

UNIVERSITY OF VICTORIA
FACULTY OF LAW

CIVIL PROCEDURE WITH DRAFTING - Law 307B

Instructor Bryant Mackey

Course Outline and Reading List for Winter 2009

The Rules of Court referred to in this list is the British Columbia Supreme Court Rules published in *British Columbia Annual Practice, 2009* and the New Rules refer to the version of the rules of court set to take effect next year. These are found in the supplement to the 2010 edition of *British Columbia Annual Practice*. The Rules and Practice Directions are also available online at <http://www.courts.gov.bc.ca>

The BC Justice Review Task Force has proposed reforms to the BC Civil Rules. The 2006 report, "Effective and Affordable Civil Justice" and other background papers and documents are posted on the website: <http://www.bcjusticereviewforum.ca/civilrules/index.cfm>

The draft new civil procedure rules are online, published by the BC Rules Revision Committee, at: <http://www.bcrulesrevisioncommittee.ca/pages/policy.cfm> On this site you will also find a comparison between the July 2007 Concept Draft and the May 2008 Draft.

The *Supreme Court Act, Court Rules Act, Class Proceedings Act, Interpretation Act, Limitation Act, Law and Equity Act* and *Negligence Act* are all contained in *British Columbia Annual Practice, 2009*. These statutes are also available online at <http://www.BCLaws.ca> - and on commercial databases such as Quicklaw.

The Provincial Court of British Columbia, Small Claims division, is undergoing some significant changes in practice and procedure. The court is expected to increase its jurisdiction to \$50,000 in the near future. The Provincial Court Act and Rules are on the court website at: <http://www.provincialcourt.bc.ca>

The *Canons of Legal Ethics* and *Rules of Professional Conduct* referred to in this list are in the *Professional Conduct Handbook*, published by The Law Society of British Columbia. They are online at the Law Society's website: <http://www.lawsociety.bc.ca> under "Publications and Forms"

The full-text of the cases referred to in this outline are available on the Internet at <http://www.courts.gov.bc.ca> or <http://www.canlii.org> or on commercial databases such as Quicklaw. Summaries of many of these cases are in *British Columbia Annual Practice, 2010 (or the 2009 edition)*.

In addition to the statutes, rules, cases, reports, and other items indicated below, additional readings may be assigned for some classes. Please note that anything not indicated on this list as 'optional' is assigned and examinable. We may from time to time refer to cases that are not on this list that we do not require you to read. Reference to those cases in class is made to illustrate the different approaches taken by the justices of the court to address procedural issues.

Recommended Text

Bouck, Turriff & Dillon, *British Columbia Annual Practice 2009* (the "White Book"). This is a popular British Columbia rule book that provides short summaries of key cases interpreting each rule.

Reference Materials.

Seckel and MacInnis, *BC Supreme Court Rules Annotated*. Very similar to the White Book, but provides useful short essays on each Rule.

Guides to Civil Procedure

B. McLachlin and J. Taylor, *British Columbia Practice* (2nd ed.). This is organized by Rules and offers the most complete collection of judicial application of the rules.

Fraser and Horn, *The Conduct of Civil Litigation in British Columbia* (2 vol); organized by procedures and themes rather than by rules.

Stevenson and Cote, *Civil Procedure Encyclopedia* (5 volume). This provides a useful survey of procedural topics and focuses on Ontario, BC and Alberta.

Williston and Rolls, *The Law of Civil Procedure*. This is a classic text, but it has not been revised since 1970.

Pleadings

Atkin's Encyclopedia of Court Forms: English encyclopedia of court forms.

Bullen & Leake & Jacob's Precedents of Pleading. This is a classic pleadings text but is based on English law. The older editions are often more useful as they focus more on common law claims and defences and less on English statute law.

Casson and Dennis, *Odgers on Pleadings and Practice*. This is also a classic text with a very useful introductory chapter on pleadings and practice.

B. McLachlin and J. Taylor, *British Columbia Court Forms* (2nd ed). This is the authoritative British Columbia book of precedents.

Litigation Texts and Resources

D. Bennett and W. Cascadden, *Procedural Strategies for Litigators in British Columbia and Alberta*

D. Harris and G. Brown (eds.), *British Columbia Civil Trial Handbook* (2nd ed.)

J. Walker, et al. (eds.), *The Civil Litigation Process* (6th ed.)

Law Society of BC, *Professional Legal Training Course Practice Material* - Online at:
http://www.lawsociety.bc.ca/licensing_membership/pltc/material-toc.html

Wednesday September 9, 2009 - Introduction to course

TOPICS: Review course requirements
 Methods of dispute resolution
 Introduce the 'life-cycle' of a civil action
 Identify and discuss professional responsibility issues

READING:

Law Society of British Columbia Professional Conduct Handbook – Chapter 1 Canons of Legal Ethics, Chapter 3 Competence and Quality of Service, Chapter 5 Confidential Information, Chapter 6 Conflicts of Interest Between Clients, Chapter 7 Conflicts of Interest Between Lawyer and Client, Chapter 8 Lawyer as Advocate, and Chapter 9 Fees. <http://www.lawsociety.bc.ca>

OPTIONAL READING:

For background, you may find it helpful to skim Garry D. Watson et. al., *The Civil Litigation Process: Cases and Materials*, 6th ed., (Toronto: Emond Montgomery, 2005) (“Watson”), Chapter 1, Section C - Structure of a Civil Proceeding pp. 83-102

Monday, September 14, 2009 – Basic Background

TOPICS: Underlying goals and assumptions
 Courts and judicial independence
 Jurisdiction
 Rules of Civil Procedure
 Proposed reform
 General interpretive Rules
 Object of the Rules
 Effect of non-compliance

STATUTES: *Constitution Act*, 1867, ss. 92(14), 96-101 & 129
Supreme Court Act, R.S.C, 1985, c. S-26, ss. 35-43
Federal Courts Act, R.S.C. 1985, c. F-7, ss. 17-28
Court of Appeal Act, R.S.B.C. 1996, c. 77, ss. 6-7
Supreme Court Act, R.S.B.C. 1996, c.442, ss. 1, 2, 8, 9, 14, 15
Court Rules Act, R.S.B.C. 1996, c. 80, s.1
Provincial Court Act, R.S.B.C. 1996, c.386
Small Claims Act, R.S.B.C. 1996, c.430, ss. 2-5
Interpretation Act, R.S.B.C. 1996, c. 238, ss. 25 & 29

RULES: 1, 2, 3 and 4 and see New Rules Part I

REPORTS: Professional conduct handbook (Chapters 1, 3, 5-9)

OPTIONAL READING - CASES:

Bell v. Woods, [1927] 2 D.L.R. 827 (BCSC)
Serban v. Casselman, [1995] B.C.J. No. 254 (CA)

Johnson v. Laing (2004), 30 B.C.L.R. (4th) 103 at paras. 26-120.
Robertson v. Slater Vecchio (2007), 70 B.C.L.R. (4th) 199 (CA)
Port Seguro Companhia De Seguros Gerais v. Belcan, [1997] 3 S.C.R. 1278
International Forest Products Ltd. v. Moody (1997), 36 BCLR (3d) 257 (CA)

Wednesday, September 16, 2009 – Basic Background (continued)

TOPIC: Continued from previous class.
READING: Rules, cases, statutes and reports as above.

Monday, September 21, 2009 – Initiating the Process

TOPICS: How to Make a Claim
 Naming the Parties
 Multiple Parties
 Choice of Originating Process and Consequences
 Pleadings generally
 Service
 Appearance
 Renewal of Claim

RULES: Rules 5 to 14, 19 to 21, and 23; and Forms 1, 13 and 14
 And see New Rules Parts 2, 3, 4, 16, 20, 21 and 22-5

STATUTES: *Negligence Act*, R.S.B.C. 1996, c.333, ss.1 & 4

CASES: *Canadian Council of Churches v. The Queen*, [1992] 1 S.C.R. 236

Wednesday, September 23, 2009 - Responses and Raising Defects

TOPICS: Responding to a Civil Claim
 Reply
 Alternative Responses and Raising Defects
 Effect of non-compliance
 Seeking Particulars
 Striking pleadings
 Summary Judgment
 Seeking particulars
 Default Proceedings
 Counterclaim and Set-off
 Third Parties

RULES: 2, 18, 19, 17 (1) and (2) and Rule 25 (1) to (3); and Rules 21, 22 and Forms 15 and 16
 And New Rules Part 3, 9-5 – 9-8, 22-7

OPTIONAL READING:

I anticipate referring to the following cases in class; you are not required to read them.

Sufficiency of Endorsement on the Writ of Summons:

Eloway v. British Columbia Electric Railway (1956), 4 D.L.R. (2d) 734 (B.C.S.C.).

Hicks v. Beaver Lumber (1993), 98 B.C.L.R. (2d) 206 (C.A.), 1993 CanLII 158

International Forest Products Ltd. v. Moody (1997) 36 B.C.L.R. (3d) 257 (C.A.), 1997 CanLII 2977

Strike out all or portions of an amended statement of claim

Peterson v. Bannon (1993), 84 B.C.L.R. (2d) 350 (C.A.).

Homalco Indian Band v. British Columbia (1998), 25 C.P.C. (4th) 374 (BCCA)

Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Cong (1999), 36 C.P.C. (4th) 266 (BCSC) – 1999 CanLII 5860

Monday, September 28, 2009 - Failure to Prosecute, Discontinuance and Amendments

TOPICS: Res Judicata
Issue Estoppel, Collateral Estoppel
Dismissal for Want of Prosecution
Discontinuance & Withdrawal
Amendments
Change of Parties

RULES: Rules 2, 24 and 36 and New Rules 3-7, Part 6, 9-8, 22-4

CASES: *Tundra Helicopters Ltd. v. Allison Gas Turbine* (2002), 98 BCLR (3d) 238 (SC)

Wednesday, September 30, 2009 - Drafting Pleadings

Today and next class we will discuss the rules of pleading and collectively draft a statement of claim.

TOPIC: Drafting pleadings (statement of claim; statement of defence/Notice of Civil Claim)

READING: Handouts to be provided

Note: The drafting assignment will be distributed today, September 30, and is due on Wednesday, October 14, 2009 at 4:00 p.m.

Monday, October 5, 2009

TOPIC: Drafting pleadings, continued

Wednesday, October 7, 2009 - Limitation Periods

We will spend two classes on limitation periods. Today will include an overview of the *Limitation Act* and commencement, postponement and the effect of confirmation, and some fundamental constitutional issues.

Time permitting, we will begin the discoverability principle and continue our discussion of it next class.

<u>TOPICS:</u>	Limitation Periods Commencement Postponement, Effect of Confirmation and the Discoverability Principle
<u>STATUTES:</u>	* <i>Limitation Act</i> , R.S.B.C. 1996, c.266
<u>CASES:</u>	<i>Novak v. Bond</i> , [1999] 1 S.C.R. 808 <i>Edgeworth Construction Ltd. v. Thurber Consultants Ltd.</i> (2000), 190 D.L.R. (4th) 89 (BCCA)

Wednesday, October 14, 2009 - Limitation Periods

<u>TOPICS:</u>	Limitation Periods – Subordinate Pleadings; Amending Pleadings
<u>RULES:</u>	Third party proceedings Amending pleadings Change of Parties And see New Rules
<u>STATUTES:</u>	<i>Limitation Act</i> , R.S.B.C. 1996, c.266
<u>CASES:</u>	<i>Strata Plan LMS 1463 v. Krahn</i> , 2004 BCCA 190 (CanLII) – R15 <i>Teal Cedar Products Ltd. V. Dales Intermediaries Ltd.</i> , 1994 CanLII 1176 (BC S.C.) <i>Letvad v. Fenwick</i> , 2000 BCCA 630 (CanLII)

Note: The drafting assignment distributed September 30, 2009 is due today: Wednesday, October 14, 2009 at 4:00 p.m.

Monday, October 19, 2009 – Case Planning Conferences & Procedures for Ascertaining Facts

<u>TOPICS:</u>	Case Planning Conferences Discovery of Documents Discovery of Documents from Third Parties Privilege Examination for Discovery Pre-trial examination of Witnesses Interrogatories Physical Examination and Inspection
----------------	--

RULES: Rules 26-31 and see Part 7 of New Rules

READINGS: Law Society of BC Professional Conduct Handbook, Chapters 5, 6 and 8

CASES: *Jackson v. Belzberg* [1981] 6 W.W.R. 273 (BCCA)
[Hoyt v. Insurance Corporation v. Insurance Corporation of BC \(2001\), 89 B.C.L.R. \(3d\) 44 \(BCCA\)](#) – 2001 BCCA 154 CanLII
[Tse-Ching v. Wesbild Holdings Ltd. \(1994\), 98 B.C.L.R. \(2d\) 92 \(BCSC\)](#) – 1994 CanLII 1505
Hunt v. T&N plc (1985), 4 B.C.L.R. (3d) 110 (CA)
Homalco Indian Band v. British Columbia (1999), 56 B.C.L.R. (3d) 114 (SC)

OPTIONAL

CASES: *Compagnie Financier du Pacifique v. Peruvian Guano Co.* (1882), 11 Q.B.D. 55 (CA)
Hodgkinson v. Simms (1988), 33 B.C.L.R. (2d) 129 (CA)
Wu v. Sun 2007 BCSC 446
[British Columbia v. Columbia v. Canadian Forest Products Ltd. \(1999\), 37 C.P.C. \(4th\) 61 \(BCSC\)](#) – 1999 CanLII 7025
Bronson v. Hewitt 2007 BCSC 1705
Re: Thompson 2007 BCSC 742
LeSoleil Hotel & Suites Ltd. v. Le Soleil Management Inc. 2007 BCSC 1295

Wednesday, October 21, 2009 - Pre-Trial Procedures (continued) and Introduction to Chambers Practice

TOPICS: Pre-Trial Procedures (continued) and Introduction to Chambers
 Interlocutory Applications
 Chambers applications
 Notice of Motion
 Affidavits
 Orders
 Costs

RULES: 41, 44, 51, 51A, 52 and 57 and see Part 7 of New Rules

PRACTICE DIRECTIONS:

Masters (Extent of Jurisdiction; Restrictions on Jurisdiction; Mode of Address; Practice Directions)

Note: Practice Directions issued by the court are reproduced in British Columbia Annual Practice. The BCSC webpage contains only the Practice Directions and Notices issued since January 1997.

READINGS: Law Society of BC Professional Conduct Handbook, Chapter 8

Monday, October 26, 2009 – Chambers - Drafting

TOPIC: Drafting Applications, Affidavits, Arguments & Orders

Note: The Chambers assignment will be distributed today and is due November 16, 2009 at 9 a.m.

Wednesday, October 28, 2009 – Chambers Advocacy

TOPIC: Advocacy in Chambers

READING:

Laskin, J.I., "What Persuades (or, What's going on inside the judge's mind) (Summer 2004) 23 Advocates' Soc. J. No. 1, 4-9.

Mr. Justice J.C. Bouck, "*Faults and Fixes: Preparation and Presentation by Counsel of Chambers Applications, Civil Judge Alone Trials and Civil Jury Trials*". Paper presented to the Civil Litigation Sub-section of the Canadian Bar Association, 15 February 1999. (On Reserve)

Monday, November 2, 2009 – Preparing for Trial: Experts and Admissions of Fact

TOPICS: Setting Matters for Trial
Trial Management Conference
Admissions
Experts

RULES: Rule 29, 30, 31, 34, 40 and New Rules Part 12, Part 11, 7-7

CASES: TBA

OPTIONAL
CASES

Prevost v Vetter (2002) 210 DLR (4th) 649 (BCCA)
Colosimo v Geraci (2004), 15 CPC (6th) 126 (BCSC)
Chu v Chen (2002), 22 CPC (5th) 73 (BCSC)
Grifone v. Moline (2004) 33 B.C.L.R. (4th) 170 (SC)
Moore v Castlegar and District Hospital (1995), 13 BCLR 31 (CA)

Monday, November 9, 2009 – Trials and Juries

TOPICS: Summary Trial v. Conventional Trial
Case Management
Setting a matter down for Trial
Pre-Trial Conference
Notice to Admit
Expert Reports
Evidence & Procedure at Trial
Civil Juries

RULES: 31, 35, 18A, 32A, 39, 40, 40A and see New Rules
Part 9 and Part 15

CASES: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (CA)

Louch (Litigation Guardian Of) v. Decicco 2006 BCSC 1911

OPTIONAL
CASES

Prevost v Vetter (2002) 210 DLR (4th) 649 (BCCA)
Colosimo v Geraci (2004), 15 CPC (6th) 126 (BCSC)
Chu v Chen (2002), 22 CPC (5th) 73 (BCSC)
Grifone v. Moline (2004) 33 B.C.L.R. (4th) 170 (SC)
Moore v Castlegar and District Hospital (1995), 13 BCLR 31 (CA)

Monday, November 16, 2009 - Hearing of Mock Chambers Applications (times may go over to Tuesday or Wednesday depending on class size)

Note: Chambers Assignment (oral arguments) scheduled today between 9am and 9pm – Check Chambers list for time of your moot.

Wednesday November 18, 2009 – Class Proceedings

TOPIC: Class Proceedings

GUEST: Craig Jones, Legal Services Branch, Ministry of Attorney General

STATUTE: *Class Proceedings Act*, R.S.B.C. 1996, c.50
(focus on Part I and Part II)

CASES: [Western Canadian Shopping Centres Inc. v. Dutton, \[2001\] 2 S.C.R. 534](#)
[Hollick v. Toronto \(City\), \[2001\] 3 S.C.R. 158](#)
[Rumley v. British Columbia, \[2001\] 3 S.C.R. 184](#)

READINGS: R. Hayley and W. Branch, An Insider's Guide to Class Certification
http://www.branmac.com/go/download/insider_certification.pdf

Monday, November 23, 2009 – Legal Fees and Disbursements and Costs

TOPICS: Legal Aid
 Self-Represented Parties
 Legal Fees, Contingency Fees
 Legal Costs/Interim Costs Orders
 Disbursements
 Special Costs
 Offers to Settle
 Challenge to tax on legal fees
 Access to Justice

RULES: Part 14

CASES:**Self-represented parties and Costs:**

Skidmore v. Blackmore (1995), 2 BCLR (3d) 201, [1995] BCJ No 305 (CA);
Pierlot Family Farm Ltd. v. Polstra (2006), 271 DLR (4th) 525 (PEI CA)

Order for Advance or Interim Costs:

British Columbia (Minister of Forests) v. Okanagan Indian Band, [2003] 3 S.C.R. 371;
Little Sisters Book and Art Emporium v. Commissioner of Customs and Revenue and Minister of National Revenue (2005), 249 D.L.R. (4th) 695 (BCCA) affirmed 2007 SCC 2,
 [2007] S.C.J. No. 2 *Little Sisters Book and Art Emporium v. Commissioner of Customs and Revenue*, 2007 SCC 2

Challenge to Tax on Legal Fees:

Christie v. British Columbia (A.G.) (2005), [2006] 2 W.W.R. 610 (BCCA) (appeal to SCC heard March 21, 2007 - see 2007 SCC 21 - judgment of SCC reverses BCCA)

STATUTE:

Legal Professions Act, R.S.B.C. 1996, c 255, Part VIII
Law Society Rules, Part VIII

Wednesday, November 25, 2009 – Professional Responsibility and the Role of Legal ProfessionalsTOPIC:

Overview of BC Law Society and the role of Benchers
 Profession Responsibility Issues

Please review the Professional Conduct Handbook on the website of The Law Society of British Columbia - <http://www.lawsociety.bc.ca>

Monday, November 30, 2009 – Civil Justice ReformTOPICS:

Civil Practice in Provincial Court
 Small Claims

GUESTS:

Barbara Carmichael, Legal Services Branch, Ministry of Attorney General

READINGS:

Handouts to be provided

Wednesday, December 2, 2009 - ReviewTOPIC:

Last class - closing remarks; exam review; questions.

Monday, December 14, 2009 – Final Exam