



**Federation of Law Societies of Canada**

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**National Committee on Accreditation**

**SAMPLE**

# **Examination for Civil Procedure**

Candidate No.: \_\_\_\_\_

*(To ensure your anonymity, please **DO NOT** include/type your name in any part of your exam)*

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## SAMPLE

### Examination for Civil Procedure

#### **General conditions of NCA online exams:**

To help NCA applicants transition to online long form examinations, the NCA now allows an extra hour, or **four (4) hours in total**, for completion of each exam.

NCA exams are open-book. **Only hard copy study materials** will be permitted; you will **NOT** have access to electronic copies of your notes or textbooks.

The examination will be graded on a **pass/fail** basis (50% is a pass).

The contents of the examination, including the exam questions, **must not be disclosed** or discussed with others

If you finish early, you must stay in place, with your computer still locked down, for the full 4 hours. **Failure to follow the proctor's instructions regarding sequestering is a violation of the Candidate Agreement and will result in your exam being disqualified.**

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NCA online exams are available through a secure, browser-based platform that locks down your computer. This means the computer cannot be used for any other purpose or to access any other material during the exam.

As you write your exam, a person designated as proctor will check your identification and monitor you **using two cameras**; a web camera on your computer and a camera on a tablet or phone.

For more information concerning the NCA's online exams, including, exam rules, technical requirements and the candidate agreement please see the links below:

<https://nca.legal/exams/online-exam-rules/>  
<https://nca.legal/exams/technical-requirements-and-testing-for-online-exams/>  
<https://nca.legal/exams/nca-candidate-agreement/>



**Each exam may have its own special instructions, therefore, it is important for you to read these carefully before starting.**

**Instructions specific to this exam:**

1. This examination contains **XYZ questions**, worth a total of **100 marks**.
2. Reference must be made to relevant materials – rules, cases, codes, commentaries, etc. – and failing to do so will negatively affect your grade.
3. The questions are designed to address different parts of the course. Repetition in your answers, which must be avoided where possible, will negatively affect your grade.

**This sample exam provides an indication of the style/type of questions that may be asked in each exam. It does not reflect the content or actual format/structure of questions nor their value. Actual exams for a specific subject vary from exam session to exam session.**



## **FACT PATTERN**

The recent COVID-19 pandemic has impacted all parts of society, including the farming and food industry.

Pratibha Kumar owns a food distribution company, Acme Foods (“Acme”). One of Acme’s clients – True North Groceries (“True North”), which has retail grocery stores across Canada – claims that Acme has recently failed to fully fill all shipments to True North. Further, True North claims that a recent shipment of processed meat products, which Acme provided to True North, was spoiled.

True North is claiming damages against Acme for breach of contract and negligence, as well as damages for health-related claims made against True North by its customers.

Kumar is shocked by True North’s allegations. First, with respect to any delayed or unfilled deliveries, food production and distribution across Canada has been significantly impacted by the COVID-19 pandemic. Although the Federal Government has provided some assistance, everything has slowed down. It is Kumar’s view that no one is to blame for that, particularly including Acme. Second, with respect to the allegations of spoiled meat (unrelated to the pandemic), it is her view that the reason why the meat products may have been spoiled had nothing to do with Acme, but rather was because of improper refrigeration practices on the part of True North as well as potentially the food transportation company – Reliable Trucking (“Reliable”) – used by Acme to deliver foods to all of its customers.

### **Question 1 – 20 marks**

First, provide a detailed overview description of the different procedures for commencing a proceeding in Canada.

Second, for the purpose of this question, assume you act for True North. Describe what procedure you would use to commence this proceeding. When answering this question, describe what document (for commencing the proceeding) you would use on behalf of True North and why. Further, describe what responding documents you would expect to receive back, what time periods would be involved, and what rules or other materials apply.

### **Question 2 – 20 Marks**

Now assume, for the purpose of this question, that you act for Acme. The lawyer for True North contacts you to see if Acme would be interested in resolving this case without going to a full hearing, but rather through some form of consensually-based dispute resolution process. In this answer, provide a full account to Acme about what consensually-based dispute resolution processes are available – both as part of the formal rules and separate from the rules. When answering this question, describe how they work, why one would be chosen over another, and



which one you might recommend in this case and why. In your answer, be specific in terms of rules and materials.

### **Question 3 – 20 Marks**

Again assume, for the purpose of this question, that you act for Acme and are taking instructions from Kumar. Provide a full description for Kumar about the process by which all relevant evidence is exchanged between parties in the civil litigation process (before a trial). Describe the key elements of the process (regarding both the documentary and oral phases of the process), including what the process is, what the purpose is, what the main principles are, how it works, and what information is subject to this process. Further, discuss what can be potentially excluded and why, and discuss any timing considerations. Be as specific as possible with your answer, including with the use of rules and materials. Examples must be used.

### **Question 4 – 20 Marks**

Things have become very adversarial between Acme and True North. True North has learned that one of Acme's large refrigeration units was not working properly while the processed meat was at Acme's warehouse, before it was shipped to True North. True North has a recording of this information made by a disgruntled former Acme employee. The recording was made just after the Acme employee was fired by Acme. It is the former Acme employee's opinion that Acme's faulty refrigeration unit caused the meat products to spoil.

Assume you act for True North. With the recording in its possession, True North thinks it has a very strong case. However, it would prefer not to go to a full final trial. Rather, it would prefer to use some form of adversarial, non-consensual process that would fully or partially deal with the matter before a full final trial. True North asks you for your advice?

First, provide a full general description of the basic adversarial, non-consensual processes that are available under the rules to partially or fully deal with a matter without going to a full final trial, including what the purpose of those processes are, how they work, what the differences are between the procedural options, and what specific tests might apply.

Second, what process would you recommend to True North in this situation and why? Be as specific as possible, including with the use of rules and materials.

### **Question 5 – 20 Marks**

Question 5 has 10 sub-questions, each worth 2 marks. Answer each of the sub-questions with either a "True" or "False".

- a) Assume True North is claiming only for the shipment of spoiled meat products against Acme. True North first became aware of the spoiled meat on 27 April 2020. True North would typically need to commence proceedings against Acme no later than 27 April 2021.



- b) Assume that the driver of the Reliable truck, which delivered the spoiled meat, made an unscheduled and improper stop along the delivery route. That stop, which resulted in a significant delay, likely caused the meat products to spoil. For the purpose of this question, assume that True North brought a claim only against Reliable, and that Reliable has no claim against True North. Reliable denies any liability and, further, is of the view that if anyone is to blame, it is the driver. In addition to defending against True North, Reliable would use a Counterclaim against the driver in order to cover any damages Reliable might have to pay to True North.
- c) Assume True North sues Acme. Kumar is examined for discovery on behalf of Acme. In addition to Kumar, True North, without bringing a motion or without consent, may also discover any other employee of Acme.
- d) Losing parties pay costs at trials, but losing parties do not pay costs on motions.
- e) Proportionality is designed to improve civil justice.
- f) Masters are involved in settlement discussions, judges are not.
- g) Two different causes of action, and two different plaintiffs, may not be joined in one statement of claim.
- h) A defendant from outside of Canada may not be sued by a plaintiff from outside of Canada using a court process in Canada.
- i) Originating processes do not typically need to be served personally.
- j) Evidence on motions is typically brought by way of affidavit.