

Please write in the question numbers that you have answered:

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90

*THIS EXAMINATION CONSISTS OF FOUR PAGES AND ONE APPENDIX (16 pages total)
Please ensure that you have a complete paper*

THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION SATURDAY, APRIL 12, 2014

**LAW 270B-003
Civil Litigation**

Adjunct Professors Andrew Nathanson and David Crerar

TOTAL MARKS: 90

TIME ALLOWED: 3 HOURS

General Instructions

This Final Examination consists of two parts:

- Part 1 requires you to answer **two** of three short answer questions: 20 marks (22%) each, for a total of 40 marks. Recommended time: 40 minutes each.
- Part 2 consists of a Fact Pattern: **one question, no choice**: 50 marks (55%). Recommended time: 100 minutes.

We strongly urge you to thin out your answers before committing pencil to paper. Focus on the specific issues raised in each question. In marking, we will reward reflection and economy of prose, rather than broad regurgitation. Less is usually more: excessive discussion of unimportant or irrelevant issues will lower the mark, rather than be ignored.

The examination is closed-book. The only material to which you may refer is a copy of the Course Outline, attached as *Appendix "A"*. You may *not* refer to your own copies of the Course Outline.

Good Luck.

**THIS EXAMINATION CONSISTS OF 4 QUESTIONS IN TOTAL,
ONLY 3 OF WHICH MUST BE ANSWERED:
2 OF 3 SHORT ESSAYS, AND 1 FACT PATTERN**

PART 1**SHORT ESSAYS****(ANSWER ONLY TWO OF THE FOLLOWING THREE QUESTIONS)**Marks

- 20 1. British Columbia is reviewing its civil litigation costs regime. With reference to the readings and themes of the course, what suggestions would you provide to the review committee with respect to possible reforms?
- 20 2. The predominant concept underlying the reform of the Rules of Court in July 2010 is “proportionality”. What are the practical pros and cons of proportionality? What difficulties and complications does proportionality pose to counsel in the course of litigation? Provide clear examples, and assess whether these concerns are in the end significant or surmountable.
- 20 3. *“The procedure prescribed by R.18A [now Rule 9-7] may not furnish perfect justice in every case, but that elusive and unattainable goal cannot always be assured even after a conventional trial and I believe that the safeguards furnished by the Rule and the common sense of the chambers judge are sufficient for the attainment of justice in any case likely to be found suitable for this procedure. Chambers judges should be careful but not timid in using R.18A for the purpose for which it was intended.”* Discuss.

PART 2**FACT PATTERN (YOU MUST ANSWER THE FOLLOWING ONE QUESTION)**Marks

- 50 4. The morning had dawned clear and cold, with a crispness that hinted at the end of summer. Your new client, Ed Stark, enters your office, in significant need of urgent legal advice.

Until just last week he had been the vice-president and a director of Throne Games Ltd., a leading international software company incorporated in British Columbia, with offices in Vancouver and Bangalore. Its considerable assets are primarily held in Indian bank accounts and real estate, as well as in US patents, but in Vancouver the company has cash in local bank accounts, as well as some expensive computer equipment and code for cutting-edge computer games that the company is currently developing. The company was recently valued at CAN\$30million.

Throne Games Ltd. is a small closely-held corporation. Ed was the co-founder of the company along with Robert Baratheon, an old friend. Ed held 30% of the shares in the company. Robert held 40% of the shares. The remaining 30% are held by a variety of smaller investors. By a shareholder’s agreement signed in Bangalore,

Robert was made the president of the company and Ed was made the vice-president, with an annual salary of CAN\$500,000, with bonuses based on the company's annual profitability. There are no other significant principals of the company, which has few employees and relies largely on programmers and other persons under limited contracts. Robert and Ed (and Geoff, below), are all Canadian citizens, and regularly reside in Vancouver.

Three months ago Robert died in an unusual hunting accident. His only son and heir Geoff inherited all of Robert's shares, and proceeded with his majority shares and his nominees on the board of directors to make himself the new president. Despite some internal doubts, Ed voted in favour of Geoff becoming president.

Last week Ed, during a routine IT audit of the company, discovered an email chain indicating that Geoff was manipulating the company's sales results to record lower profits, in order to evade taxes and also to avoid paying bonuses to Ed and paying dividends to the shareholders. The email was sent to Littlefinger & Co., the firm's auditors, and indicated that that firm may have extensive documentation concerning this fraud. Unfortunately, Ed did not make a copy of the email, and, as set out below, presently has no way to access the company's servers.

When Ed confronted Geoff with the email, Geoff at first reacted calmly and said words to the effect of "*I propose a sensible resolution to this issue: on a without prejudice basis, I will offer you a million dollars to leave the company and forget that this ever happened. If you do not accept this generous offer, however, I will destroy you and your reputation. Any emails can be deleted or changed, and it will be my word against yours.*" Ed could not believe his ears and said that he could not agree. Geoff then fell into an apoplectic rage. He fired Ed on the spot and had security escort him out.

Ed soon discovered that his remote access to the company servers had been cut off. When he went to the company offices yesterday, he discovered that the locks had been changed. This effectively denied him access to all of his documents concerning the company (including minutes of directors meetings) as he kept all of his records in that office.

Ed then returned home, only to find two disturbing messages waiting for him. A telephone message from the company secretary, Eunice Varys, warned Ed of her suspicion that Geoff was draining company funds and directing them to Geoff's personal accounts at the Bank of Montreal and various Indian-based banks. She also believes that Geoff plans to issue an additional 100,000 shares in the company to himself, thereby materially diluting the shareholdings of Ed and the other investors. Ms. Varys also told Ed that she thought Geoff might be leaving the country, as she saw him at the office with several new pieces of luggage.

An email from his friend Jon Arryn alerted him to a series of anonymous internet postings that accused Ed of committing the same frauds that he discovered at Geoff's hand. A Google search confirmed these postings, made on investor and game industry

bulletin boards based in British Columbia, Iceland, Croatia, and Northern Ireland. On some of these websites, in turn, several of the minority shareholders (specifically Danielle Targaryen, Buck Renly, and Dylan Stannis) have announced that they are organising a class proceeding against the company and Ed personally based on these false accusations; the organising shareholders claim that over 30 minority shareholders have signed up for the litigation.

Ed seeks your wise, strategic, and cost-effective advice on what risks he faces, on how the dispute could unfold, and how best to remedy the situation. He also has a few ideas of his own. In addition to the email chain revealing Geoff's fraud, he is also aware of board of director minutes which discuss, in the context of corporate succession planning, Geoff's disputed paternity and unusual sexual proclivities; Ed believes that Geoff may settle the dispute if you indicated in a "without prejudice" letter that you would seek disclosure of this documentation in any litigation. Further, if that does not lead Geoff to reason, he suggests that you could anonymously send this documentation, once obtained, to reporters in the computer gaming press, in order to exert pressure on Geoff. Finally, Ed proposes a second meeting tomorrow, and suggests that the meeting also involve Walter Frey and Bob Greyjoy: these are two former business associates of Geoff who Ed is reasonably sure (but not entirely sure) would assist him against Geoff, and who might have some good ideas for legal strategies, and who may be good sounding-boards for legal advice and strategy.

You will be marked on the civil procedure aspects of the fact pattern above: do not worry about issues of purely corporate, family, trust, or estates law. Please feel free if necessary to make assumptions concerning any unstated facts that you consider important, but be sure to expressly state those assumptions in your answer.

END OF EXAMINATION

It has been our great pleasure teaching you this term. We appreciated your enthusiasm and interest. Our best wishes to you all for a happy summer and a successful and enriching career, in law, or otherwise.

LAW 270B-003: CIVIL PROCEDURE
COURSE OUTLINE 2014

9 January to 10 April 2014
(Thursday evenings 17:30 – 20:30)

ANDREW NATHANSON, Fasken Martineau DuMoulin LLP (anathanson@fasken.com)
and
DAVID CRERAR, Borden Ladner Gervais LLP (dcrerar@blg.com)

Class website: <http://www.law.ubc.ca/courses/LAW270B-003/index.html>

Objectives

This course has the following objectives:

1. Introduce the fundamentals of civil procedure and familiarize students with the structure of a civil action.
2. Provide a theoretical framework for the rules of procedure and identify the values and policies on which the rules are based.
3. Place these rules in a practical context to encourage future practitioners to wield the rules in a responsible, strategic, and cost-effective manner.

Materials

We will refer most often to the Casebook and Walker. Several copies of Walker are on reserve in the library. The course materials are available for purchase in the Bookstore.

1. **Crerar / Nathanson, *Civil Procedure Casebook 2014*** (the “**Casebook**”).
2. **Janet Walker, et al., *The Civil Litigation Process: Cases and Materials*, 7th ed.** (Toronto: Emond Montgomery Publications Ltd., 2010) (“**Walker**”) (formerly “**Watson**”).
3. **Supreme Court Civil Rules.** The Rules can be found in the following sources (and you may use any of the sources):
 - Bouck, Dillon, and Turriff, *British Columbia Annual Practice 2014* (Canada Law Book Inc.) (the “**White Book**”)
 - Seckel & MacInnis, *Supreme Court Rules Annotated 2014* (Carswell) (the “**Black Book**”)
 - The new Rules are also available online at:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/168_2009_01.
 - A concordance of the old and new rules is found here: <http://www.ag.gov.bc.ca/new-rules/pdfs/civil-rules-concordance.pdf>.

The (pre-July 2010) former rules are not required reading but are, however, very useful for understanding the new Rules, and are the rules on which all of the case law in this course are based. We will frequently refer to the former rules. Past editions of the White Book and the Black Book will be useful in this regard.

We may at times hand out, post on the class website or otherwise refer to recent judgments or other supplementary readings, for which students are also responsible.

Evaluation

The evaluation method in this course will be by:

- (a) **10%**: based on two very simple and brief pass-fail assignments: a pleadings drafting exercise (3-4 pages) and a report on an independent visit (1 page) to the British Columbia Supreme Court Civil Chambers (at any British Columbia Courthouse); and
- (b) **90%**: a final examination set during the Faculty examination period.

As per the Faculty's policy, "Mark Deduction For Late Assignments", a late penalty of 1 mark per day will be assessed.

Schedule

Please note it is our goal to keep classes in this order, limiting these topics to the assigned classes, but dates and contents are subject to change.

1. Topics:

- (a) Overview of course
- (b) The life cycle of a civil action

2. Readings:

- (a) Walker, pp. 64-85 (Overview of Civil Procedure)
- (b) Handout: "Life cycle of an action in British Columbia Supreme Court"

3. (Optional Readings):

- (a) Andrew Nathanson & Gavin Cameron, *Complex Litigation under BC's new Supreme Court Civil Rules*, p. 1

1. Topics:

- (a) The adversary system
- (b) The rule of law and judicial independence
- (c) Ethical issues

2. Readings:

- (a) Walker, pp. 13-30 (the adversary system), 189-193 and 826-828 (ethics)
- (b) Casebook:

- (i) *Murphy v. Dodd*, 1989 (ethics in the adversary system), p. 21
 - (ii) *Meek v. Fleming*, 1961 (ethics in the adversary system), p. 25
 - (iii) *British Columbia v. Imperial Tobacco Canada*, 2005 (the adversary system, the rule of law and judicial independence), p. 30
 - (iv) *Cojocaru v. British Columbia Women's Hospital and Health Centre*, 2013 (reasons), p. 41
- (c) *Code of Professional Conduct for British Columbia ("B.C. Code")*: see http://www.lawsociety.bc.ca/docs/publications/mm/BC-Code_2012-12.pdf
 - (d) "Indian Judge Bans Reporting on Trial of 5 Men in Gang Rape Case", New York Times online edition, January 7, 2013: see class website, "E-mail, January 7, 2013"
 - (e) "Justices Rule for Inmate after Mailroom Mix-Up", New York Times online edition, January 18, 2012: see class website, "E-mail, January 15, 2013, New York Times article *Maples v. Thomas*"

1. Topics:

- (a) **Pass-fail assignment discussion: Independent BCSC Chambers visit**
- (b) Different forms of procedure and consequences: notice of claim versus petition
- (c) Ethical issues
- (d) Service
- (e) Jurisdiction
- (f) Limitation Periods

2. Readings:

- (a) Casebook:
 - (i) *Orazio v. Ciulla*, 1966 (service), p. 56
 - (ii) *Luu v. Wang*, 2011 (alternative service), p. 59
 - (iii) *Austin v. Rescon Construction*, 1986 (default judgment), p. 63
 - (iv) *K.L.B. v. British Columbia*, 2003 (limitation periods), p. 65
 - (v) *Global Light Telecommunications Inc. v. GST Telecommunications Inc.*, 1999 (jurisdiction), p. 69
 - (vi) *Leung v. 568263 BC Ltd.*, 2000 (petition), p. 75
 - (vii) *East Kootenay Realty Ltd. v. Gestas Inc.*, 1986 (petition), p. 79
 - (viii) *Limitation Act*, SBC 2012, c.13, p. 80
 - (ix) *Court Jurisdiction and Proceedings Transfer Act* (2003), p. 88
 - (x) former *Professional Conduct Handbook*, ch.11(12), p. 92

- (xi) new *Code of Professional Conduct*, art. 6.02(2), p. 93
- (xii) Tabs A - E
- (b) White Book:
 - (i) **Rules 4-2 (old 4*), 2-1, and 3-1 (old 8), 3-2 (old 9), 16-1 (old 10), 4-2 and 4-3 (old 11), 4-4 (old 12), 4-5 (old 13), 3-3 (old 14), 3-8 (old 17 and 25), and 15-1 (old 66)**
- 3. **(Optional Readings):**
 - (a) Walker, pp. 232-308
 - (b) Casebook:
 - (i) *Bank of Montreal v. Erickson*, 1984 (default judgment), p. 94
 - (ii) *Schmid v. Lacey*, 1991 (default judgment), p. 95
 - (iii) *472900 B.C. Ltd. v. Thrifty Canada, Ltd.*, 1998 (jurisdiction), p. 96
 - (iv) *Pan-Afric Holdings Ltd. v. Ernst & Young LLP*, 2007 (jurisdiction), p. 104
 - (v) Robert J. Deane, *Addressing Jurisdictional Complexity: The new Civil Rules and the CJPTA*, p. 112
 - (c) David Crerar, Practice Tips for the New BC *Limitation Act* (on class website)
 - (d) Ministry of Justice resources on new *Limitation Act*: <http://www.ag.gov.bc.ca/legislation/new.htm>

1. **Topics:**

- (a) The function and purpose of pleadings
- (b) Particulars
- (c) Amendments
- (d) Striking pleadings
- (e) Ethical issues

2. **Readings:**

- (a) Casebook:
 - (i) W. Stanley Martin, "Pleadings", p. 121
 - (ii) *Jones v. Donaghey*, 2011 (pleadings), p. 125
 - (iii) *CFAR v. Canadian Jewish Congress*, 1999 (striking pleadings), p. 130
 - (iv) *GWL v. W.R. Grace*, 1993 (particulars), p. 140

* The former rule numbers are included for reference and convenience only. It is NOT necessary to read the former version of each rule.

- (v) *Lax Kw'alaams Indian Band v. Canada*, 2011 (pleadings & parties), p. 145
 - (vi) *Sahyoun v. Ho*, (pleadings), p. 148
 - (vii) *Code of Professional Conduct*, art. 4.01(1)-(2), p. 156
 - (b) Walker, pp. 487-490, 496-498 (function and purpose of pleadings) and 500 (ethical issues)
 - (c) **Rules 20-3, 20-4 & 22-5 (old 5), 20-2 (old 6), 20-1 (old 7), 3-7 (old 19), 3-1 (old 20), 3-4 (old 21), 3-6 (old 23), and 6-1 (old 24)**
3. **(Optional Readings):**
- (a) *Joly v. Pelletier*, 1999 (striking pleadings), p. 158
 - (b) *Murrell v. Simon Fraser University*, 1997 (pleadings), p. 160
 - (b) *National Leasing Group v. Top West Ventures Ltd.*, 2011 (striking pleadings), p. 166
4. **Pleadings Resources (NOT necessary to read but useful for assignment):**
- (a) Casson & Dennis, *Odgers's Principles of Pleadings and Practice*, chap. 6 & 7
 - (b) Bullen & Leake & Jacob, *Precedents of Pleadings*
 - (c) McLachlin & Taylor, *British Columbia Court Forms*
5. **Pass-fail assignment discussion: Notice of Civil Claim Drafting Assignment**



1. **Topics:**
- (a) Discovery of documents
 - (b) Proportionality in discovery
 - (c) Discovery of documents from third parties
 - (d) The implied undertaking of confidentiality
 - (e) Postponing discovery of documents
 - (f) Privilege
 - (g) Ethical issues: discovery
2. **Readings:**
- (a) Walker, pp. 534-535 (purposes of discovery), 538-543 (ethical issues), 550-552 (discovery of electronic documents), 603-608 (privilege), 621-643 (waiver of privilege, ethical issues, litigation privilege), 655-663 (discovery of documents from third parties and confidentiality), and 664-680 (implied undertaking of confidentiality)
 - (b) Casebook:
 - (i) *Blank v. Canada*, 2006 (*Minister of Justice*) (privilege), p. 169
 - (ii) *Peter Kiewit Sons v. B.C. Hydro*, 1982 (document proportionality), p. 176

- (iii) *Desgagne v. Yuen*, 2006 (electronic discovery), p. 180
- (iv) *IBEW v. Hochstein*, 2009 (implied undertaking), p. 188
- (v) *Hodgkinson v. Simms*, 1988 (privilege), p. 194
- (vi) *Keefer Laundry Ltd. v. Pellerin Milnor Corp.*, 2006 (privilege), p. 203
- (vii) *Dykeman v. Porohowski*, 2010 (privilege/internet/list), p. 206
- (viii) *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 (settlement privilege), p. 213
- (ix) Tab F
- (c) White Book
 - (i) **Rules 7-1 (old 26) and Part 5 (old 68)**

3. **(Optional Readings):**

- (a) Casebook:
 - (i) *Fric v. Gershman*, 2012 (document proportionality; electronic discovery), p. 218
 - (ii) *Kaladjian v. Jose*, 2012 (document proportionality), p. 229
 - (iii) *Tai v. Lam*, 2010 (document proportionality), p. 235
 - (iv) *Pro-Sys Consultants Ltd. v. Infineon*, 2011 (document proportionality; electronic discovery), p. 236
 - (v) *GWL Properties v. W.R. Grace*, 1992 (list of documents), p. 239
 - (vi) *Dufault v. Stevens*, 1978 (non-party discovery), p. 244
 - (vii) *Donell v. GJB Enterprises Inc.*, 2012 (privilege: law firms), p. 248

1. **Topics:**

- (a) Examinations for discovery
- (b) Examinations of non-party witnesses
- (c) Interrogatories
- (d) Physical/medical examinations and inspections
- (e) BCSC Chambers and applications

2. **Readings:**

- (a) Walker: 571-573 (purpose of examinations for discovery)
- (b) Casebook:
 - (i) *B.C. Lightweight Aggregate v. Canada Cement Lafarge*, 1978 (discovery of corporate representative), p. 257
 - (ii) *Fraser River Pile and Dredge v. Can-Dive Services Ltd.*, 1992 (discovery ethics), p. 260

- (iii) *Sinclair v. March*, 2001 (non-party examination), p. 262
- (iv) Practice Direction: Masters' Jurisdiction PD-34, p. 267
- (v) *Fraser v. Houston*, 1997 (privacy, proportionality), p. 269
- (vi) *Forliti v. Wooley*, 2002 (examinations for discovery: scope and objections), p. 273
- (vii) *Nwachukwu v. Ferreira*, 2011 (examinations for discovery: scope and objections), p. 277
- (viii) *Jones v. Donaghey*, 2011 (physical examination) (see above, Week 5), p. 125
- (ix) Tabs G, H

(c) White Book

- (i) Rules 7-2 (old 27), 7-5 (old 28), 7-3 (old 29) 7-6 (old 30), 22-2 (old 51), 8-1 (old 51A), 22-1 (old 52)

3. (Optional Readings):

- (a) *Roitman v. Chan* 1994 (interrogatories), p. 286



1. Topics:

- (a) *Res Judicata*
- (b) Issue estoppel

2. Readings:

- (a) Walker, pp. 309-363 (joinder of claims, res judicata, issue estoppel, and abuse of process) and 370-379 (issue estoppel)

3. Pass-fail assignments due: in class (greatly preferred) or by email.



1. Topics:

- (a) Joinder of claims and parties
- (b) Third-party proceedings
- (c) Class proceedings

2. Readings:

- (a) Walker, pp. 412-460 (joinder of claims, counterclaims, and third party claims), 865-887 (class proceedings) and 923-935 (multi-jurisdiction class proceedings)
- (b) Casebook:
 - (i) *R. v. Imperial Tobacco Canada Ltd.*, 2011 (third party proceedings), p. 289

- (ii) A. Nathanson & G. Cameron, *Complex Litigation under BC's new Supreme Court Civil Rules* (see above, Week 1), p. 1
 - (c) White Book:
 - (i) **Rules 20-3, 20-4 and 21-2 (old 5), 6-2 (old 15), 21-9 (old 22), and 6-1 (old 24)**
3. **(Optional Readings):**
- (a) *B.C. Ferry Corporation v. T&N*, 1993 (third party proceedings), p. 295
 - (b) *CLASS PROCEEDINGS ACT*: review generally, but focus on ss. 1, 25, 28

1. **Topics:**

- (a) Summary trial (Part 9-7 (old Rule 18A))
- (b) Summary judgment (Part 9-6 (old Rule 18))
- (c) Interlocutory injunctions
- (d) *Mareva* injunctions
- (e) *Anton Pillar* orders

2. **Readings:**

- (a) Walker: nothing
- (b) Casebook:
 - (i) *Attorney General of B.C. v. Wale*, 1986 (injunction test), p. 298
 - (ii) *RJR MacDonald v. Canada (Attorney General)*, 1994 (injunction test), p. 302
 - (iii) *Tracy v. Instalcons Financial Solutions Centres (B.C.) Ltd.*, 2007 (*Mareva* injunction), p. 312
 - (iv) *Insurance Corp. of British Columbia v. Patko*, 2008 (*Mareva* injunction), p. 325
 - (v) *Celanese Canada Inc. v. Murray Demolition Corp.*, 2006 (*Anton Pillar* order), p. 327
 - (vi) *Inspiration Management v. McDermid St. Lawrence*, 1989 (summary trial), p. 340
 - (vii) *Western Delta Lands Partnership v. 3557537 Canada Inc. #1*, 2000 (summary trial), p. 346
 - (viii) *Western Delta Lands Partnership v. 3557537 Canada Inc. #2*, 2000 (summary trial), p. 353
 - (ix) *Prevost v. Vetter*, 2002 (summary trial), p. 356
- (c) White Book:
 - (i) **Rules 9-6 (old 18), 9-7 (old 18A), and 10-4 (old 45)**

3. (Optional Readings):

- (a) *Mark Anthony v. Vincor*, 1998 (injunction), p. 362
- (b) *Centre Ice Ltd. v. National Hockey League (FCA)*, 1996 (injunction test), p. 366
- (c) *Orangeville Raceway Ltd. v. Wood Gundy Inc.*, 1995 (summary trial), p. 369
- (d) *Chu v. Chen*, 2002 (summary trial), p. 375
- (e) David Crerar, "How to Lose Your Own Rule 18A Summary Trial" (on class website)

1. Topics:

- (a) Review and Continuation of Week 10: Modes of Trial and Injunctions
- (b) Party and party costs and special costs
- (c) Offers to settle
- (d) Security for costs
- (e) Contingency fees
- (f) Costs in class proceedings

2. Readings:

- (a) Walker, pp. 117-121, 125-151, 161-169, and 940-945
- (b) Casebook:
 - (i) *Bank of Credit & Commerce v. Akbar*, 2001 (special costs), p. 385
 - (ii) *Royal Bank of Canada v. B.M.P. Global Distribution Inc.*, 2011 (special costs and offers to settle), p. 388
 - (iii) *Fraser v. Houston*, 1997 (see above, Week 7) (security for costs), p. 269
 - (iv) *CFAR v. Canadian Jewish Congress*, 1999 (see above, Week 5) (security for costs), p. 130
 - (v) *Nazmdeh v. Spraggs*, 2010 (costs against lawyer personally), p. 397
 - (vi) *Robson v. Chrysler*, 2001 (class action costs), p. 403
 - (vii) *Ward v. Klaus*, 2012 (offers to settle), p. 406
 - (viii) *(British Columbia) Minister of Forests v. Okanagan Indian Band* 2003 (advance costs), p. 415
 - (ix) Tab I
- (c) White Book
 - (i) **Rules 9-1 (old 37B), 14-1 (old 57), and Appendix B**
 - (ii) *Class Proceedings Act*: ss. 37 & 38 (costs provisions)

3. (Optional Readings):

- (a) *Little Sisters Book and Art Emporium v. Canada*, 2007 (advance costs), p. 430
- (b) “Da Vinci Code Appeal is Dismissed” (UK v. Canada costs), p. 442
- (c) *Bystedt (Guardian ad litem of) v. Hay*, 2005 (costs against lawyer personally), p. 444
- (d) *Jayetileke v. Blaker*, 2010 (offer to settle; special costs), p. 445

To be held at Fasken Martineau DuMoulin LLP (2900 - 550 Burrard Street, Vancouver: Bentall 5 Building) or Borden Ladner Gervais LLP (12th Floor, 200 Burrard Street): to be announced.

1. Topics:

- (a) Notices to Admit
- (b) Expert evidence
- (c) Standing
- (d) Intervention
- (e) Evidence and procedure at trial
- (f) Contents and structure of exam
- (g) General review of the course
- (h) Pizza
- (i) Beer
- (j) Further and in the alternative, other beverages

2. Readings:

- (a) Walker: 477-485 (expert evidence), 381-397, 402-410 (standing), 461 and 468-477 (intervention)
- (b) Casebook:
 - (i) *Skillings v. Seasons Development Corporation* (#1 & #2), 1992 (notice to admit), p. 450 and p. 451
 - (ii) *Vancouver Community College v. Phillips Barratt*, 1988 (role and duty of experts), p. 455
 - (iii) *Surrey Credit Union v. Willson*, 1990 (admissibility of expert evidence), p. 460
 - (iv) *Yewdale v. ICBC*, 1995 (admissibility of expert evidence), p. 464
 - (v) *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 (public interest standing), p. 468
- (c) White Book
 - (i) **Rules 7-7 (old 31), 9-2 (old 35), 12-1 to 12-6 (old 39), 12-5 (old 40), and 11-6 & 11-7 (old 40A)**

3. (Optional Readings):

- (a) *Pedersen v. Degelder*, 1985 (expert evidence), p. 482
- (b) *Delgamuukw v. B.C.*, 1988 (expert evidence), p. 487

(c) Rule Books

- Bouck, Turriff & Dillon, *British Columbia Annual Practice* (the “White Book”): the standard British Columbia Rule book, it provides short summaries of the key cases interpreting each rule. **KN361.B74 C658**
- Seckel & MacInnis, *BC Supreme Court Rules Annotated* (the “Black Book”): like the White Book, but with very useful mini-essays on each Rule. **KN361 .B742**

Civil Procedure Guides and Commentaries

- Abrams & McGuinness, *Canadian Civil Procedure Law* (Lexis Nexis, 2008)
- Fraser & Horn, *The Conduct of Civil Litigation in British Columbia* (2 volumes): organized by procedures and themes, rather than by rules. It is useful but at times sparse. It tends to cite venerable and ancient black-letter cases. **KN350 .F738**
- McLachlin & Taylor, *British Columbia Practice* (3 volumes): organized by Rule numbers, it offers the most complete (if sometimes excessive and bewildering collection of judicial application unwieldy and interpretation of each rule. **KN361 .M325**
- May et al., *Civil Procedure* (the English “White Book”): organized like our White Book, on which it is based. Often older editions of the book (circa 1960) are more useful as at that time the English and British Columbia rules were very similar. Often a more appropriate interpretative tool than, say, Ontario rules. **KN350 .C595 1972**
- Stevenson & Côté, *Civil Procedure Encyclopedia* (5 volumes): a valuable survey of different procedural topics, focusing on Alberta, BC, and Ontario. It will often provide just the case you are looking for where other sources come up dry. **KN361 .S849 2002**
- Williston & Rolls, *The Law of Civil Procedure*: a classic text (albeit unrevised since 1970), respected by courts; it often supplies obscure gems of legal authority. **KN0350 .W55 1970**

Pleadings

- *Atkin’s Court Forms*: English Encyclopedia of court forms. **KN351 .A855**
- *Bullen & Leake & Jacob’s Precedents of Pleadings*: the classic pleadings text; sometimes older editions (e.g. 1975) will be more useful as they focus more on common law claims and defences and less on English statute law. **KN380.3 .B843 2004**
- Casson & Dennis, *Odgers on Pleadings and Practice*: another classic text, with an enormously useful introductory chapter on pleadings and practice. **KN380.3 .O349 1991**

- McLachlin & Taylor, *British Columbia Court Forms* (4 volumes): the authoritative British Columbia book of precedents. **KN360 .M252 2005**

Discovery

- L. Harris, QC, *Discovery Practice in British Columbia* (CLE) **KN 390.61 .C65 H37** (not at UBC)

Summary Trials

- CLE, *Rule 18A Applications* (February 2002) **KN360 . R84 2005**
- L. Warren, et al., *Rule 18A Applications*, in CLE, *Civil Litigation Conference 2004*. **KN350 .C585 2004**

Ethics

- *Code of Professional Conduct for British Columbia* (the “BC Code”) **<http://www.lawsociety.bc.ca/docs/practice/resources/bc-code/bc-code.pdf>**

Other Useful Litigation Texts

- Hon. Mr. Justice David C. Harris, ed., *British Columbia Civil Trial Handbook*: an invaluable series of pithy and up-to-date essays on all aspects of civil litigation, including pleadings, gathering evidence, interlocutory applications, witnesses, trials, ethical and professional responsibility issues, and costs. **KN350 .B73 2003**
- Hon. Chief Justice A. McEachern, “Professionalism for Litigators”: an edited version can be found at **http://www.lawsociety.bc.ca/licensing_membership/professional_training_courses/docs-material/civlit_ch6.pdf**
- T.A. Mauet, et al., *Fundamentals of Trial Techniques*: **KN380 .M384 1995**
- Hon. Mr. Justice J. Sopinka, *Trial of an Action*: **KN380 .S665 1998**
- Williston & Rolls, *Conduct of An Action*: **KN380 .W544 1982**

Websites

- **<http://www.courts.gov.bc.ca/>**