

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 ejection, 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

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 loquitur* 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, 2454-1455
- 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

