identity of defendant, 695-697
  - interim injunction, 694-695
  - section 137.1 — *Courts of Justice Act*, 705-707
  - reply, 704-705
  - statement of claim
    - media defendants, 685-688
    - non-media defendant, 689-691
  - slander, 691-693
  - statement of defence
    - media, 698-701
    - non-media, 701-704
- preliminary motions by defendant
- motions for determination of point of law, 680
  - motions for security for costs, 680
- replies, 681-682
- section 137.1 *Courts of Justice Act* — motion, 682-683
- statements of claim, 673-675
- statements of defence, 677-680

#### **Patents**

declaration of non-infringement and/or impeachment — counterclaim (infringement)

- defendant by counterclaim's infringement of patent, 1958
- parties, 1958
- plaintiff by counterclaim's patent rights and standing to sue for relief, 1958
- prayer for relief, 1957
- relief sought and *quantum*, 1958

declaration of non-infringement and/or impeachment — reply, 1958

declaration of non-infringement and/or impeachment — reply and defence to counterclaim, 1959

declaration of non-infringement and/or impeachment — reply to defence to counterclaim, 1959

## INDEX

### **Patents** — *Continued*

declaration of non-infringement and/or impeachment — statement of claim, 1954-1956

- costs, 1956
- defendant's patent, 1955
- invalidity of patent, 1956
- location of trial, 1956
- non-infringement, 1955
- parties, 1955
- plaintiff's business and technology and standing, 1955
- prayer for relief, 1955

declaration of non-infringement and/or impeachment — statement of defence, 1956-1957

- admissions, denials and/or assertions of no knowledge, 1956
- costs, 1957
- defendant's patent rights, 1956
- enforceability of patent, 1957
- location of trial, 1957
- parties, 1956
- plaintiff's infringement of the patent, 1957
- plaintiff's lack of standing, 1957
- validity of patent, 1957

infringement — counterclaim

(declaration of non-infringement and/or impeachment)

- costs, 1953
- defendant by counterclaim's false and misleading statements, 1952
- invalidity of patent, 1952
- non-infringement, 1952
- parties, 1952
- plaintiff by counterclaim's business and technology, 1952
- prayer for relief, 1952

infringement — reply

- admissions, denials and/or assertions of no knowledge, 1953

- replay and miscellaneous, 1953

infringement — reply and defence to counterclaim

- admissions, denials and/or assertions of no knowledge, 1953
- costs, 1954
- defence to counterclaim, 1954
- reply, 1953

infringement — reply to defence to counterclaim, 1954

infringement — statement of claim

- costs, 1939
- defendant's infringing acts, 1935-1936
- generally, 1931-1932
- location of trial, 1939
- parties, 1933-1934
- plaintiff's patent rights and standing to sue for relief, 1934-1935
- prayer for relief, 1932-1933
- relief sought and *quantum*, 1937-1939

infringement — statement of defence

- admissions, denials and/or assertions of no knowledge, 1939
- costs, 1951
- defendant's business and technology, 1940
- disentitlement to relief claimed, 1950-1951
- invalidity of patent, 1941-1950
  - ambiguity and indefiniteness, 1948
  - anticipation and obviousness, 1942-1945
  - claims broader than invention made or disclosed, 1947-1948
  - double patenting, 1948
  - failure to fulfill duty of candour, 1950
  - improperly added subject matter, 1949

## CANADIAN PRECEDENTS OF PLEADINGS

### **Patents — Continued**

infringement — statement of defence —  
*Continued*

- • insufficiency of disclosure, 1947
- • irrevocable abandonment, 1949-1950
- • lack of sound prediction, 1946-1947
- • material misrepresentation and willful omission and addition, 1949
- • non-statutory subject matter, 1945-1946
- • utility, 1946
- limitation periods, 1951
- location of trial, 1951
- non-infringement, 1940-1941
- parties, 1940
- plaintiff's lack of rights and/or standing, 1940
- unenforceability of patent, 1950
- litigation
- applications under "old" *Patent Act*, 1929
- generally, 1928-1931
- jurisdiction of courts, 1928-1929
- *Patented Medicines (Notice of Compliance) Regulations*, amendments, 1929-1931
- six principle types, 1928
- precedents
- declaration of non-infringement and/or impeachment — counterclaim, 1985
- declaration of non-infringement and/or impeachment — reply, 1986
- declaration of non-infringement and/or impeachment — reply and defence to counterclaim, 1986
- declaration of non-infringement and/or impeachment — reply to defence to counterclaim, 1986-1987

- declaration of non-infringement and/or impeachment — statement of claim
- defendant's patent, 1982
- invalidity of patent, 1983
- non-infringement, 1983
- parties, 1982
- plaintiff's business and technology and standing, 1982
- prayer for relief, 1981-1982
- declaration of non-infringement and/or impeachment — statement of defence
- admissions, denials and/or assertions of no knowledge, 1983
- defendant's patent rights, 1984
- enforceability of patent, 1984
- parties, 1983
- plaintiff's infringement of patent, 1984
- plaintiff's lack of standing, 1984
- validity of patent, 1985
- infringement — counterclaim (declaration of non-infringement and/or impeachment), 1976-1979
- defendant by counterclaim's false and misleading statements, 1977-1978
- invalidity of patent, 1979
- non-infringement, 1979
- parties, 1977
- plaintiff by counterclaim's business and technology, 1977
- prayer for relief, 1976-1977
- infringement — reply, 1979-1980
- infringement — reply and defence to counterclaim, 1980-1981
- infringement — reply to defence to counterclaim, 1981
- infringement — statement of claim, 1960-1964



## INDEX

### **Patents — Continued**

#### precedents — *Continued*

- • defendant's infringing act, 1962-1963
- • parties, 1961
- • plaintiff's patent rights and standing to sue for relief, 1961-1962
- • prayer for relief, 1960-1961
- • relief sought and *quantum*, 1964
- infringement — statement of defence, 1964-1975
- • admissions, denials and/or assertions of no knowledge, 1964-1965
- • defendant's business and technology, 1965
- • disentitlement to relief claimed, 1973-1975
- • invalidity of patent, 1967-1973
- • limitation periods and delay, 1975
- • non-infringement, 1966-1967
- • parties, 1965
- • plaintiff's lack of rights and/or standing, 1965
- • unenforceability of patent, 1973

### **Personal Injury**

#### class actions

- sample statement of claim, 2241-2244
- sample statement of defence, 2244-2245

#### damages, types of

- non-pecuniary, 2159-2161
- pecuniary, 2161
- punitive, 2161-2162
- generally, 2156-2159
- defences, 2158-2159
- pleadings, 2156-2157
- specific intentional torts, claim, 2157
- statutory claims, 2157

- structure of claims, 2158
- motor vehicle claims
- animals on the road
- • generally, 2183
- • statement of claim, 2183-2184
- defences
- • contributory negligence, 2184-2185
- • *ex turpi causa*, 2187
- • inevitable accident, 2185-2186
- • limitation defence and lack of proper service, 2184
- • statutory defences, 2186
- fatal accidents
- • affidavit, 2178-2180
- • description in style of cause
- • • action brought against personal representative/administrator/executor, 2177-2178
- • • action brought in name of executor/administrator, plaintiff described, 2177
- • • action brought in one of beneficiaries' names, 2177
- • for whose benefit action is brought, 2176
- • pecuniary damages that may be claimed, 2179-2180
- • single vehicle accident — statement of claim, 2180-2182
- • spouse defined, 2176-2177
- MVA claims — by mechanism of accident
- • head on collision, 2173-2175
- • improper passing, 2175-2176
- • left turn, 2172-2173
- • rear end collisions, 2169-2172
- other pleadings
- • counterclaim, 2187-2188
- • defence to third party notice, 2190-2191
- • third party notice, 2188-2190

## CANADIAN PRECEDENTS OF PLEADINGS

### **Personal Injury — Continued**

#### motor vehicle claims — *Continued*

- provinces compared, ability to bring action, 2162-2163
- style of cause or style of proceeding
- • format in Alberta, 2163
- • motor vehicle action against unidentified owner or driver, 2167-2169
- • motor vehicle action brought by minor, 2164-2167
- • motor vehicle action brought by person of unsound mind, 2167
- occupiers' liability
- claims
- • claim pursuant to statute, 2209-2211
- • claim to include independent contractor hired by occupier, 2211-2213
- • general claim at common law, 2206-2209
- defences
- • acceptance of risk, 2223-2224
- • general, 2214-2215
- • independent contractor, 2215-2219
- • • filed by independent contractor, 2217-2219
- • • filed by occupier, 2216-2217
- • recreational property, 2219-2221
- • trespassers, 2221-2223
- generally, 2206
- other claims
- • animal bites
- • • claims, 2234-2238
- • • defences, 2238-2241
- • harassment in workplace causing psychological injury, 2225-2227
- • • claims, 2226-2227
- • • defences, 2228-2229
- • nuisance

- • • claims, 2229-2232
- • • defences, 2232-2234
- products liability
- claims
- • contract-based liability, 2192-2193
- • design- or manufacture-defect claims, 2193-2194
- • failure to warn claim 2194
- • main causes of action, 2193
- • negligent misrepresentation claim, 2194
- • *res ipsa loquitor* rejected, 2195
- • statement of claim, 2195-2199
- • tort-based liability, 2193-2195
- • warranties, 2193
- defences
- • defence of retailer, 2203-2206
- • defence of retailer and manufacturer, 2200-2203
- • generally, 2199-2200

### **Plain Language Legal Pleadings**

#### before and after examples

- contract indemnity clause, 2316-2317
- factum, 2302-2308
- Justice Dept. notice published in newspaper, 2309-2312
- precedents, 2313-2314
- CLARITY — plain language guidelines acronym, 2293-2296
- CLARITY test, 2317-2325
- communication triad: audience, purpose, message, 2287-2292
- defined, 2251-2252
- evolution, 2252-2255
- generally, 2285-2286
- international initiatives, organizations and texts
- Australia
- • plain language drafting, 2280

## INDEX

### **Plain Language Legal Pleadings —** *Continued*

international initiatives, organizations  
and texts — *Continued*

- • Plain-Language Legal Requirements, 2281
- • Victoria Law Foundation, 2280-2281
- Canada
- • Canadian *Labelling Regulations*, 2278-2279
- • *Cost of Borrowing (Banks) Regulations*, 2277-2278
- • *Employment Insurance Act* — research on plain language for legislation, 2276
- • Simon Fraser University's Plain Language Certificate course (BC), 2278
- • The Canadian Style — Public Works and Government Services writing guide, 2275-2276
- examples
- • Clarity, an international association promoting plain legal language, 2284
- • latest editions of key plain language texts, 2284-2285
- • Plain Language Association InterNational (PLAIN), 2283
- Hong Kong
- • Drafting Legislation in Hong Kong: A Guide to Styles and Practices (2012), 2281
- South Africa
- • Post-Apartheid Constitution (1997), 2281
- Sweden
- • 30 years of plain language, 2283
- United Kingdom
- • Good Law Initiative, 2013, 2279-2280
- • Office of the Scottish Parliamentary Counsel booklet — Plain Language in Legislation (2006), 2280
- • Tax Law Rewrite Project, 2279
- United States
- • Federal Rules of Court Rewritten in Plain Language, 2282
- • Improving Communication from the Government to the Public, 2282
- • Joseph Kimble, Instructor of Legal Writing and Drafting, 2282-2283
- • *Plain Writing Act*, 2282
- law firm's chart describing how a case goes through court, 2315
- Plain Language Association InterNational (PLAIN), 2283
- purpose, 2255-2256
- rebuttals to arguments against
  - educated people don't mind or prefer traditional writing, 2272
  - it will never happen, 2274-2275
  - law firms don't want to spend the time and money to change, 2273-2274
  - law requires specific, unalterable wording, 2271
  - opinions are difficult to read because of the complexity of issues, 2271-2272
  - people trust the legal profession to understand, 2272-2273
  - plain language dumbs down legal content, 2272
  - plain language generates errors, 2274
- rewrite example — recognizance
  - after, 2262-2265
  - before, 2258-2262

## CANADIAN PRECEDENTS OF PLEADINGS

### **Plain Language Legal Pleadings —**

*Continued*

rewrite example — recognizance —

*Continued*

- discussion — CLARITY, 2265-2271

*R. v. Jesse Armitage* — unique

plain-language decision, 2300-2302

terms not to use and plain-language

substitutes, 2296-2300

### **Privacy**

*Charter of Rights and Freedoms*

- balance between privacy and needs of law enforcement, 2231
- s. 8 generally, 2330-2331
- two-part test
  - stage 1 — whether there is a reasonable expectation of privacy, 2332-2336
  - stage 2 — whether the search or seizure is reasonable, 2336-2337
- generally, 2330
- precedents
  - application under *Privacy Act*, 2361-2368
  - common law tort of invasion of privacy, 2357-2361
  - PIPEDA application, 2368-2371
- private sector legislation
  - *Personal Information Protection and Electronic Documents Act* (PIPEDA)
    - application, 2346-2348
    - precedent, 2368-2371
    - main obligations, 2348-2350
  - *Model Code for the Protection of Personal Information*, 2345-2346, 2348-2349, 2351
  - oversight, 2350
  - provincial legislation, 2350-2351
- public sector legislation
  - federal *Privacy Act*, 2337-2345

- access to personal information, 2340-2343
- application, 2338
  - precedent, 2361-2368
- oversight, 2343-2344
- protection of personal information, 2338-2340
- provincial legislation, 2345
- tort of invasion of privacy
  - does it exist, 2351-2356
  - precedent, 2357-2361
  - why it is important, 2356

### **Professional Negligence**

common causes of action, basic elements of

- breach of contract, 2379-2380
- breach of fiduciary duty, 2382
- negligence, 2380-2381
- negligent misstatement, 2381
- defence of professional negligence claims
  - admit facts, deny conclusions, 2412-2413
  - general denial, 2412
  - positive defences
    - contract unenforceable, release, performance, etc., 2413
    - contractual defences, 2413-2414
    - contributory negligence, 2413
    - limitation defence, 2413
- generally, 2377-2378
- health care practitioners
  - breach of contract, 2425
  - limitation periods, 2425
  - precedents
    - statement of claim — physician and hospital, 2425-2430
    - statement of defence — professional health liability, 2430-2433
  - subrogated claims, 2425
  - tort of battery, 2424

## INDEX

### **Professional Negligence** — *Continued*

#### health care practitioners — *Continued*

- tort of negligence
- • causation principles, 2421-2422
- • delay in diagnosis, 2422
- • duty of care principles, 2419
- • informed consent — duty of disclosure, 2422-2424
- • legal burden, 2418-2419
- • standard of care principles, 2419-2421

#### precedents — reply and joinder of issue — sample language

- fundamental breach of contract, 2417-2418
  - joinder of issue, 2418
  - limitations period (fraudulent concealment), 2417
  - limitations period (minor), 2417
  - limitations period (person under disability), 2417
  - promissory estoppel, 2417
- #### precedents — statement of claim
- accountant, 2382-2386
  - auditor
  - • negligence re client, 2390-2393
  - • negligence re outside share purchaser, 2386-2390
  - engineer, 2410-2412
  - financial advisor, 2397-2402
  - insurance broker, 2393-2397
  - physician and hospital, 2425-2430
  - solicitor
  - • loss of mortgage priority, 2405-2407
  - • missed limitation, 2402-2405
  - • negligent drafting of will, 2408-2410

#### precedents — statement of defence

- generally, 2414-2416
- professional health liability, 2430-2433

profession defined, 2377

reply and joinder of issues, 2416

### **Proposals, see Insolvency**

### **Receiverships, see Insolvency**

### **Registered Trade-marks**

application for infringement, 2003-2004

infringement and passing off — statement of claim

- defendant's infringing acts, 1998-1999
- generally, 1993
- location of trial, 1999
- parties, 1996-1997
- plaintiff's rights and standing to sue for relief, 1998
- prayer for relief, 1993-1996
- • accounting of profits, 1994
- • costs, 1995
- • damages, 1994
- • declaration, 1994
- • interest, 1995-1996
- • injunctions, 1995
- • interest, 1995-1996

infringement and passing off — statement of defence

- admissions, denials, assertions of no knowledge, 2000, 2002
  - defence of non-infringement
  - • defence of trade-mark invalidity, 2001
  - • prohibited mark, 2002
  - • unregistrable mark, 2002
  - disentitlement to relief claimed, 2000-2001
  - generally, 1999-2000
- expungement, 2002-2003
- litigation
- four main types, 1991
  - generally, 1990-1993

## CANADIAN PRECEDENTS OF PLEADINGS

### **Registered Trade-marks — Continued** litigation — *Continued*

- jurisdiction of courts, 1991-1992
- registration, rights associated with, 1993
- rights established at common law through use and advertising, 1992-1993
- precedents
- application for infringement and passing off, 2038-2043
- • documentary evidence, 2043
- • grounds for application, 2040-2043
- • prayer for relief, 2038-2040
- expungement, 2031-2038
- • amending trade-mark entries on the register, 2037-2038
- • declaration of invalidity of trade-mark registration, 2032-2033
- • expunging distinguishing guise registrations, 2038
- • expunging trade-mark entries on the register, 2037
- • invalid trade-mark registration, 2034-2037
- • parties, 2032
- • plaintiff's trade-mark and plaintiff's activities, 2033-2034
- • prayer for relief, 2031-2032
- infringement and passing off — statement of claim, 2004-2017
- • defendant's infringing act, 2012-2014
- • parties, 2008-2012
- • plaintiff's rights and standing to sue for relief, 2012-2013
- • prayer for relief, 2004-2007
- • relief sought and *quantum*, 2015-2017

- infringement and passing off — statement of defence, 2017-2029
- • admissions, denials and/or assertions of no knowledge, 2017-2021
- • defence of non-infringement, 2024-2028
- • disentitlement to relief claimed, 2021-2022
- • limitation periods and delay, 2022-2024
- • plaintiff not entitled to remedies, 2028-2029
- infringement — counterclaim, 2029-2030
- infringement — reply, 2030
- infringement — reply and defence to counterclaim, 2031

### **Restitution**

bibliography, selected

- Australia, 2519
- Canada, 2518
- international website, 2519
- New Zealand, 2519
- UK, 2518
- USA, 2519

claims

- restitutionary claim defined, 2441-2442
- unjust enrichment, generally, 2442
- wrongs, for, 2442
- coercion, benefits conferred under
- duress, 2455-2456
- generally, 2454-2455
- unconscionability, 2458-2459
- undue influence, 2456-2458
- compulsion of law, money paid under, 2460-2461
- compulsory discharge of another's liability, 2461-2462
- concurrent or alternative causes of action and remedies

## INDEX

### **Restitution** — *Continued*

concurrent or alternative causes of action and remedies — *Continued*

- contract, 2489-2490
- generally, 2489
- property, 2490
- tort, 2490

defences

- assumption of risk, 2483
- bona fide purchase, 2482
- change of position, 2479-2481
- estoppel, 2481-2482
- generally, 2443, 2478
- impossibility of returning parties to original positions, 2484
- juristic reason, 2478
- laches and acquiescence, 2482
- lack of clean hands, 2484, 2485
- plaintiff is mere volunteer or is officious, 2478-2479
- set-off, 2483
- statutory defences, 2484

emergency, benefits conferred without request, 2462-2463

equity, maxims of, 2485

forms

- Form 7A — Plaintiff's Claim, 2506-2510
- Form 9A — Defence, 2511-2514
- Form 10A — Defendant's Claim, 2515-2517
- Form 14A — Statement of Claim (General), 2498-2500
- Form 14E — Notice of Application, 2500-2501
- Form 18A — Statement of Defence, 2501-2502

generally, 2441

government, claims against or by, 2459-2460

ineffective transactions, benefits conferred under, 2463-2464

maxims of equity, 2485

mistake, benefits conferred under

- money paid under mistake of fact, 2452-2453
- money paid under mistake of law, 2453-2454
- other benefits conferred, 2454

money had and received, 2451

pleadings

- defences, 2491
- matters that must be specifically pleaded, 2490-2491

practical tips

- for defence counsel, 2492
- generally, 2485-2488

precedents

- notice of application
  - • breach of contract; differential value agreement; unpaid management fees; breach of trust; breach of fiduciary duty; unjust enrichment; undue influence; equitable lien, 2583-2585
- statement of claim
  - • assignment of lease; royalty payments; mistake of fact; mistake of law; constructive trust; unjust enrichment; set-off, 2533-2535
  - • breach of contract; breach of trust; breach of fiduciary duty; constructive trust; wrongful retention of refund belonging to plaintiff; unjust enrichment, 2571-2575
  - • breach of contract; failure to repay advances received against success fee; unjust enrichment, 2544-2547

## CANADIAN PRECEDENTS OF PLEADINGS

### **Restitution** — *Continued*

#### precedents — *Continued*

- • breach of contract; fundamental breach of contract; *Sale of Goods Act*; misrepresentation; conspiracy; unjust enrichment; punitive damages, 2556-2560
- • breach of contract; inducing breach of contract; breach of confidence; breach of fiduciary duty; knowing assistance and knowing receipt; unjust enrichment; unlawful interference with economic relations; conspiracy; punitive damages; accounting; disgorgement, 2575-2583
- • constructive trustees; breach of trust; breach of fiduciary duty; misappropriation of funds; *Construction Lien Act*; unjust enrichment; accounting, 2563-2565
- • defective consumer goods; negligence; breach of contract; unjust enrichment; *Sale of Goods Act*; *Consumer Protection Act, 2002*, 2568-2571
- • division of family (husband and wife) property after divorce; constructive trust; unjust enrichment; value survived method of calculation, 2551-2552
- • employment; constructive dismissal; unjust enrichment, 2537-2540
- • government suing insurer; Statutory Accident Benefits; unjust enrichment, 2540-2542
- • landlord's failure to reimburse tenant for taxes and utilities costs owing; unjust enrichment; liquidated damages, 2530-2533
- • late payment penalties; illegality; unjust enrichment; injunction, 2535-2537
- • lien under *Construction Lien Act*; breach of contract; unjust enrichment, 2560-2563
- • misappropriation of investment property; refusal to repay loan; unjust enrichment, 2542-2544
- • money owing under line of credit; breach of contract; unjust enrichment, 2528-2530
- • oral contract; familial relationship; constructive trust; *quantum meruit*; unjust enrichment, 2552-2556
- • promissory note; negligence; fraud; breach of fiduciary duty; punitive damages; unjust enrichment, 2547-2550
- • supply of materials and services; breach of contract; *quantum meruit*; unjust enrichment, 2524-2526
- • termination of agency agreement; license agreements; breach of contract; unjust enrichment; declaration; accounting, 2565-2568
- • unpaid invoices; breach of contract; unjust enrichment; guarantee, 2523-2524
- • unpaid invoices for building materials; unjust enrichment, 2519-2521
- • unpaid invoices; unjust enrichment; breach of trust; guarantee, 2521-2522



## INDEX

### **Restitution — Continued**

#### precedents — *Continued*

- • unpaid legal services; breach of retainer agreement; *quantum meruit*; unjust enrichment, 2526-2528

*quantum meruit*, 2449-2451

*quantum valebat*, 2451

quasi-contract, 2449

relief, grounds for, 2449

remedies

- examples where granted, 2476-2477
- generally, 2469
- monetary award
  - • account of profits, 2472-2473
  - • disgorgement, 2473-2474
  - • equitable compensation, 2474
  - • equitable damages, 2471-2472
  - • generally, 2470
  - • quantifying, 2474-2476
- nature of, 2442-2443
- other remedies, 2477
- proprietary award, 2470-2471

scope of law of restitution, 2497

Small Claims Court

- Form 7A — Plaintiff's Claim, 2506-2510
- Form 9A — Defence, 2511-2514
- Form 10A — Defendant's Claim, 2515-2517
- generally, 2502-2505

Supreme Court of Canada cases

- benefits acquired through wrongful acts, 2495
- claims against government, 2495
- co-habitants' property (family and family-like) cases, 2493-2494
- commercial cases, 2494
- defences, 2496
- inter-governmental claims, 2494
- recovery of unlawful taxes, 2494
- specific remedies, 2495

UK cases, 2496-2497

unjust enrichment

- cause of action, 2444-2445
  - elements of claim
    - • absence of juristic reason, 2447-2449
    - • defendant's enrichment, 2445-2446
    - • plaintiff's corresponding deprivation, 2447
  - rationale and definition, 2443-2444
- wrongful acts, benefits acquired through
- breach of confidence, 2466-2468
  - breach of fiduciary duty, 2468-2469
  - criminal acts, 2469
  - waiver of tort, 2465

### **Securities Litigation**

alternative legal proceedings, 2591-2592

causation, 2617-2618

construction of claim/defence

- conduct of account
    - • documents, 2598-2600
    - • generally, 2597-2598
  - initiation of relationship, 2596-2597
- damages, 2618

defences

- contributory negligence, 2623
- dealer/financial advisor defences, 2620-2621
- duty to mitigate, 2623
- generally, 2620
- investor client duties and conduct, 2621-2623
- limitation period, 2624-2625
- ratification, estoppel, waiver, laches and acquiescence, 2624

duties/causes of action/pleading a claim

- contractual obligations, 2604-2605
- failure to supervise, 2612-2613

## CANADIAN PRECEDENTS OF PLEADINGS

### **Securities Litigation** — *Continued* duties/causes of action/pleading a claim — *Continued*

- fiduciary, 2605-2606
- fraud/fraudulent misrepresentation, 2614-2615
- negligence and negligent misrepresentation, 2611-2612
- pleading regulatory enforcement proceedings, settlements and findings, 2607-2609
- principal and agent, 2603
- regulatory requirements, industry practices and internal dealer policies, 2606-2607
- similar fact evidence, 2613-2614
- vicarious liability, 2609-2611
- fact expert, role of, 2592
- loss
  - cause, 2591
  - existence of, 2590-2591
- parties
  - dealer/financial advisor, 2593-2594
  - investor client: investor profile, 2592-2593
  - other defendants, 2594-2595
- pleadings generally, 2590
- pleadings — samples
  - claim, 2600-2602
  - damages, 2619
  - fiduciary relationship, 2615-2617
  - parties, description, 2595
  - ratification, estoppel, waiver, 2624

### **Supreme Court of Canada**

- appeal process
  - importance of appeal materials, 2632-2633
  - steps to an appeal, 2630-2631
  - whether to appeal, 2629
- documents
  - application for leave to appeal, 2633-2634

- factum of the appellant and respondent, 2635-2636
- factum of the intervener, 2636-2637
- reply, 2635
- response, 2634-2635

### **Trade Secrets**

#### defined

- generally, 2046-2047
- North American Free Trade Agreement, 2048
- Quebec *Civil Code*, 2046, 2047
- *TRIPS* agreement, 2048
- *Uniform Trade Secrets Act* (US), 2047-2048

#### limitations, delay and laches, 2076 precedents

- *Anton Piller* order, 2095-2105
- confidentiality or non-disclosure agreement, 2079-2081
- confidentiality order, 2092-2095
- employment agreements, sample clauses, 2082-2083
- protective and confidentiality order, 2083-2092

#### prerequisites for protection

- communication under circumstances of confidence, 2054-2062
  - circumstances or relationship of confidence, 2055
  - employee's implied obligation, 2057-2058
  - fiduciary duty, 2058-2061
  - implied contract, 2056-2057
  - no protection where there is no communication in confidence, 2062
  - where confidentiality is understood from circumstances, 2061-2062
  - written contract, 2055-2056

## INDEX

### **Trade Secrets — Continued**

prerequisites for protection — *Continued*

- information conveyed was confidential, 2049-2054
- • collections of public information, 2052-2053
- • ownership/creation, 2050-2052
- • reverse engineering, 2053-2054
- misuse of confidential information, 2062-2064
- • liability of claimants, 2064
- • misuse defined, 2062
- • onus, 2063-2064
- • public interest defence, 2063
- obligation of confidence not limited to contract, equity or property, 2049

property, as, 2051-2052

protective orders in court proceedings, 2076-2079

remedies for misuse, 2065-2075

- accounting of profits, 2073
  - *Anton Piller* order, 2071-2072
  - constructive trust, 2073-2075
  - • four conditions plaintiff must satisfy, 2074
  - • test, 2073-2074
  - damages, 2072-2073
  - delivery-up, 2072
  - injunctive relief, 2066-2071
  - • delay, effect of, 2070-2071
  - • interlocutory injunction, 2067-2068
  - • last beyond life of secret — springboard doctrine, 2069
  - • last until secret expires, 2068
  - • order not to compete, 2070
  - • permanent injunction, 2068
- springboard doctrine, 2069
- Statute of Limitations*, 2076

third parties who received trade secrets, 2064-2065

### **Wills and Estates**

challenging validity of will

- certification of appointment of estate trustee, 2644
  - common challenges, 2642
  - notice of objection, 2643-2644
  - Rule 75.06, 2644
- court-appointed guardians for property and of the person
- applicant, family member/friend or Public Guardian and Trustee, 2652-2653
  - documents to be served with notice of application, 2652-2653
  - generally, 2651-2652
  - order, 2654
  - standard procedure vs. summary procedure, 2652, 2653-2654
- dependant support claims
- dependant defined, 2646
  - estate with few or no assets, 2646-2647
  - interim support, 2647
  - notice of application, 2646
- executors' fees, 2649-2650
- opinion, advice and direction of the court, applications, 2654-2655
- order for assistance, 2644-2645
- passing of accounts
- form and procedure, 2647-2648, 2650
  - voluntary application by trustee, 2648-2649

precedents

- applications for the opinion, advice and direction of the court
- • affidavit in support of application, 2719-2722
- • factum of applicant, 2722-2728

## CANADIAN PRECEDENTS OF PLEADINGS

### **Wills and Estates — Continued**

precedents — *Continued*

- • notice of application — Rule 14.05(3), 2717-2719
- challenging validity of will
- • affidavit in support of application for order for return of certificate of appointment of estate trustee, 2663-2665
- • affidavit in support of motion for directions, 2658-2661
- • notice for motion for return of certificate of appointment, 2661-2662
- • notice of motion for directions — standard form, 2657-2658
- • notice of objection — standard form, 2656-2657
- court-appointed guardians for property and of the person
- • affidavit of applicant, 2691-2694
- • consent of applicant, 2695
- • guardianship plan — guardian of the person, 2705-2714
- • management plan — guardian of property, 2695-2704
- • notice of application, 2688-2691
- • physician's affidavit for guardian of property, 2714-2717
- dependant support claims
- • affidavit: spouse as claimant, 2672-2673
- • notice of application, 2668-2672
- order for assistance
- • affidavit in support of motion for order to accept or refuse appointment as estate trustee with will, 2666-2667
- • affidavit in support of motion for order to accept or refuse appointment as estate trustee without will, 2667-2668
- • affidavit in support of motion for order to bring in testamentary document, 2668
- • order to accept or refuse appointment as estate trustee with will — standard form, 2665-2666
- passing of accounts and executors' fees
- • affidavit in support of motion for order to pass accounts, 2674-2676
- • notice of application to pass accounts, 2676-2679
- • notice of motion for order to pass accounts, 2673-2674
- • notice of objection to accounts, 2679-2681
- • reply to notice of objection to accounts, 2682-2685
- • request for further notice, 2681-2682
- retirement and removal of trustees
- • affidavit in support of removal of estate trustee, 2731-2733
- • affidavit — trustee consenting to removal, 2729-2731
- • notice of application — removal of estate trustee, 2731
- • notice of application — trustee consenting to removal, 2728-2729
- statement of accounts
- • contents of estate accounting, 2685-2687
- statement of accounts, 2651
- trustees, retirement and removal, 2655-2656

### **Wrongful Dismissal**

*Bardal v. Globe & Mail*, 715-716, 735, 802  
generally, 713-714  
*Keays v. Honda Canada Inc.*, bad faith damages, 754  
precedents

## INDEX

### **Wrongful Dismissal** — *Continued* precedents — *Continued*

- reply
- • contractual notice, reduced, 826-828
- • fixed-term contract alleged, 825
- • frustration — illness alleged, 823
- • independent contractor relationship alleged, 824-825
- • just cause alleged, 820-821
- • resignation/job abandonment alleged, 821-822
- • statement of claim, 719-725
- • additional language
  - • • aggravated damages, 756-757
  - • • bonus entitlement, 747
  - • • breach of termination agreement, 729-730
  - • • commissions, entitlement, 746
  - • • constructive dismissal, 727-728
  - • • employment insurance and Canada Pension Plan contributions entitlement, 751
  - • • fringe benefits entitlement, 749-750
  - • • human rights legislation, damages for breach, 761
  - • • inducement, 739
  - • • insurance benefits entitlement — medical, dental and disability, 748-749
  - • • just cause alleged, 733-734
  - • • moral damages, “Wallace” damages, 754-755
  - • • notice period, 742-744
  - • • punitive and exemplary damages, 759
  - • • restrictive covenant, 740
  - • • retirement/pension benefits, 750-751
  - • • salary increases and overtime entitlement, 745
  - • • special damages for out-of-pocket expenses, mitigation, 753
  - • • successor employer, 728-829
  - • • vacation or vacation pay entitlement, 748
- • statement of defence, 762-765
- • additional language
  - • • absenteeism — lateness, 782-783
  - • • aggravated damages — mental distress, 813
  - • • breach of fiduciary duty, 796-797
  - • • breach of policy, 797-798
  - • • commissions, 805-806
  - • • constructive dismissal, 766-767
  - • • deductions: income earned — benefits receive during notice period, 809
  - • • dishonesty, 791
  - • • Employment Insurance and Canada Pension Plan contributions, 808
  - • • fixed-term contract, 775-776
  - • • fringe benefits, 807
  - • • frustration — illness, 770-771
  - • • human rights legislation, breach of, 814-815
  - • • impairment — intoxication, 784-785
  - • • independent contractor, 772-773
  - • • inducement, 802-803
  - • • insubordination, 787-789
  - • • insurance benefits — medical, dental and disability, 807
  - • • just cause alleged, 779-780
  - • • mitigate damages, failure to, 810-811
  - • • mitigation expenses, 811

## CANADIAN PRECEDENTS OF PLEADINGS

### **Wrongful Dismissal** — *Continued* precedents — *Continued*

- • • moral damages, “Wallace damages”, 811-812
- • • notice entitlement limited to statutory minimums, 765-766
- • • off-duty, online misconduct, 800-801
- • • period of non-competition or non-solicitation, 803
- • • poor performance — incompetence, 780-781
- • • punitive and exemplary damages, 813-814
- • • resignation/job abandonment, 768-769
- • • retirement/pension benefits, 808
- • • salary, salary increases, bonuses and overtime, 804-805
- • • sexual harassment, 794-795
- • • successor employers, 776-777
- • • theft, 792-793
- • • vacation and vacation pay, 806
- reply, 815-817
- contractual notice, 826-828
- fixed-term contract alleged, 825
- frustration — illness, 822-823
- independent contractor, 823-825
- just cause, 817-821
- resignation/job abandonment, 821-822
- statement of claim
- damages
- • aggravated damages — mental distress, 755-757
- • entitlements during notice period
- • • bonuses, 746-747
- • • commissions, 745-746
- • • Employment Insurance and Canada Pension Plan contributions, 751
- • • fringe benefits, 749-750
- • • insurance benefits — medical, dental and disability, 748-749
- • • retirement/pension benefits, 750-751
- • • salary, salary increases and overtime, 744-745
- • • vacation and vacation pay, 747-748
- human rights legislation, damages for breach, 759-761
- *Keays v. Honda Canada Inc.*, bad faith damages, 754
- moral damages, “Wallace” damages, 753-755
- mitigation expenses, 752-753
- notice of termination
- • *Bardal v. Globe & Mail*, 735
- • common law notice period, 735-740
- • inducement, 738-739
- • period of non-competition or non-solicitation, 739-740
- • notice period, contractual, 741-744
- • notice period, statutory, 740-741
- punitive and exemplary damages, 757-759
- *Wallace v. United Grain Growers Ltd.*, bad faith damages, 753-755
- just cause alleged
- • generally, 730-733
- just cause alleged, but statutory notice and severance pay possible, 734
- no just cause alleged
- • *Bardal v. Globe & Mail*, 715-716
- claim for notice or pay in lieu, 715-719
- constructive dismissal, 725-728

## INDEX

### **Wrongful Dismissal — Continued**

#### statement of claim — *Continued*

- • failure to provide notice in accordance with termination agreement, 729-730
- • successor employers, 728-729
- statement of defence
- damages
  - • aggravated damages — mental distress, 812-813
  - • deductions: income earned — benefits receive during notice period, 808-809
  - • entitlements during notice period
    - • • commissions, 805-806
    - • • Employment Insurance and Canada Pension Plan contributions, 808
    - • • fringe benefits, 807
    - • • insurance benefits — medical, dental and disability, 806-807
    - • • retirement/pension benefits, 807-808
    - • • salary, salary increases, bonuses and overtime, 804-805
    - • • vacation and vacation pay, 806
  - • human rights legislation, breach of, 814-815
  - • mitigation
    - • • expenses, 811
    - • • failure to, 810-811
  - • moral damages, “Wallace damages”, 811-812
  - • notice of termination, 802

- • • inducement, 802-803
- • • period of non-competition or non-solicitation, 803
- • punitive and exemplary damages, 813-814
- just cause alleged, 777-780
  - • absenteeism — lateness, 782-783
  - • breach of fiduciary duty, 795-797
  - • breach of policy, 797-798
  - • dishonesty, 789-791
  - • generally
  - • impairment — intoxication, 783-785
  - • insubordination, 785-789
  - • off-duty, online misconduct, 798-801
  - • poor performance — incompetence, 780-781
  - • sexual harassment, 793-795
  - • theft, 791-793
- no just cause alleged, 761-765
- • constructive dismissal, 766-767
- • fixed-term contract, 773-776
- • frustration — illness, 769-771
- • independent contractor, 771-773
- • notice entitlement limited to statutory minimums, 765-766
- • resignation/job abandonment, 767-769
- • successor employers, 776-777
- statutory rules of pleading, 829-833
- Wallace v. United Grain Growers Ltd.*, bad faith damages, 753-755

