

## Index

### Class Actions

- Competition law , vol. 1, 86
- Certification, vol. 1, 87
- Costs, vol. 1, 90
- Damages, vol. 1, 89
- Evidence, vol. 1, 89
- Jurisdiction, vol. 1, 89
- Overview, vol. 1, 86
- Sample Filings , vol. 1, 90
- Definition, vol. 1, 4
- History, vol. 1, 4
- Precedents, Class actions, vol. 1, 23
- Affidavit of Corporate Officer in Opposition to Certification, vol. 1, 52
- Affidavit of Lawyer in Support of Certification , vol. 1, 43
- Affidavit of Proposed Representative Plaintiff, vol. 1, 39
- Issued Certification Order, vol. 1, 69
- Notice of Intent to Defend , vol. 1, 31
- Notice of Motion Seeking Certification, vol. 1, 36
- Notice of Motion for Leave to Appeal, vol. 1, 63
- Plaintiff's Litigation Plan, vol. 1, 48
- Statement of Claim, vol. 1, 23
- Statement of Defence, vol. 1, 32
- Procedure, commencing , vol. 1, 5
- Access to justice , vol. 1, 13
- Air of reality , vol. 1, 11
- Appeals, vol. 1, 16
- Behaviour modification , vol. 1, 14
- Cause of action, vol. 1, 8
- Certification, vol. 1, 5
- Class, identifiable , vol. 1, 9
- Common issues trial , vol. 1, 17
- Costs, vol. 1, 17
- Decertification, vol. 1, 16
- Defence, vol. 1, 16
- Discovery, vol. 1, 16
- Individual claims , vol. 1, 17
- Judicial economy , vol. 1, 13
- Litigation plan , vol. 1, 15
- National class actions , vol. 1, 22
- Notice of class certification , vol. 1, 15
- Pre-certification motions, vol. 1, 5
- Preferable procedure test , vol. 1, 11
- Proposed representative plaintiff , vol. 1, 14
- Settlement, vol. 1, 19

### Competition Law , vol. 1, 76

- Canadian Competition Law, vol. 1, 77
- Civil Reviewable Practices , vol. 1, 80
- Exclusive dealing/tied selling/market restriction , vol. 1, 81
- Price maintenance , vol. 1, 80
- Refusal to deal , vol. 1, 81
- Criminal Offences , vol. 1, 78
- Bid-rigging , vol. 1, 79
- Conspiracy, vol. 1, 78

## CANADIAN PRECEDENTS OF PLEADINGS

- Competition Law (*cont'd*)
- Criminal misleading representations , vol. 1, 80
  - Overview, vol. 1, 77
  - Class Actions , vol. 1, 86
  - Certification , vol. 1, 87
  - Costs, vol. 1, 90
  - Damages, vol. 1, 89
  - Evidence, vol. 1, 89
  - Jurisdiction, vol. 1, 89
  - Overview, vol. 1, 86
  - Sample Filings , vol. 1, 90
  - Private Actions for Damages, vol. 1, 82
  - Arbitrability of Claims , vol. 1, 86
  - Damages/Costs , vol. 1, 85
  - Elements, vol. 1, 83
  - Forum , vol. 184
  - Interim and Permanent Injunctions , vol. 1, 85
  - Limitation Period, vol. 1, 84
  - Overview , vol. 1, 82
  - Relation to Common Law Causes of Action, vol. 1, 83
  - Sample Filings , vol. 1, 86
  - Private Applications, vol. 1, 90
  - Appeals , vol. 1, 95
  - Applications for Leave — Process , vol. 1, 92
  - Applications for Leave — Standard , vol. 1, 91
  - Costs, vol. 1, 94
  - Hearings, vol. 1, 93
  - Interim Injunctions , vol. 1, 93
  - Overview, vol. 1, 90
  - Remedies, vol. 1, 94
  - Sample Filings , vol. 1, 95
  - Settlements, vol. 1, 94
  - Sample Filings , vol. 1, 95
  - Affidavit in Support of Application for Leave (Refusal to Deal), vol. 1, 120
  - Notice of Appeal to Federal Court of Appeal from Denial of Leave (Refusal to Deal) , vol. 1, 125
  - Notice of Application for Leave Pursuant to Section 103.1 of the Competition Act (Refusal to Deal) , vol. 1, 114
  - Notice of Application on the Merits (Refusal to Deal), vol. 1, 118
  - Notice of Motion - Certification Motion for a Class Action under Section 36 of the *Competition Act* (Price-Fixing) , vol. 1, 102
  - Response To Application For Leave (Refusal to Deal), vol. 1, 121
  - Statement of Claim for a Class Action Under section 36 of the Competition Act (Price Fixing), vol. 1, 105
  - Statement of Claim Under section 36 of the Competition Act (Price Fixing), vol. 1, 96
  - Statement of Defence in Response to Claim Under section 36 of the *Competition Act* , vol. 1, 100
  - Statement of Defence In Response to a Class Action Claim under Section 36 of the *Competition Act* (Price-Fixing) , vol. 1, 111
- Construction Claims**, vol. 1, 132
- *Anns v. Merton* test, vol. 1, 136
  - Bidding and tendering , vol. 1, 134
  - Basis of claim, vol. 1, 134
  - Remedies, vol. 1, 134
  - Changed work, vol. 1, 135
  - Claims in tort , vol. 1, 136
  - Defective work , vol. 1, 135
  - Delay claims , vol. 1, 135
  - Extra work , vol. 1, 135
  - Forms of contract, vol. 1, 133
  - Insurance, vol. 1, 137
  - Liens, vol. 1, 137
  - Parties to construction contract , vol. 1, 133

## INDEX

- Construction Claims (*cont'd*)
  - Payment, vol. 1, 136
  - Privity of contract , vol. 1, 133
  - Precedents, Construction claims , vol. 1, 139
  - Breach of trust, statement of defence , vol. 1, 188
  - Construction Lien, breach of trust, vol. 1, 184
  - Construction Lien , Defence and Counterclaim of Owner , vol. 1, 172
  - Defence and Counterclaim (Engineer defending against owner), vol. 1, 163
  - Lien, Statement of Claim General Contractor against Owner, vol. 1, 179
  - Lien, statement of claim subcontractor against owner and general, vol. 1, 178
  - Reply and Defence to Counterclaim, vol. 1, 193
  - Statement of Claim, contractor against owner and architect/engineer , vol. 1, 142
  - Statement of Claim — Bid Bond , vol. 1, 194
  - Statement of Claim, contractor against owner, delay, vol. 1, 146
  - Statement of Claim, general contractor against owner and architect , vol. 1, 139
  - Statement of Claim — L & M Bond, vol. 1, 210
  - Statement of Claim, owner against architect — engineer, vol. 1, 148
  - Statement of Claim, owner against contractor and engineer, vol. 1, 154
  - Statement of Claim — Performance Bond , vol. 1, 201
  - Statement of Claim, subcontractor against general contractor, vol. 1, 160
  - Statement of Defence — Bid Bond, vol. 1, 197
  - Statement of Defence — L& M Bond , vol. 1, 212
  - Statement of Defence — Performance Bond , vol. 1, 206
  - Third party claim — contractor against subcontractor and architect, vol. 1, 182
  - Third Party Claim — Trust Action , vol. 1, 189
  - Request for proposals, vol. 1, 135
  - Risk management cases , vol. 1, 137
  - Surety bonds, vol. 1, 137
  - Trusts , vol. 1, 138
  - Unilateral contract analysis, vol. 1, 134
- Construction Insurance** , vol. 1, 216
  - Broker's liability , vol. 1, 227
  - Coverage triggers , vol. 1, 220
  - Distinction between first and third party insurance coverage, vol. 1, 218
    - first party coverage , vol. 1, 218
    - third party coverage , vol. 1, 219
  - Named insureds, additional insureds and joint and several insureds , vol. 1, 220
  - “occurrence” and “claims-made” policies, vol. 1, 219
    - claims-made policies , vol. 1, 219
    - occurrence based policies , vol. 1, 219
  - Precedents , vol. 1, 227
  - Boiler and Machinery Insurance Statement of Claim , vol. 1, 233
  - Brokers' Negligence , vol. 1, 238
  - Builder's Risk Statement of Claim , vol. 1, 227
  - CGL Statement of Claim , vol. 1, 230
  - Notice Letter , vol. 1, 241
  - Pollution Insurance Statement of Claim , vol. 1, 235
  - Relevant principles of insurance law , vol. 1, 216
  - Subrogation, vol. 1, 221
  - Types of construction insurance, vol. 1, 221

## CANADIAN PRECEDENTS OF PLEADINGS

- Construction Insurance (*cont'd*)
  - Boiler and machinery and contractor's equipment, vol. 1, 226
  - Builder's risk , vol. 1, 222
  - Commercial general liability, vol. 1, 223
  - Pollution, vol. 1, 226
  - Professional liability, vol. 1, 225
  - Use of standard forms , vol. 1, 221
- Contracts**, vol. 1, 248
  - Assignment, vol. 1, 263
  - Breach, vol. 1, 261
    - Anticipatory, vol. 1, 262
    - Doctrine of fundamental breach, vol. 1, 262
  - Capacity to contract , vol. 1, 251
    - Corporations, vol. 1, 252
    - Minor, vol. 1, 252
    - Person of Unsound Mind , vol. 1, 252
    - The Crown , vol. 1, 252
    - Unincorporated Associations , vol. 1, 252
  - Collateral contracts , vol. 1, 259
  - Conditions precedent , vol. 1, 257
  - *consensus ad idem* , vol. 1, 248
  - Consideration , vol. 1, 250
  - Criteria of enforcement , vol. 1, 250
  - Damages, vol. 1, 264
    - Principles, vol. 1, 266
    - Types, vol. 1, 264
      - Aggravated (also called "mental distress damages"), vol. 1, 265
      - Compensatory (also called "actual damages") , vol. 1, 264
      - General (also called "non-pecuniary damages"), vol. 1, 264
      - Liquidated , vol. 1, 265
      - Nominal, vol. 1, 266
      - Pecuniary (also called "special damages") ,
  - Punitive, vol. 1, 265
- Defences, vol. 1, 272
  - Duress , vol. 1, 255
  - Exclusion Clauses, vol. 1, 259
  - Frustration, vol. 1, 262
  - Illegality, vol. 1, 256
  - Landmark Old English Contract Cases , vol. 1, 267
  - Matters that Must be Specifically Pleaded, vol. 1, 271
  - Misrepresentation , vol. 1, 254
    - Fraudulent, vol. 1, 254
    - Innocent, vol. 1, 255
    - Negligent , vol. 1, 255
    - Non-disclosure , vol. 1, 255
  - Mistake, vol. 1, 254
  - Offer and acceptance , vol. 1, 249
    - Acceptance, vol. 1, 249
    - Offer, vol. 1, 249
  - Outline, vol. 1, 270
  - Performance, vol. 1, 259
    - Dependency of performance, vol. 1, 260
    - Discharge of Duty to Perform , vol. 1, 261
    - Duty to perform , vol. 1, 259
    - Incomplete Performance , vol. 1, 260
    - Modification of Performance , vol. 1, 260
    - Time for Performance, vol. 1, 260
- Pertinent Forms , vol. 1, 274
  - Form 14A: Statement of Claim (General), vol. 1, 274
  - Form 14E: Notice of Application , vol. 1, 275
  - Form 18A: Statement of Defence , vol. 1, 277
- Practical Tips , vol. 1, 267
- Precedents , vol. 1, 279
  - Agreement of Purchase and Sale of Land — Binding Agreement;

## INDEX

- Contracts (*cont'd*)
- Declaration; Specific Performance; Damages — Application, vol. 1, 311
  - • Banking — Loan Default; Non-payment by Borrower and Guarantors — Statement of Claim, vol. 1, 286
  - • Bulk Cable Services Agreement-Breach; Injunction; Declaration; Damages — Statement of Claim , vol. 1, 291
  - • Car Rental Agreement — Car Damaged — Statement of Claim, vol. 1, 279
  - • Change of Control Agreement — Breach; Money Owed — Application, vol. 1, 310
  - • Condominium Construction — Deficiencies — Statement of Claim , vol. 1, 305
  - • Consumer Contract — Breach; Unfair Practices — Statement of Claim , vol. 1, 288
  - • Driveway Construction Contract — Deficiencies — Statement of Claim , vol. 1, 281
  - • Franchise and Sub-lease Agreements — Default — Statement of Claim , vol. 1, 285
  - • Oral Contract for Services-Services Not Provided — Statement of Claim, vol. 1, 279
  - • Partnership Agreement — Breach; Attempted Unilateral Dissolution-Statement of Claim, vol. 1, 297
  - • Pharmacy License Agreement — Breach; Interference with Obligations; Improper Solicitation — Statement of Claim , vol. 1, 293
  - • Post-Retirement Benefits Entitlement — Money Owed — Statement of Claim , vol. 1, 302
  - • Property Insurance Contract-Insurer's and Agent's Breach of Contract and Negligence — Statement of Claim, vol. 1, 307
  - • Sale of Goods — Non-payment Because of Defective Goods and Failure to Honour Warranty — Statement of Defence , vol. 1, 313
  - • Share Purchase Agreement-Damages; Rescission — Statement of Claim , vol. 1, 299
  - • Storage of Goods — Goods Destroyed — Statement of Claim, vol. 1, 282
  - • Supply and Delivery of Goods — Partial Payment — Statement of Claim, vol. 1, 283
  - Privity, vol. 1, 252
  - Reason for invalidity of contract, vol. 1, 251
  - Remedies for Breach of Contract, vol. 1, 263
  - • Options, vol. 1, 263
  - • Range of , vol. 1, 264
  - • Void or voidable? , vol. 1, 263
  - *Sale of Goods Act* , vol. 1, 253
  - Scope, vol. 1, 274
  - Selected Canadian biography, vol. 1, 277
  - Sources of contract law, vol. 1, 267
  - *Statute of Frauds* , vol. 1, 253
  - Terms , vol. 1, 257
  - • Definition, vol. 1, 257
  - • Implied, vol. 1, 258
  - • Interpreting express terms , vol. 1, 257
  - • Variety of , vol. 1, 258
  - Unconscionability, vol. 1, 256
  - Undue Influence , vol. 1, 256
  - What is a contract?, vol. 1, 248
- Copyright**, vol. 2, 833
- Application for Copyright and Moral Right Infringement , vol. 2, 833
  - • Notice of application , vol. 2, 833
  - Copyright Litigation in Canada , vol. 2, 819

## CANADIAN PRECEDENTS OF PLEADINGS

- Copyright (*cont'd*)
- Counterclaim, vol. 2, 831
  - Invalidity of copyright , vol. 2, 832
  - Miscellaneous, vol. 2, 832
  - Non-infringement , vol. 2, 832
  - Parties, vol. 2, 831
  - Plaintiff by counterclaim's business and activities , vol. 2, 831
  - Prayer for relief , vol. 2, 831
  - Precedents, vol. 2, 834
  - Application for Copyright and Moral Right Infringement , vol. 2, 866
  - Acceptance of Admissions, Admissions, Denials and/or No Knowledge of, vol. 2, 862
  - Acceptance of Admissions, Admissions, Denials and/or No Knowledge of, vol. 2, 864
  - Acceptance of Admissions, Admissions, Denials and/or No Knowledge of , vol. 2, 865
  - Acts or Omissions Contrary to Moral Rights were Consented to by the Plaintiff , vol. 2, 857
  - Admissions, Denials and/or No Knowledge of Allegations Made in Statement of Claim, vol. 2, 849
  - Applicant's Copyright , vol. 2, 870
  - Applicant's Moral Rights, vol. 2, 876
  - Application will be Supported by the Following Material , vol. 2, 882
  - Assignee Is Entitled to Commence Copyright Proceedings , vol. 2, 874
  - Assignment / License of Rights from Individual(s) / Employee(s) / Independent Contractor(s) to the Plaintiff, vol. 2, 841
  - Assignment / License of Rights from Individual(s) / Employee(s)/Independent Contractor(s) to the Applicant , vol. 2, 872
  - Authors of the Work and Other Subject Matter Were Those Who Contributed Skill and Judgment in the Authorship of said Work and Other Subject Matter , vol. 2, 863
  - Authorship, vol. 2, 839, 844, 871, 876
  - Citizenship and Residency , vol. 2, 840, 872
  - Citizenship and Residency of Author , vol. 2, 844
  - Claims are Time Barred , vol. 2, 858
  - Claims Barred by the Doctrines of Estoppels, Waiver, Acquiescence and Laches , vol. 2, 858
  - Clean Hands , vol. 2, 864
  - Collective Work , vol. 2, 871
  - Collective Work / Compilation of Works, vol. 2, 871
  - Compilation of Works , vol. 2, 871
  - Continuing Infringement Requires Restraint by the Court, vol. 2, 864
  - Copyright, vol. 2, 863
  - Copyright and Moral Right Infringement , vol. 2, 834
  - Copyright Was not Registered at the Material Time , vol. 2, 859
  - Costs, 837, 861, 869
  - Counterclaim, vol. 2, 861
  - Damages, vol. 2, 879
  - Damages and Accounting of Profits , vol. 2, 837, 846, 869, 879
  - Declaration of Copyright and Moral Rights in Work , vol. 2, 834
  - Declaration of Copyright in Other Subject Matter , vol. 2, 834, 866
  - Declaration of Infringement of Copyright in Work and Other Subject Matter , vol. 2, 866
  - Declaration of Infringement of Copyright in Work and Other Subject Matter , vol. 2, 834

## INDEX

- Copyright (*cont'd*)
- Declaration of Infringement of Moral Right , vol. 2, 834, 866
  - Declaration of Invalidity of Copyright Registration , vol. 2, 861
  - Defence of Assignment / License Generally , vol. 2, 854
  - Defence of Consent , vol. 2, 855
  - Defence of Fair Dealing , vol. 2, 855
  - Defence to Counterclaim, vol. 2, 864
  - Defences , vol. 2, 850
  - Defendant Did not Infringe Plaintiff's Moral Rights, vol. 2, 857
  - Defendant Did not Obtain Copyright Clearances , vol. 2, 863
  - Defendant is Owner of Copyright in Collective Work / Compilation of Works, vol. 2, 854
  - Defendant was Aware of the Plaintiff's Copyright , vol. 2, 845, 864
  - Defendant's Infringing Acts with respect to the Plaintiff's Communication Signal , vol. 2, 843
  - Defendant's Infringing Acts with respect to the Plaintiff's Copyrighted Work and Other Subject Matter, vol. 2, 842
  - Defendant's Infringing Acts with respect to the Plaintiff's Moral Rights, vol. 2, 844
  - Defendant's Infringing Acts with respect to the Plaintiff's Performance , vol. 2, 842
  - Defendant's Infringing Acts with respect to the Plaintiff's Sound Recording , vol. 2, 842
  - Defendant's Infringing Acts — Primary Infringement , vol. 2, 842
  - Defendant's Infringing Acts — Secondary Infringement , vol. 2, 843
  - Delivery Up / Destruction , vol. 2, 837, 848, 869, 880
  - Denial of Copyright Ownership , vol. 2, 851
  - Denial of Infringement Conclusion, vol. 2, 858
  - Denial of Ownership of Copyright , vol. 2, 851
  - Denial of Subsistence of Copyright , vol. 2, 850
  - Details of Appropriate Subject-matter for Copyright/Registration, vol. 2, 870
  - Details of Copyright/Registration , vol. 2, 838
  - Duration of Copyright , vol. 2, 840, 872, 876
  - Duration of Moral Rights , vol. 2, 844
  - Employee(s) of the Applicant , vol. 2, 871
  - Exclusive Licensee Is Entitled to Commence Copyright Proceedings, vol. 2, 874
  - Extent Unknown, vol. 2, 845, 877
  - Fair Dealing Does Not Apply, vol. 2, 863
  - Independent Contractor(s) retained by the Applicant, vol. 2, 872
  - Infringement of Moral Rights , vol. 2, 845, 877
  - Injunction , vol. 2, 835, 845, 867, 877
  - Interest, vol. 2, 837, 869
  - Limitation Period Has not Expired , vol. 2, 864
  - Miscellaneous, vol. 2, 849, 861, 862, 881
  - Moral Rights , vol. 2, 864

## CANADIAN PRECEDENTS OF PLEADINGS

- Copyright (*cont'd*)
- No Assignment / License / Consent / Authorization Given to the Defendant , vol. 2, 863
  - No Cease and Desist Letter Was Sent , vol. 2, 855
  - No Copyright Infringement , vol. 2, 854
  - No Moral Right Infringement , vol. 2, 856
  - No Moral Rights Exist , vol. 2, 856
  - No Waiver of Moral Rights , vol. 2, 841, 873
  - Notice of Application , vol. 2, 866
  - Originality, vol. 2, 840, 870
  - Other Relief , vol. 2, 838, 860, 870
  - Ownership of Moral Rights , vol. 2, 844, 876
  - Partial Assignment / License of Rights from the Applicant to Respondent , vol. 2, 873
  - Partial Assignment / License of Rights from the Plaintiff to Defendant , vol. 2, 841
  - Parties, vol. 2, 838, 850, 870
  - Persons Entitled to Commence Copyright Proceedings , vol. 2, 873, 842
  - Place of Trial , vol. 2, 881
  - Plaintiff Does not Have Moral Rights , vol. 2, 856
  - Plaintiff Is Entitled to Equitable Remedies , vol. 2, 864
  - Plaintiff Is not Entitled to an Injunction , vol. 2, 858
  - Plaintiff Is Not Entitled to any Remedies , vol. 2, 858
  - Plaintiff Is not Entitled to Damages and Accounting of Profits, vol. 2, 859
  - Plaintiff Is not Entitled to Statutory Damages , vol. 2, 860
  - Plaintiff Is not the Assignee , vol. 2, 854
  - Plaintiff Is not the Exclusive Licensee , vol. 2, 853
  - Plaintiff Is only Entitled to an Injunction because the Defendant Was not Aware of Copyright , vol. 2, 858
  - Plaintiff Is only Entitled to Nominal Statutory Damages , vol. 2, 860
  - Plaintiff not Entitled to Commence Copyright Proceedings, vol. 2, 853
  - Plaintiff Obtained a Valid Assignment / License, vol. 2, 863
  - Plaintiff waived hIs/her Moral Rights, vol. 2, 857
  - Plaintiff's Copyright , vol. 2, 838
  - Plaintiff's Copyright RegIstration(s) is/are Invalid , vol. 2, 862
  - Plaintiff's Moral Rights , vol. 2, 844
  - Prayer for Relief , vol. 2, 834, 866
  - Presumption of Author(s) as the First Owner , vol. 2, 871
  - Proceedings by way of Application , vol. 2, 881
  - Punitive / Exemplary , vol. 2, 837, 848, 869, 881
  - Punitive / Exemplary Available even if Applicant Elects Statutory Damages , vol. 2, 881
  - Punitive / Exemplary Available even if Plaintiff Elects Statutory Damages, vol. 2, 849
  - Recovery of all Infringing Copies, vol. 2, 837, 848, 869, 880
  - Registered Copyright, vol. 2, 845, 877
  - Remedies, vol. 2, 835, 845, 861, 867, 877
  - Reply, vol. 2, 862
  - Reply to Defence to Counterclaim , vol. 2, 865



## INDEX

- Copyright (*cont'd*)
- Respondent's Infringing Acts with respect to the Applicant's Communication Signal , vol. 2, 875
  - Respondent's Infringing Acts with respect to the Applicant's Copyrighted Work and Other Subject Matter , vol. 2, 874
  - Respondent's Infringing Acts with respect to the Applicant's Moral Rights , vol. 2, 876
  - Respondent's Infringing Acts with respect to the Applicant's Performance , vol. 2, 874
  - Respondent's Infringing Acts with respect to the Applicant's Sound Recording , vol. 2, 875
  - Respondent's Infringing Acts — Primary Infringement , vol. 2, 874
  - Respondent's Infringing Acts- Secondary Infringement , vol. 2, 875
  - Right of Integrity of the Work , vol. 2, 844
  - Right of Integrity of the Work, vol. 2, 857, 876
  - Right to be Identified with the Work, vol. 2, 844, 877
  - Statement of claim , vol. 2, 834
  - Statement of Defence , vol. 2, 284
  - Statutory Damages , vol. 2, 847
  - The Applicant Will Rely on , vol. 2, 881
  - The Defendant Was not Aware that its Activities were an Infringement the Plaintiff's Rights, vol. 2, 855
  - Type of Assignment / Grant , vol. 2, 873
  - Wide Injunction, vol. 2, 846
  - Reply, vol. 2, 832
  - Acceptance of admissions, admissions, denials and/or no knowledge of allegations made in statement of defence, vol. 2, 832
  - Miscellaneous, vol. 2, 832
  - Reply and Defence to Counterclaim , vol. 2, 832
  - Acceptance of admissions, admissions, denials and/or no knowledge of allegations made in statement of defence/counterclaim, vol. 2, 832
  - Defence to counterclaim , vol. 2, 833
  - Miscellaneous, vol. 2, 833
  - Reply, vol. 2, 832
  - Reply to defence to counterclaim, vol. 2, 833
  - Admissions, denials, and/or assertions of no knowledge of allegations made in the defence to counterclaim, vol. 2, 833
  - Reply and Miscellaneous , vol. 2, 833
  - Statement of Claim — Copyright and Moral Right Infringement, vol. 2, 821
  - Miscellaneous, vol. 2, 827
  - Parties, vol. 2, 823
  - Plaintiff's copyright and standing to sue for relief, vol. 2, 824
  - Plaintiff's moral rights , vol. 2, 826
  - Prayer for relief , vol. 2, 821
  - Relief sought and quantum, vol. 2, 827
  - Statement of Defence , vol. 2, 827
  - Admissions, denials and/or assertions of no knowledge of allegations made in Statement of Claim, vol. 2, 827
  - Defences, vol. 2, 827
  - Denial of subsistence/validity of copyright , vol. 2, 827
  - Denial of copyright ownership , vol. 2, 828
  - Defendant's business and activities , vol. 2, 827
  - Disentitlement to relief claimed, vol. 2, 831

## CANADIAN PRECEDENTS OF PLEADINGS

- Copyright (*cont'd*)
  - Limitation period , vol. 2, 831
  - Miscellaneous, vol. 2, 831
  - No copyright infringement , vol. 2, 828
    - Defence of consent , vol. 2, 829
    - Defence of fair dealing , vol. 2, 829
  - Parties, vol. 2, 827
  - Unenforceability of moral rights , vol. 2, 831
- Corporate Pleadings** , vol. 1, 318
  - Derivative Action, the , vol. 1, 327
  - Cause of action, the , vol. 1, 331
  - Costs of , vol. 1, 331
  - Procedural considerations , vol. 1, 330
    - Action, vol. 1, 331
    - Applicable court, vol. 1, 330
    - Seeking leave , vol. 1, 331
  - Remedies , vol. 1, 331
  - Requirements for leave , vol. 1, 327
    - Good faith , vol. 1, 329
    - Interests of the Corporation , vol. 1, 330
    - Notice to the board of directors , vol. 1, 327
    - Standing , vol. 1, 328
  - Interplay between Oppression Remedy and the Derivative Action, vol. 1, 332
  - Limitations Issues , vol. 1, 320
  - Oppression Remedy, the , vol. 1, 320
    - Applicable statute , vol. 1, 320
    - Central elements of oppression claim , vol. 1, 323
      - Corporate conduct , vol. 1, 325
      - Reasonable expectations , vol. 1, 325
      - Standard of conduct: oppression, unfair prejudice and/or unfair disregard , vol. 1, 325
  - Damages, vol. 1, 326
    - Procedural considerations , vol. 1, 323
      - Action or application , vol. 1, 324
      - Arbitration clauses , vol. 1, 325
      - Class proceedings , vol. 1, 324
      - The applicable court , vol. 1, 323
    - Proper defendants/respondents , vol. 1, 323
    - Remedies, vol. 1, 326
    - Standing, vol. 1, 321
    - Precedents, vol. 1 339
    - Derivative Action-Notice of Application for Leave to Commence a Derivative Action, vol. 1, 342
    - Derivative Action — Statement of Claim , vol. 1, 344
    - Oppression Remedy — Statement of Claim , vol. 1, 339
    - Securities Class Actions-Notice of Motion for Leave to Commence an Action under Part XXIII.1 , vol. 1, 346
    - Securities Class Actions: Statement of Claim under Part XXIII, vol. 1, 348
    - Preliminary Considerations Regarding Corporate Parties , vol. 1, 319
    - Securities Class Actions for Misrepresentation, vol. 1, 333
    - Common law pleadings , vol. 1, 333
    - Statutory claims for primary market misrepresentation , vol. 1, 338
    - Statutory claims for secondary market misrepresentation, vol. 1, 334
      - Right of action , vol. 1, 334
      - Statutory protections for defendants , vol. 1, 335
        - Damages calculations and liability limits , vol. 1, 336
        - Leave requirement , vol. 1, 335
        - Statutory defences , vol. 1, 337
- Defamation**, vol. 1, 354
  - Apologies and retractions , vol. 1, 360
  - Damages at large , vol. 1, 356

## INDEX

- Defamation (*cont'd*)
  - Defences, vol. 1, 360
    - Absolute privilege, vol. 1, 361
    - Defendant's meanings, vol. 1, 362
    - Consent, vol. 1, 362
    - Fair comment, vol. 1, 361
    - Innocent dissemination, vol. 1, 362
    - Justification or truth, vol. 1, 361
    - Lack of reputation, vol. 1, 362
    - Provocation, vol. 1, 362
    - Qualified privilege, vol. 1, 361
    - Related publications, impact, vol. 1, 362
    - Reportage, vol. 1, 363
    - Responsible communication, vol. 1, 361
    - Statutory privilege, vol. 1, 361
    - Verbal abuse, vol. 1, 362
  - Definition, vol. 1, 355
  - Glossary, vol. 1, 355
  - Jury notice, vol. 1, 359
  - Libel, definition, vol. 1, 355
  - Limitation periods, vol. 1, 356
  - Malice, definition, vol. 1, 355
  - Motion for summary judgment, vol. 1, 363
  - Newspapers and broadcasting, definition, vol. 1, 355
  - Notice of libel, vol. 1, 358
  - Notice of motion for disclosure of true identity of defendant, vol. 1, 360
  - Notice of motion for interim injunction, vol. 1, 359
  - Precedents, defamation, vol. 1, 364
    - Apology, newspapers, vol. 1, 366
    - Jury notice, vol. 1, 372
    - Notice of libel, broadcasts, vol. 1, 365
    - Notice of libel, publication, vol. 1, 364
    - Notice of motion for disclosure of identity of defendant, vol. 1, 374
    - Notice of motion for interim injunction, vol. 1, 372
    - Reply, vol. 1, 380
    - Retraction, vol. 1, 366
    - Statement of claim, media defendants, vol. 1, 366
    - Statement of claim, non-media defendant, vol. 1, 368
    - Statement of claim, slander, vol. 1, 370
    - Statement of defence, media, vol. 1, 375
    - Statement of defence, non-media, vol. 1, 378
  - Preliminary motions, defendant's, vol. 1, 363
  - Determination of point of law, vol. 1, 363
  - Motion for security for costs, vol. 1, 363
  - Replies, vol. 1, 364
  - Slander, definition, vol. 1, 355
  - Statement of claim, vol. 1, 358
  - Statement of defence, general, vol. 1, 360
- Domain Name Dispute Resolution Policy**, vol. 2, 884
  - Bad Faith, vol. 2, 891
    - Establishing Bad Faith, vol. 2, 891
      - Burden of Proof, vol. 2, 893
      - Intention, vol. 2, 894
      - Registration, vol. 2, 892
      - Whose Bad Faith, vol. 2, 893
    - Enumerated Bad Faith Factors, vol. 2, 894
      - Bad Faith: Purpose of Transfer, vol. 2, 894
        - Competitor, vol. 2, 895
        - Excess Costs, vol. 2, 895
        - Offer of Transfer, vol. 2, 895

## CANADIAN PRECEDENTS OF PLEADINGS

- Domain Name Dispute Resolution Policy (*cont'd*)
    - Purpose, vol. 2, 895
    - Bad Faith: Blocking Complainant , vol. 2, 896
      - Pattern, vol. 2, 896
      - Purpose, vol. 2, 896
    - Bad Faith: Disrupting Business of Complainant , vol. 2, 897
      - Competitor , vol. 2, 898
      - Parking, vol. 2, 898
      - Purpose, vol. 2, 898
    - Bad Faith: Attracting Internet Users , vol. 2, 899
      - Attempt to Attract Users , vol. 2, 900
      - Commercial Gain , vol. 2, 900
      - Confusion, vol. 2, 900
      - Intention, vol. 2, 899
    - Basis for Complaint , vol. 2, 887
    - Confusing Similarity with Mark of Complainant , vol. 2, 888
    - Confusing Similarity , vol. 2, 890
    - Resemblance as Test , vol. 2, 890
    - Eligible Complainant , vol. 2, 885
    - Canadian Presence Requirements , vol. 2, 886
    - Legitimate Interest: Overview , vol. 2, 901
      - Absence of Legitimate Interest , vol. 2, 903
      - Burden of Proof , vol. 2, 902
      - Good Faith , vol. 2, 903
      - The Listed Legitimate Interest Factors , vol. 2, 903
        - Legitimate Interest: Descriptive Name , vol. 2, 903
        - Legitimate Interest: Generic Name , vol. 2, 904
        - Legitimate Interest: Geographical Location , vol. 2, 905
        - Legitimate Interest: Name , vol. 2, 905
        - Legitimate Interest: Non-Commercial Activity , vol. 2, 904
        - Legitimate Interest: Use as Mark , vol. 2, 903
      - Mark: Overview , vol. 2, 889
      - Mark: Exclusions , vol. 2, 889
      - Names of Individuals , vol. 2, 890
- Employment and Labour Law *SEE* Wrongful Dismissal**
- Equitable Remedies** , vol. 1, 502
- Account of profits , vol. 1, 532
  - Common mistake , vol. 1, 521
  - Declaration, vol. 1, 546
  - Equitable accounting, vol. 1, 533
  - Injunctions , vol. 1, 504
    - Anton Piller order , vol. 1, 505
    - Interlocutory injunction, vol. 1, 505
    - Mandatory injunction , vol. 1, 505
    - Mareva injunction , vol. 1, 505
    - Permanent injunction , vol. 1, 505
    - Perpetual injunction , vol. 1, 505
    - Prohibitory injunction, vol. 1, 505
    - Quia timet , vol. 1, 505
    - Search order , vol. 1, 505
  - Maxims of equity , vol. 1, 502, 503
  - Precedents
    - Account as Constructive Trustees; Contract Void, vol. 1, 554
    - Agreement of Entitlement to Pension Benefit (Mutual Mistake), vol. 1, 523
    - Agreement of Purchase and Sale, vol. 1, 514
    - Agreement of Purchase and Sale of Real Property, vol. 1, 530
    - Asset Purchase Agreement , vol. 1, 526
    - Appointment of Receiver and Manager over Motion Pictures , vol. 1, 543

## INDEX

- Equitable Remedies (*cont'd*)
  - Breach of Covenant against Competition, vol. 1, 535
  - Breach of Dealership Agreement , vol. 1, 506
  - Breach of Indemnity Agreement , vol. 1, 541
  - Contract of Sale of Goods , vol. 1, 528
  - Employment contract , vol. 1, 513
  - Lawyer's Trust Funds , vol. 1, 536
  - Lease, vol. 1, 522
  - License Agreement , vol. 1, 515
  - Medical Software Agreement , vol. 1, 529
  - No Right, Title or Interest in Real Property , vol. 1, 547
  - Preventing Lawyer from Acting, vol. 1, 509
  - Shareholder Agreement , vol. 1, 518
  - Trespass, vol. 1, 508
  - Unjust Enrichment from Wrongful Conduct , vol. 1, 548
  - Winding up Company's Affairs and Distributing its Property, vol. 1, 540
  - Wrongful dismissal, vol. 1, 534
  - Receiver, appointment of , vol. 1, 539
  - Rectification, vol. 1, 520
  - Rescission, vol. 1, 527
  - Specific performance , vol. 1, 511
  - Specific performance, defence to , vol. 1, 511
  - Specific performance, where available , vol. 1, 511
  - Unilateral mistake, vol. 1, 521
- Injunctions in the Labour and Employment Contexts** , vol. 1, 473
  - Employment
    - Injunctions against Departing Employees , vol. 1, 474
    - Injunctions to Prevent Loss of Clients and Employees, vol. 1, 474
  - Injunctions to Prevent Loss of Confidential Information, vol. 1, 474
  - Labour
    - Injunctions in the Strike Context , vol. 1, 474
    - Precedents, vol. 1, 475
    - Employment — Injunctions Against Departing Employees, vol. 1, 475
      - Affidavit — Background , vol. 1, 480
      - Affidavit — Technical Information , vol. 1, 483
      - Notice of Motion, vol. 1, 478
      - Order, vol. 1, 485
      - Statement of Claim , vol. 1, 475
    - Labour — Injunctions in the Strike Context , vol. 1, 486
      - Affidavit of Management , vol. 1, 493
      - Affidavit of Picketing Activities , vol. 1, 495
      - Notice of Motion , vol. 1, 490
      - Order, vol. 1, 497
      - Statement of Claim , vol. 1, 486
- Insolvency** , vol. 2, 564
  - Asset Sales , vol. 2, 768
  - Asset Sale and Approvals , vol. 2, 768
  - *Bulk Sales Act* (Ontario), vol. 2, 770
  - Distributions, vol. 2, 771
  - Forms
    - Form IX.A.1 — Sale Process Order , vol. 2, 771
    - Form IX.B.1 — Model Approval and Vesting Order (Ontario), vol. 2, 774
    - Form IX.B.2 — Model Approval and Vesting Order (British Columbia) , vol. 2, 774
    - Form IX.B.3 — Certificate , vol. 2, 777

## CANADIAN PRECEDENTS OF PLEADINGS

- Insolvency (*cont'd*)
- Form IX.C.1 — Notice of Application re Exemption from *Bulk Sales Act*, vol. 2, 778
  - Form IX.C.2 — Order re Exemption from *Bulk Sales Act*, vol. 2, 780
  - Form IX.C.3 — Statement as to Seller's Creditors, vol. 2, 781
  - Form IX.C.4 — Statement of Affairs, vol. 2, 782
  - Form IX.C.5 — Consent, vol. 2, 784
  - Form IX.C.6 — Affidavit re Section 11 of the *Bulk Sales Act*, vol. 2, 785
  - Form IX.C.7 — Waiver, vol. 2, 786
  - Form IX.D.1 — Notice of Motion re Distribution, vol. 2, 786
  - Form IX.D.2 — Distribution Order, vol. 2, 788
  - The Sale Process, vol. 2, 768
  - Bankruptcy, vol. 2, 564
  - Commencing Bankruptcy Proceedings, vol. 2, 564
  - Duties of Bankruptcy, vol. 2, 566
  - Involuntary Bankruptcy, vol. 2, 565
  - Voluntary Bankruptcy, vol. 2, 564
  - Administration of the Bankrupt Estate, vol. 2, 566
  - Form I.A.1(a) — Resolution of the Board of Directors of the Corporation Authorizing Bankruptcy, vol. 2, 567
  - Form I.A.1(b) — Assignment for the General Benefit of Creditors—Form 20.1, vol. 2, 568
  - Form I.A.2(a) — Demand Letter, vol. 2, 569
  - Form I.A.2(b) — Application for a Bankruptcy Order, vol. 2, 570
  - Form I.A.2(c) — Affidavit Verifying Application for Bankruptcy Order, vol. 2, 571
  - Form I.A.2(d) — Notice of Hearing, vol. 2, 571
  - Form I.A.2(e) — Order of Substituted Service of Application — Form 89, vol. 2, 572
  - Form I.A.2(f) — Notice of Substituted Service of Application — Form 90, vol. 2, 573
  - Form I.A.2(g) — Bankruptcy Order — Form 91, vol. 2, 573
  - Form I.A.3(a) — Statement of Affairs (Business) — Form 78, vol. 2, 574
  - Form I.A.3(b) — Notice of Examination before the Official Receiver (Corporation) — Form 24, vol. 2, 580
  - Form I.B.1(a) — Notice to Bankrupt of First Meeting of Creditors in Local Newspaper — Form 73, vol. 2, 581
  - Form I.B.1(b) — Proxy — Form 36, vol. 2, 581
  - Notice of Bankruptcy and First Meeting of Creditors, vol. 2, 566
  - Claims, vol. 2, 743
  - Claims Process, vol. 2, 744
  - Forms
  - Form VII.A.1 — Claims Procedure Order, vol. 2, 746
  - Form VII.A.2 — Model Claims Procedure Order (Quebec), vol. 2, 753
  - Form VII.B.1 — Proof of Claim — Form 31, vol. 2, 759
  - Reclamation of Property Claim 402 (a) Form VII.B.2 — Reclamation of Property Proof of Claim — Form 74, vol. 2, 761

## INDEX

- Insolvency (*cont'd*)
- Form VII.B.3 — Demand for Repossession of Goods (30-Day Goods Claim) — Form 75 , vol. 2, 763
  - Form VII.B.4 — Notice by Trustee Requiring Filing of Proof of Security — Form 76 , vol. 2, 763
  - Form VII.B.5 — Notice of Disallowance of Claim, Right to Priority or Security or Notice of Valuation of Claim — Form 77, vol. 2, 764
  - Form VII.B.6 — Appeal of Disallowance , vol. 2, 764
  - *Companies' Creditors Arrangement Act* , vol. 2, 665
  - Commencing CCAA Proceedings , vol. 2, 665
  - Debtor-in-Possession Financing , vol. 2, 667
  - Forms
    - Form V.A.1 — Resolution of the Board of Directors Authorizing Filing for CCAA Protection , vol. 2, 669
    - Form V.A.2 — Initial Affidavit , vol. 2, 670
    - Form V.A.3 — Model Initial Order (Ontario), with explanatory notes, vol. 2, 675
    - Form V.A.4 — Model Initial Order (Alberta), with explanatory notes , vol. 2, 675
    - Form V.A.5 — Model Initial Order (BC), with explanatory notes , vol. 2, 675
    - Form V.A.6 — Model Initial Order (Quebec), vol. 2, 692
    - Form V.A.7 — Monitor Consent to Act , vol. 2, 703
    - Form V.B.1 — Notice of Motion for Extension of Stay , vol. 2, 703
    - Form V.B.2 — Order Extending Stay of Proceedings , vol. 2, 705
    - Form V.C.1 — Debtor in Possession Financing Order , vol. 2, 705
    - Form V.D.1 — Plan of Compromise or Arrangement, vol. 2, 710
    - Form V.D.2 — Plan Meeting and Approval Order , vol. 2, 727
    - Form V.D.3 — Plan Sanction Order , vol. 2, 731
    - Plans of Compromise or Arrangement , vol. 2, 668
    - Stay Extension, vol. 2, 667
    - Disclaimers, vol. 2, 765
    - Disclaimers of Agreements , vol. 2, 765
    - Forms
      - Form VIII.A.1 — Notice by Debtor to Disclaim or Resiliate an Agreement in a Proposal — Form 44.1 , vol. 2, 766
      - Form VIII.A.2 — Notice to Lessor to Disclaim or Resiliate a Lease by Commercial Tenant in a Proposal — Form 45 , vol. 2, 767
    - Fees and Fee Approval , vol. 2, 736
    - Forms
      - Form VI.1 — Notice of Application for Taxation of Accounts and Discharge of Interim Receiver — Form 18 , vol. 2, 737
      - Form VI.2 — Notice of Motion re Approval of Fees , vol. 2, 738
      - Form VI.3 — Affidavit of Restructuring Professional re Fees, vol. 2, 740
      - Form VI.3 — Affidavit of Restructuring Professional re Fees, vol. 2, 741
      - Form VI.5 — Order re Fees, vol. 2, 742
    - Foreign Proceedings, vol. 2, 790
    - Commencing Foreign Proceedings , vol. 2, 791

## CANADIAN PRECEDENTS OF PLEADINGS

- Insolvency (*cont'd*)
- Foreign Plan Recognition , vol. 2, 792
  - Forms
    - Form X.A.1 — Application for Recognition Order , vol. 2, 792
    - Form X.A.2 — Order Recognizing Foreign Proceeding , vol. 2, 795
    - Form X.A.3 — Supplemental Order , vol. 2, 798
    - Form X.B.1 — Foreign Plan Recognition Order , vol. 2, 805
    - Form XI.1 — Practice Direction Regarding Frequently Cited Cases , vol. 2, 809
  - Practice Directions, vol. 2, 809
  - Proposals, vol. 2, 594
  - Approval of the Proposal , vol. 2, 595
  - Cash-Flow Statements and Reports , vol. 2, 595
  - Commencing proceedings , vol. 2, 594
  - Default/Annulment of Proposal , vol. 2, 597
  - Extension of time to make a proposal , vol. 2, 595
  - Forms
    - Form III.A.1 — Resolution of the Board of Directors of the Corporation Authorizing Proposal , vol. 2, 598
    - Form III.A.2 — Notice of Intention to Make a Proposal — Form 33 , vol. 2, 598
    - Form III.A.3 — Form of Proposal , vol. 2, 599
    - Form III.A.4 — Notice of Proposal to Creditors — Form 92, vol. 2, 609
    - Form III.A.5 — Consent of Trustee to Act Under the Proposal, vol. 2, 609
  - Form III.B.1 — Trustee's Report on Cash-flow Statements — Form 29, vol. 2, 610
  - Form III.B.2 — Report on Cash-flow Statement by the Person Making the Proposal - Form 30, vol. 2, 611
  - Form III.B.3 — Report of Trustee on Non-filing of Cash-flow Statement or Proposal — Form 34 , vol. 2, 612
  - Form III.C.1 — Notice of Motion to Extend Time for Making a Proposal, vol. 2, 612
  - Form III.C.2 — Affidavit in Support of Motion to Extend Time for Making a Proposal , vol. 2, 614
  - Form III.C.3 — Order Extending Time for Making a Proposal, vol. 2, 616
  - Form III.D.1 — Proxy — Form 36 , vol. 2, 617
  - Form III.D.2 — Voting Letter — Form 37 , vol. 2, 617
  - Form III.D.3 — Report of Trustee on Refusal by Creditors to Approve Proposal — Form 38, vol. 2, 618
  - Form III.D.4 — Report of Trustee on Proposal — Form 40, vol. 2, 618
  - Form III.D.5 — Notice of Hearing of Application for Court Approval of Proposal — Form 40.1, vol. 2, 620
  - Form III.D.6 — Report of Trustee on Refusal by Court to Approve Proposal — Form 41, vol. 2, 621
  - Form III.E.1-Notice of Default in the Performance of a Proposal — Form 43, vol. 2, 621
  - Form III.E.2-Report of Trustee on Annulment of Proposal — Form 43.1, vol. 2, 622



## INDEX

- Insolvency (*cont'd*)
  - Form III.E.3 — Order Annulling Proposal — Form 43.2, vol. 2, 623
  - Form III.F.1 — Certificate of Full Performance of Proposal — Form 46, vol. 2, 624
  - Performance of Proposal, vol. 2, 597
  - Receiverships, vol. 2, 624
  - Enforcement of Security, vol. 2, 624
  - Appointment of Interim Receiver, vol. 2, 625
  - Appointment of National Receiver, vol. 2, 625
  - Discharge of Receiver, vol. 2, 627
  - Duties of Receiver, vol. 2, 626
  - Enforcement of Security, vol. 2, 624
  - Forms
    - Form IV.A.1 — Notice of Intention to Enforce Security (Bankruptcy and Insolvency Act) — Form 86, vol. 2, 627
    - Form IV.A.1 — Notice of Intention to Enforce Security (Bankruptcy and Insolvency Act) — Form 86, vol. 2, 627
    - Form IV.B.1 — Notice of Motion for Appointment of Interim Receiver, vol. 2, 628
    - Form IV.B.2 — Model Order Appointing Interim Receiver (Alberta), with explanatory notes, vol. 2, 630
    - Form IV.B.3 — Order Appointing Interim Receiver, vol. 2, 630
    - Form IV.C.1 — Notice of Motion for Appointment of Receiver, vol. 2, 638
    - Form IV.C.2 — Receiver Consent to Act, vol. 2, 640
    - Form IV.C.3 — Model Receiver Order (Ontario), vol. 2, 641
    - Form IV.C.4 — Model Receiver Order (British Columbia), with explanatory notes, vol. 2, 641
    - Form IV.C.5 — Model Receiver Order (Quebec), vol. 2, 650
    - Form IV.D.1 — Notice and Statement of Receiver-Form 87, vol. 2, 656
    - Form IV.E.1 — Notice of Motion for Discharge of Receiver, vol. 2, 657
    - Form IV.E.2 — Receiver's Final Report / Form 12-Statement of Receipts and Disbursements, vol. 2, 659
    - Form IV.E.3 — Model Discharge Order (Ontario), with explanatory notes, vol. 2, 663
    - Form IV.E.3 — Model Discharge Order (British Columbia), with explanatory notes, vol. 2, 663
    - Trustee, vol. 2, 582
    - Discharge of, vol. 2, 583
    - Final dividend, payment of, vol. 2, 583
    - Forms, vol. 2, 585
    - Form II.A.1 — Report of Trustee under Subsections 171(1) and (2) — Form 83, vol. 2, 585
    - Form II.A.2 — Statement of Receipts and Disbursements — Form 12, vol. 2, 587
    - Form II.B.1 — Application of Former Trustee to Pass Accounts — Form 7, vol. 2, 590
    - Form II.B.2 — Affidavit Verifying Application to Pass Accounts — Form 8, vol. 2, 590
    - Form II.C.1 — Notice of Final Dividend and Application for Discharge of Trustee — Form 11, vol. 2, 591
    - Form II.C.2 — Application of Trustee for Discharge — Form 10, vol. 2, 592
    - Form II.C.3 — Affidavit of Mailing, vol. 2, 592

## CANADIAN PRECEDENTS OF PLEADINGS

- Insolvency (*cont'd*)
- Form II.C.4 — Trustee's Discharge Order , vol. 2, 593
  - Report of , vol. 2, 582
  - Substitution of , vol. 2, 583
- Intellectual Property**, vol. 2, 813
- Application for Copyright and Moral Right Infringement , vol. 2, 833
  - Notice of application , vol. 2, 833
  - Copyright Litigation in Canada, vol. 2, 819
  - Counterclaim, vol. 2, 831
  - Invalidity of copyright, vol. 2, 832
  - Miscellaneous, vol. 2, 832
  - Non-infringement, vol. 2, 832
  - Parties, vol. 2, 831
  - Plaintiff by counterclaim's business and activities , vol. 2, 831
  - Prayer for relief , vol. 2, 831
  - Precedents, vol. 2, 834
  - Application for Copyright and Moral Right Infringement , vol. 2, 866
  - Acceptance of Admissions, Admissions, Denials and/or No Knowledge of, vol. 2, 862, 864, 865
  - Acts or Omissions Contrary to Moral Rights were Consented to by the Plaintiff, vol. 2, 857
  - Admissions, Denials and/or No Knowledge of Allegations Made in Statement of Claim, vol. 2, 849
  - Applicant's Copyright, vol. 2, 870
  - Applicant's Moral Rights , vol. 2, 876
  - Application will be Supported by the Following Material , vol. 2, 882
  - Assignee is Entitled to Commence Copyright Proceedings , vol. 2, 874
  - Assignment / License of Rights from Individual(s) / Employee(s) / Independent Contractor(s) to the Applicant, vol. 2, 872
  - Assignment / License of Rights from Individual(s) / Employee(s) / Independent Contractor(s) to the Plaintiff , vol. 2, 841
  - Authors of the Work and Other Subject Matter Were Those Who Contributed Skill and Judgment in the Authorship of said Work and Other Subject Matter, vol. 2, 863
  - Authorship, vol. 2, 839, 844, 871, 876
  - Citizenship and Residency, vol. 2, 840, 872
  - Citizenship and Residency of Author, vol. 2, 844, 876
  - Claims are Time Barred , vol. 2, 858
  - Claims Barred by the Doctrines of Estoppels, Waiver, Acquiescence and Laches , vol. 2, 858
  - Clean Hands , vol. 2, 864
  - Collective Work , vol. 2, 871
  - Collective Work / Compilation of Works , vol. 2, 871
  - Compilation of Works , vol. 2, 871
  - Continuing Infringement Requires Restraint by the Court, vol. 2, 864
  - Copyright, vol. 2, 863
  - Copyright and Moral Right Infringement, vol. 2, 834
  - Copyright was not Registered at the Material Time, vol. 2, 859
  - Costs, vol. 2, 837, 861, 869
  - Counterclaim, vol. 2, 861
  - Damages, vol. 2, 879
  - Damages and Accounting of Profits, vol. 2, 837, 846, 869, 879
  - Declaration of Copyright and Moral Rights in Work , vol. 2, 834
  - Declaration of Copyright in Other Subject Matter , vol. 2, 834, 866

## INDEX

- Intellectual Property (*cont'd*)
  - Declaration of Infringement of Copyright in Work and Other Subject Matter, vol. 2, 834, 866
  - Declaration of Infringement of Moral Right, vol. 2, 834, 866
  - Declaration of Invalidity of Copyright Registration, vol. 2, 861
  - Defence of Assignment / License Generally , vol. 2, 854
  - Defence of Consent, vol. 2, 855
  - Defence of Fair Dealing , vol. 2, 855
  - Defence to Counterclaim, vol. 2, 864
  - Defences, vol. 2, 850
  - Defendant did not Infringe Plaintiff's Moral Rights, vol. 2, 857
  - Defendant Did Not Obtain Copyright Clearances, vol. 2, 863
  - Defendant is Owner of Copyright in Collective Work / Compilation of Works, vol. 2, 854
  - Defendant was Aware of the Plaintiff's Copyright , vol. 2, 845, 864
  - Defendant's Infringing Acts with respect to the Plaintiff's Communication Signal, vol. 2, 843
  - Defendant's Infringing Acts with respect to the Plaintiff's Copyrighted Work and Other Subject Matter, vol. 2, 842
  - Defendant's Infringing Acts with respect to the Plaintiff's Moral Rights, vol. 2, 844
  - Defendant's Infringing Acts with respect to the Plaintiff's Performance, vol. 2, 842
  - Defendant's Infringing Acts with respect to the Plaintiff's Sound Recording, vol. 2, 842
  - Defendant's Infringing Acts — Primary Infringement, vol. 2, 842
  - Defendant's Infringing Acts — Secondary Infringement, vol. 2, 843
  - Delivery Up / Destruction, vol. 2, 837, 848, 869, 880
  - Denial of Copyright Ownership , vol. 2, 851
  - Denial of Infringement Conclusion, vol. 2, 858
  - Denial of Ownership of Copyright, vol. 2, 851
  - Denial of Subsistence of Copyright , vol. 2, 850
  - Details of Appropriate Subject — matter for Copyright/Registration, vol. 2, 870
  - Details of Copyright/Registration, vol. 2, 838
  - Duration of Copyright, vol. 2, 840, 872, 876
  - Duration of Moral Rights, vol. 2, 844
  - Employee(s) of the Applicant, vol. 2, 871
  - Exclusive Licensee is Entitled to Commence Copyright Proceedings, vol. 2, 874
  - Extent Unknown , vol. 2, 845, 877
  - Fair Dealing Does Not Apply , vol. 2, 863
  - Independent Contractor(s) retained by the Applicant, vol. 2, 872
  - Infringement of Moral Rights, vol. 2, 845, 877
  - Injunction, vol. 2, 835, 845, 867, 877
  - Interest, vol. 2, 837, 869
  - Limitation Period has not Expired, vol. 2, 864
  - Miscellaneous, vol. 2, 849, 861, 862, 865, 881
  - Moral Rights , vol. 2, 864

## CANADIAN PRECEDENTS OF PLEADINGS

- |   |     |   |
|---|-----|---|
| Intellectual Property ( <i>cont'd</i> )   | ••• | Plaintiff is not the Assignee , vol. 2, 854   |
| ••• No Assignment / License / Consent / Authorization Given to the Defendant, vol. 2, 863 | ••• | Plaintiff is not the Exclusive Licensee, vol. 2, 853  |
| ••• No Cease and Desist Letter was sent , vol. 2, 855                                     | ••• | Plaintiff is Only Entitled to an Injunction because the Defendant was not Aware of Copyright, vol. 2, 858 |
| ••• No Copyright Infringement, vol. 2, 854  | ••• | Plaintiff is only Entitled to Nominal Statutory Damages, vol. 2, 860                                      |
| ••• No Moral Right Infringement , vol. 2, 856   | ••• | Plaintiff not Entitled to Commence Copyright Proceedings, vol. 2, 853                                     |
| ••• No Moral Rights Exist , vol. 2, 856   | ••• | Plaintiff Obtained a Valid Assignment / License, vol. 2, 863  |
| ••• No Waiver of Moral Rights , vol. 2, 841, 873  | ••• | Plaintiff waived his/her Moral Rights , vol. 2, 857   |
| ••• Notice of Application , vol. 2, 866   | ••• | Plaintiff's Copyright , vol. 2, 838   |
| ••• Originality, vol. 2, 840, 872   | ••• | Plaintiff's Copyright Registration(s) are Invalid , vol. 2, 862   |
| ••• Other Relief , vol. 2, 838, 862, 870  | ••• | Plaintiff's Moral Rights , vol. 2, 844  |
| ••• Ownership of Moral Rights, vol. 2, 844, 876   | ••• | Prayer for Relief , vol. 2, 834, 866  |
| ••• Partial Assignment / License of Rights from the Applicant to Respondent, vol. 2, 873  | ••• | Presumption of Author(s) as the First Owner, vol. 2, 871  |
| ••• Partial Assignment / License of Rights from the Plaintiff to Defendant , vol. 2, 841  | ••• | Proceedings by way of Application, vol. 2, 881  |
| ••• Parties, vol. 2, 838, 850, 870  | ••• | Punitive / Exemplary, vol. 2, 837, 848, 869, 881  |
| ••• Persons Entitled to Commence Copyright Proceedings, vol. 2, 873, 842                  | ••• | Punitive / Exemplary Available even if Applicant Elects Statutory Damages, vol. 2, 881                    |
| ••• Place of Trial , vol. 2, 881  | ••• | Punitive / Exemplary Available even if Plaintiff Elects Statutory Damages, vol. 2, 849                    |
| ••• Plaintiff does not have Moral Rights, vol. 2, 856                                     | ••• | Recovery of all Infringing Copies, vol. 2, 837, 848, 869, 880   |
| ••• Plaintiff is Entitled to Equitable Remedies, vol. 2, 864                              | ••• | Registered Copyright , vol. 2, 845, 877   |
| ••• Plaintiff is not Entitled to an Injunction , vol. 2, 858                              | ••• | Remedies, vol. 2, 835, 845, 861, 867, 877   |
| ••• Plaintiff is Not Entitled to Any Remedies , vol. 2, 858                               | ••• | Reply, vol. 2, 862  |
| ••• Plaintiff is not Entitled to Damages and Accounting of Profits, vol. 2, 859           | ••• | Reply and Miscellaneous , vol. 2, 865   |
| ••• Plaintiff is not Entitled to Statutory Damages , vol. 2, 860                          |     |   |

## INDEX

- Intellectual Property (*cont'd*)
- Reply to Defence to Counterclaim, vol. 2, 865
  - Respondent's Infringing Acts with respect to the Applicant's Communication Signal, vol. 2, 875
  - Respondent's Infringing Acts with respect to the Applicant's Copyrighted Work and Other Subject Matter, vol. 2, 874
  - Respondent's Infringing Acts with respect to the Applicant's Moral Rights, vol. 2, 876
  - Respondent's Infringing Acts with respect to the Applicant's Performance, vol. 2, 874
  - Respondent's Infringing Acts with respect to the Applicant's Sound Recording, vol. 2, 875
  - Respondent's Infringing Acts — Primary Infringement, vol. 2, 874
  - Respondent's Infringing Acts — Secondary Infringement, vol. 2, 875
  - Right of Integrity of the Work, vol. 2, 844, 857, 876
  - Right to be Identified with the Work, vol. 2, 844, 877
  - Secondary Infringement, vol. 2, 868
  - Statement of claim, vol. 2, 834
  - Statement of Defence, vol. 2, 284
  - Statutory Damages, vol. 2, 847
  - The Applicant will rely on, vol. 2, 881
  - The Defendant was not Aware that its Activities were an Infringement the Plaintiff's Rights, vol. 2, 855
  - Type of Assignment / Grant, vol. 2, 873
  - Wide Injunction, vol. 2, 846
  - Reply, vol. 2, 832
  - Acceptance of admissions, admissions, denials and/or no knowledge of allegations made in statement of defence, vol. 2, 832
  - Miscellaneous, vol. 2, 832
  - Reply and Defence to Counterclaim, vol. 2, 832
  - Acceptance of admissions, admissions, denials and/or no knowledge of allegations made in statement of defence/counterclaim, vol. 2, 832
  - Defence to counterclaim, vol. 2, 833
  - Miscellaneous, vol. 2, 833
  - Reply, vol. 2, 832
  - Reply to defence to counterclaim, vol. 2, 833
  - Admissions, denials, and/or assertions of no knowledge of allegations made in the defence to counterclaim, vol. 2, 833
  - Reply and Miscellaneous, vol. 2, 833
  - Statement of Claim — Copyright and Moral Right Infringement, vol. 2, 821
  - Miscellaneous, vol. 2, 827
  - Parties, vol. 2, 823
  - Plaintiff's copyright and standing to sue for relief, vol. 2, 824
  - Plaintiff's moral rights, vol. 2, 826
  - Prayer for relief, vol. 2, 821
  - Relief sought and quantum, vol. 2, 827
  - Statement of Defence, vol. 2, 827
  - Admissions, denials and/or assertions of no knowledge of allegations made in Statement of Claim, vol. 2, 827
  - Defences, vol. 2, 827
  - Denial of subsistence/validity of copyright, vol. 2, 827
  - Denial of copyright ownership, vol. 2, 828
  - Defendant's business and activities, vol. 2, 827
  - Disentitlement to relief claimed, vol. 2, 831

## CANADIAN PRECEDENTS OF PLEADINGS

- Intellectual Property (*cont'd*)
  - • Limitation period, vol. 2, 831
  - • Miscellaneous, vol. 2, 831
  - • No copyright infringement, vol. 2, 828
    - • • Defence of consent , vol. 2, 829
    - • • Defence of fair dealing , vol. 2, 829
  - • Parties, vol. 2, 827
  - • Unenforceability of moral rights , vol. 2, 831
- Judicial Review** , vol. 2, 1053
  - Applications for judicial review , vol. 2, 1058
  - Declarations , vol. 2, 1057
  - Definition of judicial review , vol. 2, 1053
  - Grounds for judicial review , vol. 2, 1054
  - Injunctions, vol. 2, 1057
  - Precedents, judicial review, vol. 2, 1064
  - • Application for Habeas Corpus , vol. 2, 1067
  - • Originating Notice, vol. 2, 1064
  - • Sample Order for Habeas Corpus , vol. 2, 1068
  - • Sample Order for Miscellaneous Remedies , vol. 2, 1067
  - • Sample Return, vol. 2, 1066
  - • Prerogative remedies , vol. 2, 1056
    - • Certiorari, vol. 2, 1056
    - • Habeas corpus , vol. 2, 1056
    - • Mandamus, vol. 2, 1056
    - • Quo warranto, vol. 2, 1056
    - • Prohibition , vol. 2, 1056
  - Procedural considerations , vol. 2, 1059
  - • Forums, vol. 2, 1059
  - • Interim orders , vol. 2, 1063
  - • Originating documents , vol. 2, 1061
  - • Returns or records, vol. 2, 1063
  - • Time limits, vol. 2, 1060
- Recent Developments , vol. 2, 1071
  - • Dunsmuir, effect on standard of review , vol. 2, 1072
    - • • Practical effect , vol. 2, 1072
    - • • Two standards of review , vol. 2, 1072
  - • Precedents, vol. 2, 1079
    - • • Factum of Applicant , vol. 2, 1085
    - • • Factum of Respondent , vol. 2, 1079
  - • Rise and Fall of Reasons as an Element of Procedural Fairness, vol. 2, 1075
  - Remedies, types of , vol. 2, 1056
  - • Declarations, vol. 2, 1057
  - • Injunctions, vol. 2, 1057
  - • Prerogative, vol. 2, 1056
  - Sample forms , vol. 2, 1063
- Judicial Review, Recent Developments In**, vol. 2, 1071
  - Dunsmuir, effect on standard of review , vol. 2, 1072
  - • Practical effect , vol. 2, 1072
  - • Two standards of review , vol. 2, 1072
  - Precedents, vol. 2, 1079
  - • Factum of Applicant , vol. 2, 1085
  - • Factum of Respondent, vol. 2, 1079
  - Rise and Fall of Reasons as an Element of Procedural Fairness, vol. 2, 1075
- Patents**, vol. 2, 923
  - Patent litigation in Canada , vol. 2, 923
  - Counterclaim, patent declaration of non-infringement and/or impeachment , vol. 2, 946
    - • Defendant by counterclaim's infringement of the patent , vol. 2, 946
    - • Parties , vol. 2, 946
    - • Plaintiff by counterclaim's patent rights and standing to sue, vol. 2, 946
    - • Prayer for relief , vol. 2, 946

## INDEX

- Patents (*cont'd*)
- Quantum, vol. 2, 946
  - Relief sought, vol. 2, 946
  - Counterclaim, patent infringement , vol. 2, 941
    - Defendant by counterclaim's false and misleading statements, vol. 2, 942
    - Invalidity of patent , vol. 2, 942
    - Non-infringement , vol. 2, 942
    - Parties, vol. 2, 941
    - Plaintiff by counterclaim's business and technology, vol. 2, 942
    - Prayer for relief , vol. 2, 941
  - Invalidity of patent, statement of defence, vol. 2, 938
    - Ambiguity and indefiniteness , vol. 2, 938
    - Anticipation and obviousness, vol. 2, 933
    - Claims broader than invention made or disclosed , vol. 2, 938
    - Double patenting , vol. 2, 938
    - Failure to fulfill duty of candour , vol. 2, 940
    - Improperly added subject matter , vol. 2, 939
    - Insufficiency of disclosure , vol. 2, 937
    - Irrevocable abandonment , vol. 2, 939
    - Lack of sound prediction , vol. 2, 937
    - Material misrepresentation and willful omission and addition, vol. 2, 939
    - Non-statutory subject matter , vol. 2, 936
    - Utility, vol. 2, 937
  - Precedents, vol. 2, 947
    - Counterclaim, patent declaration of non-infringement and/or impeachment , vol. 2, 959
    - Counterclaim, patent infringement , vol. 2, 965
      - Reply and Defence to Counterclaim, patent declaration of non-infringement and/or impeachment, vol. 2, 966
      - Reply and Defence to Counterclaim, patent infringement , vol. 2, 962
      - Reply, patent declaration of non-infringement and/or impeachment, vol. 2, 966
      - Reply, patent infringement , vol. 2, 961
      - Reply to Defence to Counterclaim, patent declaration of non-infringement and/or impeachment , vol. 2, 967
      - Reply to Defence to Counterclaim, patent infringement , vol. 2, 962
      - Statement of Claim, patent declaration of non-infringement and/or impeachment , vol. 2, 963
      - Statement of Claim, patent infringement , vol. 2, 947
      - Statement of Defence, patent declaration of non-infringement and/or impeachment , vol. 2, 964
      - Statement of Defence, patent infringement , vol. 2, 951
    - Reply and Defence to Counterclaim, patent infringement , vol. 2, 943
      - Admissions, denials, assertions , vol. 2, 943
      - Defence to Counterclaim , vol. 2, 943
      - Reply, vol. 2, 943
    - Reply to Defence to Counterclaim, patent infringement , vol. 2, 943
      - Admissions, denials, assertions , vol. 2, 943
      - Reply, vol. 2, 943
    - Reply and Defence to Counterclaim, patent declaration of non-infringement and/or impeachment , vol. 2, 947
      - Admissions, denials, assertions , vol. 2, 947
      - Defence to Counterclaim , vol. 2, 947
      - Reply, vol. 2, 947

## CANADIAN PRECEDENTS OF PLEADINGS

- Patents (*cont'd*)
- Reply to Defence to Counterclaim, patent declaration of non-infringement and/or impeachment , vol. 2, 947
  - Admissions, denials, assertions , vol. 2, 947
  - Reply, vol. 2, 947
  - Reply, patent declaration of non-infringement and/or impeachment, vol. 2, 946
  - Admissions, denials, assertions , vol. 2, 946
  - Reply , vol. 2, 946
  - Reply, patent infringement , vol. 2, 942
  - Admission, denials, assertions , vol. 2, 942
  - Reply, vol. 2, 942
  - Statement of Claim, patent declaration of non-infringement and/or impeachment, vol. 2, 943
  - Defendant's patent , vol. 2, 944
  - Invalidity of patent, vol. 2, 944
  - Non-infringement , vol. 2, 944
  - Parties , vol. 2, 944
  - Plaintiff's business, technology and standing , vol. 2, 944
  - Prayer for relief , vol. 2, 944
  - Statement of Claim, patent infringement , vol. 2, 926
  - Conveyed sales , vol. 2, 930
  - Defendant's infringing acts, vol. 2, 929
  - Parties, vol. 2, 927
  - Plaintiff's patent rights , vol. 2, 928
  - Prayer for relief, vol. 2, 926
  - Quantum, vol. 2, 930
  - Relief sought , vol. 2, 930
  - Standing to sue for relief , vol. 2, 928
  - Statement of Defence, patent infringement, vol. 2, 931
  - Admissions, denials, assertions, vol. 2, 932
  - Defendant's business and technology , vol. 2, 932
  - Disentitlement to relief claimed , vol. 2, 940
  - Invalidity of patent , vol. 2, 933
  - Ambiguity and indefiniteness , vol. 2, 938
  - Anticipation and obviousness , vol. 2, 933
  - Claims broader than invention made or disclosed , vol. 2, 938
  - Double patenting , vol. 2, 938
  - Failure to fulfill duty of candour , vol. 2, 940
  - Improperly added subject matter , vol. 2, 939
  - Insufficiency of disclosure , vol. 2, 937
  - Irrevocable abandonment , vol. 2, 939
  - Lack of sound prediction , vol. 2, 937
  - Material misrepresentation and willful omission and addition, vol. 2, 939
  - Non-statutory subject matter, vol. 2, 936
  - Utility , vol. 2, 937
  - Limitation periods , vol. 2, 940
  - Non-infringement , vol. 2, 932
  - Parties, vol. 2, 932
  - Patent, unenforceability , vol. 2, 940
  - Plaintiff's lack of rights/standing , vol. 2, 932
  - Statement of Defence, patent declaration of non-infringement and/or impeachment , vol. 2, 945
  - Admissions, denials, assertions, vol. 2, 945
  - Defendant's patent rights , vol. 2, 945
  - Enforceability of the patent , vol. 2, 945
  - Parties, vol. 2, 945



## INDEX

- Patents (*cont'd*)
  - Plaintiff's infringement of the patent , vol. 2, 945
  - Plaintiff's lack of standing , vol. 2, 945
  - Validity of the patent , vol. 2, 945
- Personal Injury**, vol. 2, 1094
  - Animal bites, vol. 2, 1154
  - Claims, vol. 2, 1154
  - Defences, vol. 2, 1157
  - Statement of Claim, sample precedent , vol. 2, 1155
  - Statement of Defence, sample precedent , vol. 2, 1157
  - Animals on the road , vol. 2, 1115
  - Statement of Claim sample precedent , vol. 2, 1115
  - Class actions, sample Statement of Claim , vol. 2, 1159
  - Class actions, sample Statement of Defence , vol. 2, 1161
  - Damages, types of , vol. 2, 1096
  - Loss of housekeeping capacity , vol. 2, 1097
  - Non-pecuniary damages , vol. 2, 1096
  - Pecuniary damages , vol. 2, 1098
  - Punitive damages , vol. 2, 1098
  - Defences, vol. 2, 1116
  - Contributory negligence , vol. 2, 1116
  - *Ex turpi causa* , vol. 2, 1118
  - Inevitable accident , vol. 2, 1117
  - Lack of service , vol. 2, 1116
  - Limitation defence , vol. 2, 1116
  - Statutory defences , vol. 2, 1117
  - Fatal Accidents , vol. 2, 1110
  - Sample precedent , vol. 2, 1111
  - Harassment, workplace , vol. 2, 1147
  - Defences , vol. 2, 1149
  - Statement of Claim, sample precedent, vol. 2, 1147
  - Statement of Defence of the Defendant Employer , sample precedent , vol. 2, 1149
  - Motor Vehicle Claims , vol. 2, 1099
  - Style of cause , vol. 2, 1099
  - Action against unidentified owner or driver , vol. 2, 1103
  - Sample claim , vol. 2, 1103
  - Action by minor , vol. 2, 1100
  - Sample claim , vol. 2, 1101
  - Action by person of unsound mind , vol. 2, 1103
  - MVA Claims, mechanism of accident , vol. 2, 1105
  - Sample Statements of Claim
  - Head on collision , vol. 2, 1108
  - Improper passing , vol. 2, 1109
  - Left turn , vol. 2, 1107
  - Rear end collisions , vol. 2, 1105
  - Nuisance, vol. 2, 1150
  - Claims , vol. 2, 1150
  - Defences, vol. 2, 1152
  - Private, vol. 2, 1150
  - Public, vol. 2, 1150
  - Statement of Claim, sample precedent , vol. 2, 1150
  - Statement of Defence, sample precedent , vol. 2, 1153
  - Occupiers' Liability , vol. 2, 1133
  - Claim to include independent contractor hired by occupier, vol. 2, 1137
  - Sample Precedent , vol. 2, 1137
  - Claim Pursuant to Statute , vol. 2, 1135
  - Sample Precedent , vol. 2, 1135
  - General claim at common law, vol. 2, 1133
  - Sample Precedent , vol. 2, 1133
  - Occupiers' Liability Defences , vol. 2, 1139
  - Acceptance of risk, vol. 2, 1145

## CANADIAN PRECEDENTS OF PLEADINGS

- Personal Injury (*cont'd*)
- Filed by occupier , vol. 2, 1140
  - Independent contractor , vol. 2, 1140
  - Precedents
    - Statement of Defence, acceptance of risk, sample precedent, vol. 2, 1146
    - Statement of Defence filed by independent contractor, vol. 2, 1140
    - Statement of Defence filed by occupier sample precedent , vol. 2, 1141
    - Statement of Defence, general, sample precedent, vol. 2, 1139
    - Statement of Defence, recreational property, sample precedent, vol. 2, 1143
    - Statement of Defence, trespassers, sample precedent , vol. 2, 1144
  - Recreational property , vol. 2, 1142
  - Trespassers, vol. 2, 1144
  - Other Pleadings , vol. 2, 1119
    - Counterclaim , vol. 2, 1119
    - Sample Precedent , vol. 2, 1119
    - Defence to third party notice , vol. 2, 1121
      - Sample Precedent , vol. 2, 1121
    - Third party notice , vol. 2, 1120
      - Sample Precedent , vol. 2, 1120
  - Precedents
    - Action against unidentified owner or driver , vol. 2, 1103
    - Action by minor, motor vehicle accident , vol. 2, 1100
    - Action by person of unsound mind, motor vehicle accident , vol. 2, 1103
    - Animal Bites, Statement of Claim , vol. 2, 1155
    - Animal Bites, Statement of Defence , vol. 2, 1157
    - Animals on the Road, Statement of Claim , vol. 2, 1115
    - Claim pursuant to statute, occupier's liability, vol. 2, 1135
    - Claim to include independent contractor hired by occupier, vol. 2, 1137
    - Class Action Statement of Claim , vol. 2, 1159
    - Class Action Statement of Defence , vol. 2, 1161
    - Counterclaim, vol. 2, 1119
    - Defence of Retailer, product liability , vol. 2, 1130
    - Defence of Retailer and Manufacturer, product liability , vol. 2, 1128
    - Defence to third party notice , vol. 2, 1121
    - Fatal accident claim , vol. 2, 1111
    - General claim at common law, occupier's liability, vol. 2, 1133
    - Nuisance statement of claim , vol. 2, 1150
    - Nuisance statement of defence , vol. 2, 1153
    - Statement of Claim, Head on collision , vol. 2, 1108
    - Statement of Claim, Improper passing , vol. 2, 1109
    - Statement of Claim, Left turn , vol. 2, 1107
    - Statement of claim, product liability , vol. 2, 1125
    - Statement of Claim, Rear end collisions , vol. 2, 1105
    - Statement of Claim, workplace harassment , vol. 2, 1147
    - Statement of Defence, acceptance of risk , vol. 2, 1146
    - Statement of Defence of defendant employer, workplace harassment, vol. 2, 1149
    - Statement of Defence filed by independent contractor , vol. 2, 1140

## INDEX

- Personal Injury (*cont'd*)
  - Statement of Defence filed by occupier, vol. 2, 1141
  - Statement of Defence, general , vol. 2, 1139
  - Statement of Defence, recreational property, vol. 2, 1143
  - Statement of Defence, trespassers, vol. 2, 1144
  - Third party notice , vol. 2, 1120
  - Products Liability , vol. 2, 1122
  - Claims , vol. 2, 1122
  - Defence of retailer , vol. 2, 1130
  - Sample Precedent, vol. 2, 1130
  - Defence of retailer and manufacturer , vol. 2, 1128
  - Sample Precedent, vol. 2, 1128
  - Defences , vol. 2, 1128
  - Statement of Claim, sample precedent , vol. 2, 1125
- Privacy**, vol. 2, 1166
  - *Access to Information Act* , vol. 2, 1171
  - *Charter of Rights and Freedoms* , vol. 2, 1166
  - Contextual approach , vol. 2, 1167
  - *Federal Personal Information Protection and Electronic Documents Act*, vol. 2, 1177
  - Informational privacy , vol. 2, 1168
  - Invasion of Privacy , vol. 2, 1182
  - Does it exist? , vol. 2, 1182
  - Why important , vol. 2, 1183
  - Precedents, vol. 2, 1184
  - Applicant's Memorandum of Fact and Law, vol. 2, 1190
  - Notice of Application, Application Under the *Privacy Act*, vol. 2, 1187
  - PIPEDA Application , vol. 2, 1193
  - Statement of Claim, Invasion of Privacy , vol. 2, 1184
  - Statement of Defence, invasion of privacy , vol. 2, 1186
  - Public sector legislation , vol. 2, 1171
  - Federal *Privacy Act*, vol. 2, 1171
  - Access to personal information , vol. 2, 1173
  - Application, vol. 2, 1172
  - Corrections to personal information , vol. 2, 1176
  - Exemptions to the right of access , vol. 2, 1174
  - Rights of access , vol. 2, 1174
  - Oversight, vol. 2, 1176
  - The Federal Court , vol. 2, 1177
  - The privacy commissioner , vol. 2, 1176
  - Protection of personal information , vol. 2, 1172
  - Collection, vol. 2, 1172
  - Disclosure, vol. 2, 1173
  - Retention and record keeping , vol. 2, 1173
  - Use, vol. 2, 1172
  - Provincial legislation , vol. 2, 1177
  - *Privacy Act* , vol. 2, 1171
  - Application, vol. 2, 1172
  - Oversight, vol. 2, 1176
  - Personal information, protection of , vol. 2, 1172
  - Personal information, access to , vol. 2, 1173
  - Privacy of the person , vol. 2, 1168
  - Private sector legislation , vol. 2, 1177
  - *Federal Personal Information Protection and Electronic Documents Act* , vol. 2, 1177
  - Application, vol. 2, 1178
  - Commercial activity , vol. 2, 1178
  - Personal information , vol. 2, 1179
  - Section 4, vol. 2, 1178
  - Main obligations , vol. 2, 1179
  - Privacy principles , vol. 2, 1179

## CANADIAN PRECEDENTS OF PLEADINGS

- Privacy (*cont'd*)
- The reasonable person standard , vol. 2, 1180
  - Oversight , vol. 2, 1181
  - Federal Court , vol. 2, 1181
  - Privacy commissioner, vol. 2, 1181
  - Provincial legislation , vol. 2, 1181
  - Provincial privacy legislation , vol. 2, 1177
  - Search or seizure, reasonableness , vol. 2, 1170
  - Territorial privacy , vol. 2, 1168, 1170
  - The Charter of Rights and Freedoms , vol. 2, 1166
  - Reasonable expectation of privacy , vol. 2, 1170
- Professional Negligence Claims** , vol. 2, 1201
- Breach of contract , vol. 2, 1202
  - Breach of fiduciary duty, vol. 2, 1204
  - Claims, forms of , vol. 2, 1205
  - Claim against an accountant , vol. 2, 1205
  - Claim against auditors , vol. 2, 1208
  - Claims against an engineer , vol. 2, 1224
  - Claim against a financial advisor , vol. 2, 1216
  - Claim against an insurance broker , vol. 2, 1212
  - Claims against a solicitor , vol. 2, 1219
  - Claims against physician and hospital , vol. 2, 1236
  - Battery, vol. 2, 1238
  - Breach of contract , vol. 2, 1238
  - Causation, vol. 2, 1239
  - Clinical Negligence , vol. 2, 1236
  - Healthcare providers , vol. 2, 1236
  - Hospitals , vol. 2, 1237
  - Informed consent , vol. 2, 1238
  - Statement of Claim, sample , vol. 2, 1236
  - Subrogated claim, vol. 2, 1238
  - Vicarious liability , vol. 2, 1239
  - Defences available in professional health liability claims, vol. 2, 1239
  - Battery, vol. 2, 1240
  - Breach of contract , vol. 2, 1240
  - Causation , vol. 2, 1241
  - Clinical negligence, vol. 2, 1239
  - Physician, vol. 2, 1239
  - Hospital, vol. 2, 1240
  - Informed consent , vol. 2, 1240
  - Statement of Defence, sample , vol. 2, 1239
  - Vicarious liability , vol. 2, 1240
  - Health Care Providers, vol. 2, 1230
  - Battery, tort of , vol. 2, 1235
  - Breach of contract, vol. 2, 1235
  - Causation principles , vol. 2, 1232
  - Diagnosis, delay in, vol. 2, 1233
  - Duty of care , vol. 2, 1230
  - Informed consent , vol. 2, 1233
  - Limitation periods , vol. 2, 1236
  - Negligence, tort of , vol. 2, 1230
  - Subrogated claims , vol. 2, 1235
  - Negligence, vol. 2, 1203
  - Negligent Misstatement , vol. 2, 1204
  - Professional Negligence Claims, defence of , vol. 2, 1226
  - Admit facts , vol. 2, 1226
  - Deny conclusions , vol. 2, 1226
  - General denial , vol. 2, 1226
  - Positive defences , vol. 2, 1226
  - Contract, legal enforceability of , vol. 2, 1226
  - Contractual defences , vol. 2, 1227
  - Contributory negligence , vol. 2, 1227
  - Limitation defence , vol. 2, 1226

## INDEX

- Professional Negligence Claims (*cont'd*)
    - • Statement of Defence, sample , vol. 2, 1227
    - Reply and Joinder of Issue , vol. 2, 1229
    - • Sample precedent , vol. 2, 1229
  - Recent Developments in Judicial Review**, vol. 2, 1071
    - Dunsmuir, effect on standard of review , vol. 2, 1072
      - • Practical effect , vol. 2, 1072
      - • Two standards of review , vol. 2, 1072
    - Precedents, vol. 2, 1079
      - • Factum of Applicant , vol. 2, 1085
      - • Factum of Respondent , vol. 2, 1079
    - Rise and Fall of Reasons as an Element of Procedural Fairness, vol. 2, 1075
  - Registered Trademarks** , vol. 2, 970
    - Expungement, trademark , vol. 2, 979
    - Precedents, vol. 2, 980
      - • Counterclaim, trade-mark infringement , vol. 2, 998
      - • Reply and Defence to Counterclaim, trade-mark infringement, vol. 2, 999
      - • Reply, trade-mark infringement , vol. 2, 998
      - • Statement of Claim, trade-mark infringement and passing off, vol. 2, 980
      - • Statement of Defence, trade-mark infringement and passing off, vol. 2, 989
      - • Trade-mark Expungement, vol. 2, 999
    - Statement of Claim, trade-mark infringement and passing off, vol. 2, 972
      - • Defendant's infringing acts , vol. 2, 976
      - • Parties, vol. 2, 974
      - • Plaintiff's rights and standing to sue , vol. 2, 975
      - • Prayer for relief , vol. 2, 972
  - Statement of Defence, trade-mark infringement and passing off, vol. 2, 977
    - • Admissions, denials and/or assertions , vol. 2, 977
    - • Defence of Non-Infringement , vol. 2, 978
      - • • Defence of trade-mark invalidity , vol. 2, 978
      - • • Prohibited mark , vol. 2, 978
      - • • Unregistrable mark, vol. 2, 978
    - • Disentitlement to relief claimed ,
    - • Limitation periods and delay , vol. 2, 978
    - • Plaintiff not entitled to remedies , vol. 2, 979
  - Trade-mark expungement , vol. 2, 979
  - Trademark litigation, types of , vol. 2, 970
- Securities Legislation** , vol. 2, 1246
  - Cause of Action , vol. 2, 1254
    - • Contractual obligations , vol. 2, 1254
    - • Failure to supervise , vol. 2, 1261
    - • Fiduciary, vol. 2, 1256
    - • Fraud/fraudulent misrepresentation, vol. 2, 1263
    - • Negligence and negligent misrepresentation , vol. 2, 1260
    - • Pleading regulatory enforcement proceedings, settlements and findings, vol. 2, 1257
    - • Principal and agent , vol. 2, 1254
    - • Regulatory Requirements, Industry Practices and Internal Dealer Policies, vol. 2, 1257
    - • Similar fact evidence , vol. 2, 1261
    - • Vicarious Liability , vol. 2, 1259
  - Cause of loss , vol. 2, 1247
  - Defences to a claim , vol. 2, 1266
    - • Contributory Negligence , vol. 2, 1268
    - • Dealer/Financial Advisor Defences to Investor Loss Claims, vol. 2, 1267

## CANADIAN PRECEDENTS OF PLEADINGS

- Securities Legislation (*cont'd*)
- Duty to Mitigate, vol. 2, 1268
  - Investor Client Duties and Conduct , vol. 2, 1267
  - Ratification, Estoppel, Waiver, Laches and Acquiescence , vol. 2, 1269
  - Duties, vol. 2, 1254
  - Contractual obligations , vol. 2, 1254
  - Failure to supervise , vol. 2, 1261
  - Fiduciary, vol. 2, 1256
  - Fraud/fraudulent misrepresentation , vol. 2, 1263
  - Negligence and negligent misrepresentation , vol. 2, 1260
  - Pleading regulatory enforcement proceedings, settlements and findings , vol. 2, 1257
  - Principal and agent , vol. 2, 1254
  - Regulatory Requirements, Industry Practices and Internal Dealer Policies, vol. 2, 1257
  - Similar fact evidence , vol. 2, 1261
  - Vicarious Liability, vol. 2, 1259
  - Existence of loss , vol. 2, 1246
  - Fact Expert, role of , vol. 2, 1247
  - Factual Construction of Claim/Defence , vol. 2, 1249
  - Conduct of account , vol. 2, 1251
  - Documents evidencing conduct of the account, vol. 2, 1251
  - Initiation of relationship , vol. 2, 1249
  - Investor client duties and conduct , vol. 2, 1266
  - Contributory Negligence , vol. 2, 1268
  - Dealer/Financial Advisor Defences to Investor Loss Claims, vol. 2, 1267
  - Duty to Mitigate , vol. 2, 1268
  - Investor Client Duties and Conduct , vol. 2, 1267
  - Ratification, Estoppel, Waiver, Laches and Acquiescence, vol. 2, 1269
  - Investor loss claim, completing , vol. 2, 1265
  - Causation, vol. 2, 1265
  - Damages, vol. 2, 1265
  - Parties, vol. 2, 1247
  - Dealer/Financial Advisor , vol. 2, 1248
  - Investor Client: Investor Profile , vol. 2, 1247
  - Pleading a claim , vol. 2, 1254
  - Contractual obligations, vol. 2, 1254
  - Failure to supervise, vol. 2, 1261
  - Fiduciary, vol. 2, 1256
  - Fraud/fraudulent misrepresentation , vol. 2, 1263
  - Negligence and negligent misrepresentation , vol. 2, 1260
  - Pleading regulatory enforcement proceedings, settlements and findings , vol. 2, 1257
  - Principal and agent , vol. 2, 1254
  - Regulatory Requirements, Industry Practices and Internal Dealer Policies , vol. 2, 1257
  - Similar fact evidence , vol. 2, 1261
  - Vicarious Liability , vol. 2, 1259
  - Supreme Court of Canada** , vol. 2, 1273
  - Key documents, overview , vol. 2, 1276
  - Application for leave to appeal , vol. 2, 1276
  - Factum of appellant and respondent , vol. 2, 1276
  - Factum of intervener , vol. 2, 1278
  - Reply, vol. 2, 1277
  - Response, vol. 2, 1277
  - Process, overview , vol. 2, 1273
  - Appeal materials, importance of , vol. 2, 1273
  - Deciding to appeal , vol. 2, 1273

## INDEX

- Supreme Court of Canada (*cont'd*)
  - Steps to appeal , vol. 2, 1274
- Trade Secrets** , vol. 2, 1006
  - Court proceedings, protective orders in , vol. 2, 1026
  - Definition, vol. 2, 1006
  - Delay, vol. 2, 1026
  - Laches, vol. 2, 1026
  - Limitations, vol. 2, 1026
    - Statute of Limitations , vol. 2, 1026
  - Misuse of a trade secret/confidential information, remedies for, vol. 2, 1019
  - Precedents
    - Anton Piller Order , vol. 2, 1041
    - Clauses for Employment Agreements , vol. 2, 1030
    - Confidentiality Agreement , vol. 2, 1028
    - Confidentiality Order , vol. 2, 1038
    - Protective and Confidentiality Order , vol. 2, 1032
  - Prerequisites for Protection of Confidential Information or Trade Secrets, vol. 2, 1008
    - Communication under circumstances of confidence, vol. 2, 1012
      - Circumstances or a relationship of confidence , vol. 2, 1012
      - Confidentiality understood from circumstances, vol. 2, 1017
      - Employee's implied obligations , vol. 2, 1013
      - Fiduciary duty , vol. 2, 1014
      - Implied contract , vol. 2, 1013
      - No protection where no confidential communication , vol. 2, 1017
      - Written contract, vol. 2, 1012
  - Information conveyed confidential , vol. 2, 1008
    - Collections of public information , vol. 2, 1010
    - Ownership/Creation , vol. 2, 1009
- Reverse engineering, vol. 2, 1011
- Misuse of confidential information , vol. 2, 1018
  - Onus , vol. 2, 1018
- Protective orders in court proceedings , vol. 2, 1026
- Remedies for Misuse of a Trade Secret , vol. 2, 1019
  - Accounting of profits, vol. 2, 1024
  - Anton Piller order , vol. 2, 1023
  - Constructive trust , vol. 2, 1024
  - Damages, vol. 2, 1023
  - Injunctive relief , vol. 2, 1019
    - Delay, vol. 2, 1022
    - Interlocutory injunction , vol. 2, 1020
    - Last beyond the life of the secret , vol. 2, 1021
    - Last until expiry of secret , vol. 2, 1021
    - Non-compete order , vol. 2, 1022
    - Permanent injunction , vol. 2, 1020
    - Springboard doctrine, the , vol. 2, 1021
- Profits, accounting of , vol. 2, 1024
- Third parties in receipt of trade secrets, vol. 2, 1018
- Wrongful dismissal** , vol. 1, 387
  - *Bardal v. Globe & Mail Ltd.* factors , vol. 1, 389
  - Incompetence, vol. 1, 433
  - Near cause , vol. 1, 432
  - Poor performance, vol. 1, 433
  - Principle of condonation , vol. 1, 400
  - Reply to Statement of Defence , vol. 1, 460
  - Responses to specific allegations , vol. 1, 461
    - Fixed-term contract , vol. 1, 466
    - Frustration, vol. 1, 464
    - Illness, vol. 1, 464

## CANADIAN PRECEDENTS OF PLEADINGS

- Wrongful dismissal (*cont'd*)
  - Independent contractor , vol. 1, 464
  - Job abandonment , vol. 1, 463
  - Just cause , vol. 1, 461
  - Resignation, vol. 1, 463
  - Statement of Claim, vol. 1, 388
  - Bardal factors , vol. 1, 126, 389
  - Claim for notice , vol. 1, 388
  - Constructive dismissal , vol. 1, 395
  - Damages, vol. 1, 402
    - Aggravated damages — damages for mental distress , vol. 1, 416
    - Entitlements during the notice period , vol. 1, 408
      - Bonuses, vol. 1, 409
      - Commissions, vol. 1, 409
      - Employment Insurance and Canada Pension Plan contributions, vol. 1, 413
      - Fringe benefits , vol. 1, 411
      - Insurance benefits — Medical/dental and disability , vol. 1, 410
      - Retirement/pension benefits , vol. 1, 412
      - Salary, salary increases and overtime , vol. 1, 408
      - Vacation and vacation pay , vol. 1, 410
    - Exemplary damages , vol. 1, 417
    - Mitigation expenses , vol. 1, 413
    - Notice of termination , vol. 1, 402
      - Common law notice period , vol. 1, 402
        - Inducement, vol. 1, 404
        - Period of non-competition or non-solicitation, vol. 1, 405
      - Contractual notice period , vol. 1, 406
      - Statutory notice period , vol. 1, 406
    - Punitive damages , vol. 1, 417
  - “The Damages Formerly Known As Wallace” — damages for bad faith in the course of dismissal — moral damages, vol. 1, 414
  - Liability, vol. 1, 388
  - Where just cause alleged , vol. 1, 398
  - Where just cause alleged but facts do not preclude statutory notice and severance pay, vol. 1, 401
  - Where no just cause alleged — Claim for notice or pay in lieu, vol. 1, 388
    - Constructive dismissal , vol. 1, 395
    - Failure to provide notice in accordance with a termination agreement , vol. 1, 397
    - Successor employers , vol. 1, 397
  - Statement of Defence, vol. 1, 419
  - Damages , vol. 1, 450
    - Aggravated damages — damages for mental distress , vol. 1, 458
    - Deductions: income earned — benefits received during notice period , vol. 1, 455
    - Entitlements during the notice period , vol. 1, 452
      - Bonuses, vol. 1, 452
      - Commissions, vol. 1, 453
      - Employment Insurance and Canada Pension Plan contributions , vol. 1, 455
      - Fringe benefits , vol. 1, 454
      - Insurance benefits — medical dental and disability, vol. 1, 454
      - Overtime, vol. 1, 452
      - Retirement pension benefits , vol. 1, 455
      - Salary, vol. 1, 452
      - Salary increases , vol. 1, 452
      - Vacation and vacation pay , vol. 1, 453



## INDEX

- Wrongful dismissal (*cont'd*)
  - Exemplary damages, vol. 1, 459
  - Failure to mitigate damages , vol. 1, 456
  - Mitigation expenses , vol. 1, 457
  - Notice of termination , vol. 1, 450
    - Inducement, vol. 1, 451
    - Period of non-competition or non-solicitation , vol. 1, 452
  - Punitive damages , vol. 1, 459
  - “The Damages Formerly Known As Wallace” — damages for bad faith in the course of dismissal — moral damages , vol. 1, 458
  - Where just cause alleged , vol. 1, 430
    - Absenteeism — lateness , vol. 1, 434
    - Breach of fiduciary duty , vol. 1, 446
    - Breach of policy , vol. 1, 447
    - Dishonesty , vol. 1, 441
    - Generally, vol. 1, 430
    - Impairment — intoxication , vol. 1, 436
    - Insubordination and insolence , vol. 1, 437
    - Off-duty: online misconduct , vol. 1, 448
    - Poor performance — incompetence , vol. 1, 433
    - Sexual harassment , vol. 1, 444
    - Theft, vol. 1, 442
  - Where no just cause alleged , vol. 1, 419
    - Constructive dismissal , vol. 1, 422
    - Fixed-term contract , vol. 1, 428
    - Frustration — illness , vol. 1, 424
    - Independent contractor, vol. 1, 426
    - Notice entitlement limited to statutory minimums , vol. 1, 421
    - Resignation/job abandonment , vol. 1, 423
    - Successor employers, vol. 1, 430
  - Statutory Rules of Pleading , vol. 1, 467

