



Syllabus

Civil Procedure

(Revised for 2022)

Candidates are advised that the syllabus may be updated from time-to-time without prior notice.

Candidates are responsible for obtaining the most current syllabus available.



PART I. COURSE DESCRIPTION

A. Introduction

This course is designed to cover the rules and procedures involved in the civil dispute resolution process in Canada. The course has three main objectives.

Concepts. The first main objective of the course is for candidates to be able to demonstrate an understanding of the general concepts involved in the civil dispute resolution process. Candidates must understand the rules of civil procedure (the “Rules”), applicable statutes and other relevant materials. The course also looks beyond the Rules to examine relevant contextual issues, including alternative processes, access to justice and professional responsibility.

Skills. The second main objective of the course is for candidates to be able to demonstrate an understanding of how the Rules apply in various steps of the civil dispute resolution process. Candidates should be able to demonstrate an understanding of how to use Rules and materials in the context of various factual scenarios.

Critical and Reflective Thinking. The third main objective of the course is to foster critical and reflective thinking about the civil dispute resolution process. Candidates should be able to think critically about what works, what doesn’t, and what options and alternatives might be available.

B. Format

Self-Taught. This course is designed to be self-taught. Topics, materials and suggested issues to consider, set out in this syllabus, provide the basic course materials.

Coverage. Procedure in civil dispute resolution matters in Canada is largely within provincial jurisdiction.¹ Provinces and territories generally have their own Rules, statutes and other materials. Candidates are not expected to learn the Rules and materials of all jurisdictions; rather, it is assumed that candidates will primarily focus on the Rules and materials of the jurisdiction in which they seek to practice. However, because a significant number of candidates typically seek to practice in Ontario, this course syllabus primarily includes Ontario’s *Rules of Civil Procedure*, statutes, and other materials as a default set of Rules and materials (subject to further comments on readings and materials below). For candidates seeking to practice in a Canadian jurisdiction other than Ontario, they should follow the topics and issues set out in this course syllabus; however, they may use the relevant corresponding Rules, statutes and materials from another Canadian jurisdiction (see further below).

¹ *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App II, No. 5, s. 92(14).



C. Course Materials

There are required and optional materials available to candidates for this course.

Rules. The primary required materials for this course are the Rules. As mentioned above, this course syllabus includes Ontario's *Rules of Civil Procedure* as a default set of Rules. Alternatively, to the extent that candidates seek to practice in another Canadian jurisdiction, candidates may study and make reference to the Rules of another Canadian jurisdiction. In those circumstances, particularly on examinations, it will be required that candidates properly identify not only the number of a given Canadian jurisdiction's Rule, but also the Rule's name, and any other relevant identifying information. For example, where this syllabus refers to Ontario's *Rules of Civil Procedure*, r. 20, "Summary Judgement", candidates seeking to practice in Alberta (and who have studied the Alberta Rules) could alternatively use the *Alberta Rules of Court*, Part 7, Division 2, "Summary Judgment". Further instructions about the use of Rules will be provided on examination instruction pages. The Rules may be accessed from various sources:

- Provincial and territorial Rules can be accessed through various online sources.²
- Optional commercial sources – including annotated collections – are also available.³

Statutes, Cases, Commentaries, and Other Materials. In addition to Rules, various statutes and other relevant materials (e.g. practice directions) also govern the civil dispute resolution process and must be reviewed. Again, it will be assumed that candidates should understand and make reference to relevant Ontario statutes and other relevant materials. However, as with the Rules, candidates may make reference to the statutes and other relevant materials of other Canadian jurisdictions, provided that they are clearly identified on examinations. For example, where this syllabus refers to Ontario's *Limitations Act, 2002*, ss. 4-5, "Basic limitation period" and "Discovery", candidates seeking to practice in Alberta (and who have studied Alberta's statutes and materials) could alternatively use Alberta's *Limitations Act*, s. 3, "Limitation periods", etc. Additionally, cases (from first instance and appellate courts) and commentaries (texts, articles, reports, etc.) will also assist candidates to understand the civil dispute resolution process and should, where appropriate, be reviewed and referred to on examinations. Statutes and other relevant materials can be accessed from various sources:

- Statutes and other relevant materials can be accessed through various online sources.⁴
- Cases and other commentaries can also be accessed through various online sources.⁵
- Optional materials – casebooks,⁶ texts and commentaries,⁷ etc. – are also available.

² See e.g. CanLII, online: <<https://www.canlii.org/en/>>; Ontario, e-Laws, online: Government of Ontario <<https://www.ontario.ca/laws>>, and others.

³ See e.g. *Watson & McGowan's Ontario Civil Practice 2022*, online: Thomson Reuters <<https://store.thomsonreuters.ca/en-ca/pdp/watson--mcgowans-ontario-civil-practice-2020--cd-rom--preview/30844994>>, and others.

⁴ See e.g. CanLII, online: <<https://www.canlii.org/en/>>; Ontario, e-Laws, online: Government of Ontario <<https://www.ontario.ca/laws>>, and others.

⁵ See e.g. CanLII, online: <<https://www.canlii.org/en/>>; Ontario Courts, online: <<https://www.ontariocourts.ca/>>; Federal Court, online: <<https://www.fct-cf.gc.ca/en/home>>; Supreme Court of Canada, online: <<https://www.scc-csc.ca/>>, and others.



D. Evaluation

Examination. Evaluation for this course is based on a 100%, open-book written examination. Examinations will be designed to cover the main civil dispute resolution topics, issues and materials. Further details about examinations and grading requirements for this course are available from the National Committee on Accreditation.⁸

⁶ For a casebook covering the civil dispute resolution process in Canada, see e.g. Janet Walker *et al.*, eds., *Civil Litigation Process: Cases and Materials*, 9th ed. (Toronto: Emond, 2022).

⁷ See e.g. Trevor C.W. Farrow, *Civil Justice, Privatization, and Democracy* (Toronto: University of Toronto Press, 2014), an early draft of which can be found online: SSRN

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1795407>; Janet Walker and Lorne Sossin, *Civil Litigation* (Toronto: Irwin Law, 2010); Noel Semple, ed., *Civil Procedure and Practice in Ontario*, Canadian Legal Information Institute, 2021 CanLII Docs 2071, online: CanLII <<https://www.canlii.org/en/commentary/66972/>>; Noel Semple, *An Introduction to Civil Procedure: Readings*, 2021 CanLII Docs 82, online:

<[https://www.canlii.org/en/commentary/doc/2021CanLII Docs82?zoupio-debug#!fragment/zoupio-Toc63261971/\(hash:\(chunk:\(anchorText:zoupio-Toc63261971\),notesQuery:'.',scrollChunk:!,n,searchQuery:'noel%20semple',searchSortBy:RELEVANCE,tab:search\)\)](https://www.canlii.org/en/commentary/doc/2021CanLII Docs82?zoupio-debug#!fragment/zoupio-Toc63261971/(hash:(chunk:(anchorText:zoupio-Toc63261971),notesQuery:'.',scrollChunk:!,n,searchQuery:'noel%20semple',searchSortBy:RELEVANCE,tab:search)))>.

⁸ For further details and contact information for the National Committee on Accreditation, see online: NCA <<http://www.nca.legal>>; Trevor C.W. Farrow & Lesley A. Jacobs, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020; paperback, 2021).



PART II. COURSE OUTLINE

1. Background to the Civil Dispute Resolution Process

Issues to Consider⁹

- Civil dispute resolution
- Purposes of the civil justice system
- Process and professionalism
- Everyday legal problems

Materials

- *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (Table of Contents) (skim¹⁰)
- Trevor C.W. Farrow *et al.*, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report* (Toronto: Canadian Forum on Civil Justice, 2016), available online: Osgoode Digital Commons <<https://digitalcommons.osgoode.yorku.ca/olsrps/150/>>; SSRN <<file:///Users/tfarrow/Downloads/SSRN-id2795672.pdf>> (also through the CFCJ's website, <<http://www.cfcj-fcjc.org/>>) (skim this report to get a sense of the landscape of everyday legal problems in Canada, how people tend to deal with them, costs, etc.)
- *Douez v. Facebook, Inc.*, 2017 SCC 33 at para. 25

Further Optional Background Materials¹¹

- Trevor C.W. Farrow, *Civil Justice, Privatization, and Democracy* (Toronto: University of Toronto Press, 2014)

2. Basic Institutions and Processes

Issues to Consider

- Structure of Canadian courts and dispute resolution system(s)
- Distinguish between courts, administrative tribunals and other processes
- Overview of civil litigation process

Materials

- *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App II, No. 5, ss. 92(13), 92(14), 96-101 (skim)

⁹ These “issues to consider”, set out here and under the other various topics, are included simply to help focus candidates’ thinking when going through the materials and various topics. They are not, however, meant to be exhaustive lists of all important aspects of a given topic, nor are candidates required to answer all of the questions raised by these issues.

¹⁰ Where “skim” is indicated, candidates do not need to do a close reading.

¹¹ These “further optional background materials”, although not required, are included to provide further materials that may be helpful for candidates looking for additional coverage of a topic.



- *Courts of Justice Act*, R.S.O. 1990, c. C.43 ([skim](#))
- *Small Claims Court Jurisdiction and Appeal Limit*, O. Reg. 626/00, s. 1 ([skim](#))
- *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended ([skim](#) Table of Contents)
- Superior Court of Justice, *Practice Directions and Policies*, online:
<<https://www.ontariocourts.ca/scj/practice/practice-directions/>> ([skim](#))
- *Federal Courts Act*, R.S.C. 1985, c. F-7 ([skim](#) headings in Table of Contents)
- *Supreme Court Act*, R.S.C. 1985, c. S-26 ([skim](#) headings in Table of Contents)
- *Statutory Powers and Procedure Act*, R.S.O. 1990, c. S.22, ss. 3, 4, 4.8, 25.01 ([skim](#))
- *Ontario Human Rights Code*, R.S.O. 1990, c. H.19 ([skim](#) headings in Table of Contents, with a particular focus on sub-headings in pt. IV)
- *Arbitration Act, 1991*, S.O. 1991, c. 17 ([skim](#))

Further Optional Background Materials

- *Reference re Code of Civil Procedure (Que.)*, art. 35, 2021 SCC 27
- Department of Justice Canada, *Canada's System of Justice* (2015), online: Government of Canada <<https://www.justice.gc.ca/eng/csjsjc/just/img/courten.pdf>>
- Ministry of Attorney General, "Flowcharts summarizing the processes under the *Rules of Civil Procedure*, Revised to reflect court reforms in effect on January 1, 2021" (January 2021), online:
<https://www.attorneygeneral.jus.gov.on.ca/english/courts/civil/changes_to_rules_of_civil_procedure_flowcharts.pdf>
- Trevor C.W. Farrow, *Civil Justice, Privatization, and Democracy* (Toronto: University of Toronto Press, 2014)
- Janet Walker and Lorne Sossin, *Civil Litigation* (Toronto: Irwin Law, 2010)

3. Limitations, Capacity, Standing and Parties

Issues to Consider

- Limitation periods: what are they, why do we have them?
- Basic statutory limitation provisions and exceptions, how they operate, when, why, etc.
- Capacity: what is it?
- Standing: what is it (private and public interest)?
- Parties: what and who are they?
- Intervenors

Materials

- *Limitations Act, 2002*, S.O. 2002, c. 24
- *Peixeiro v. Haberman*, [1997] 3 S.C.R. 549 at paras. 33-41 ([skim](#) balance of case)
- Federation of Law Societies of Canada, *Model Code of Professional Conduct (Model Code)*, r. 3.2-9
- *Rules of Civil Procedure*, rr. 1.03(1) ("disability"), 13, 14.06, 15.01, 15.01.1; [skim](#) also rr. 5 and 7-11



- *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at paras. 1-4, 18-52 (skim balance of case)
- *Carroll v. Toronto-Dominion Bank*, 2021 ONCA 38, paras. 31-41 (leave to appeal to SCC dismissed, 2021 CanLII 61407 (SCC))
- *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7 (skim)

Further Optional Background Materials

- *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31
- *Crombie Property Holdings Ltd. v. McColl-Frontenac Inc.*, 2017 ONCA 16, leave to appeal to S.C.C. refused, [2017] S.C.C.A. No. 85 (skim for basic arguments on “discoverability” in limitations)
- *Siddiqui v. Saint Francis Xavier High School*, 2019 ONSC 30 (connection between limitation periods and capacity)
- *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2 (public interest standing)
- *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14 (limitation periods, public interest standing, honour of the Crown)

4. General Matters (Proportionality, Etc.), Commencing Proceedings, Pleadings

Issues to Consider

- Proportionality: what is it, why is it important, connections with access to justice?
- Venue, time, etc.
- Originating processes – commencing proceedings (actions and applications, etc.)
- Pleadings: form, content, adequacy, particulars, etc.
- Joinder of parties and claims
- Counter, cross, and third party claims
- Consolidation
- Simplified proceedings
- Small claims
- Pleadings and professionalism

Materials

- *Rules of Civil Procedure*, rr. 1.03 (“action”, “application”, “originating process”, etc.), 1.04(1) and (1.1), 4.05, 4.05.1, 5, 6, 6.1, 13.1, 14, 15, 18, 25-29, and generally skim rr. 1-4, 76
- *Courts of Justice Act*, R.S.O. 1990, c. C.43, ss. 1, 22-23, 138 (skim)
- O. Reg. 344/19: *Rules of Civil Procedure* (23 October 2019) (skim regarding simplified procedures)
- *Moosa v. Hill Property Management Group Inc.*, [2010] O.J. No. 624, paras. 1-7, 101-117
- *Copland v. Commodore Business Machines Ltd.* (1985), 52 O.R. 2d 586 (Master)
- *Whiten v. Pilot Insurance*, [2002] 1 S.C.R. 595, paras. 1-4, 84-92, 141-142
- *Limitations Act, 2002*, S.O. 2002, s. 21



- *Model Code*, rr. 5.1-1, 5.1-2 (skim)
- *Negligence Act*, R.S.O. 1990, c. N.1, s.1 (skim)

Further Optional Background Materials

- Ministry of the Attorney General, “Fact Sheet: Simplified Procedure under rule 76 of the *Rules of Civil Procedure*” (January 2021), online: Ontario Government <https://www.attorneygeneral.jus.gov.on.ca/english/courts/civil/fact_sheet_simplified_procedure_76.pdf>
- Trevor C.W. Farrow, “Five Pleadings Cases Everyone Should Read” (2009) 35 *Advocates’ Q.* 466, available online: SSRN <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1755276>

5. Class Proceedings

Issues to Consider

- Class proceedings: what are they? Purpose?
- How are they different from multi-party litigation?
- How does the general process work?
- What specifically is “certification”?
- Settlement and appeals
- Costs, fees and funding
- Cases against the government
- Recent reforms (in Ontario)

Materials

- *Class Proceedings Act, 1992*, S.O. 1992, c. 6
- *Law Society Act*, R.S.O. 1990, c. L.8, ss. 52, 55(1), 59.1-59.5 (skim)
- *Class Proceedings*, O. Reg. 771/92, as amended, ss. 5, 10, 11 (skim)
- *Rules of Civil Procedure*, r. 12 (skim)
- *Hollick v. Toronto (City)*, [2001] 3 S.C.R. 158
- *Rumley v. British Columbia*, [2001] 3 S.C.R. 184
- *AIC Limited v. Fischer*, [2013] 3 S.C.R. 949 (skim)
- *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7 (skim)

Recent Reforms (in Ontario)

- *Smarter and Stronger Justice Act, 2020*, S.O. 2020, c. 11 – Bill 161, sched. 4 (skim)

Further Optional Background Materials



- Law Commission of Ontario, *Class Actions: Objectives, Experiences and Reforms* (Toronto: Law Commission of Ontario, 17 July 2019), online: <<https://www.lco-cdo.org/en/our-current-projects/class-actions/final-report/>>
- *Western Canadian Shopping Centres Inc. v. Dutton*, [2001] 2 S.C.R. 534
- *Cassano v. Toronto Dominion Bank* (2009), 98 O.R. (3d) 543, 79 C.P.C. (6th) 110 (C.A.)
- *Canadian Imperial Bank of Commerce v. Green*, 2015 SCC 60
- *Baxter v Canada (Attorney General)* (2006), 83 OR (3d) 481
- *Brown v. Canada (Attorney General)*, 2014 ONSC 6967
- *Brown v. Canada (Attorney General)*, 2017 ONSC 251
- *Heller v. Uber Technologies Inc.*, 2021 ONSC 5518

6. **Jurisdiction, Service**

Issues to Consider

- Jurisdiction: over what do courts have jurisdiction and on what basis?
- Distinction between jurisdiction *simpliciter* and *forum non conveniens*
- Service: in and out of the jurisdiction

Materials

- *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App II, No. 5, ss. 91 and 92
- *Courts of Justice Act*, R.S.O 1990, c. C.43, ss. 11(2), 106, 138
- *Rules of Civil Procedure*, rr. 16-17, 25.03
- *Club Resorts Ltd. v. Van Breda*, [2012] 1 S.C.R. 572

Further Optional Background Materials

- *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30
- *Arsenault v. Nunavut*, 2015 ONSC 4302, aff'd 2016 ONCA 207
- *Douez v. Facebook, Inc.*, 2017 SCC 33
- *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4
- Trevor C.W. Farrow, "Globalization, International Human Rights, and Civil Procedure" (2003) 41 Alta L. Rev. 671, available online: Digital Commons <https://digitalcommons.osgoode.yorku.ca/scholarly_works/2061/>

7. **Discovery, Evidence and Experts**

Issues to Consider

- What is discovery? Purpose? How does it work?
- How is it used at trial?



- Continuing discovery rule
- Deemed undertaking rule
- Medical examinations and experts
- What are the various aspects of discovery: documentary, oral, physical, etc.?
- How does proportionality impact discovery?
- What is electronic discovery?
- What are the various evidentiary rules and limits around discovery and disclosure, including solicitor and client privilege, litigation privilege, settlement privilege, other?
- What ethical challenges are raised by the discovery process?

Materials

- *Rules of Civil Procedure*, rr. 1.03(1) (“discovery”, “document”, and “electronic”), 1.04(1), 1.04(1.1), 29.1, 29.2, 30, 30.1, 31, 32-36, 39.04, see also rr. 4.1, 12.03, 76.03-76.04
- *Model Code*, r. 5.1

Further Optional Background Materials

- *Grossman v. Toronto General Hospital* (1983), 41 O.R. (2d) 457 (H.C.J.)
- *Apotex Inc. v. Richter Gedeon Vegyeszeti Gyar RT*, [2010] O.J. No. 2718 (Master)
- *Jones v. I.F. Propco Holdings (Ontario) 31 Ltd.*, 2018 ONSC 23 at paras. 1-5, 26-44
- *Pritchard v. Ontario (Human Rights Commission)*, [2004] 1 S.C.R. 809 at paras. 1-9, 14-21, 27-36
- *IPEX Inc. v. AT Plastics Inc.*, 2011 ONSC 4734 at paras. 26-33
- *Union Carbide Canada Inc. v. Bombardier Inc.*, [2014] 1 S.C.R. 800 at paras. 31-44
- *Lizotte v. Aviva Insurance Company of Canada*, [2016] 2 S.C.R. 521 at paras. 1, 19-25, 32-37
- *Blank v. Canada (Minister of Justice)*, [2006] 2 S.C.R. 319
- *Smith v. Jones*, [1999] 1 S.C.R. 455
- *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, [2008] 2 S.C.R. 574 at paras. 9-10
- *A.M. v. Ryan*, [1997] 1 S.C.R. 157 at paras. 1-12, 19-42

8. Case Management, Pre-Trial Conferences, ADR

Issues to Consider

- Case management and pre-trial conferences
- Alternative dispute resolution (ADR): private and court-annexed processes

Materials

- *Rules of Civil Procedure*, rr. 1.04(1), 1.04(1.1), 24.1, 50, 77, skim also r. 76.08
- *Model Code*, r. 3.2-4
- Practice Advisory Concerning the Provincial Civil Case Management Pilot – One Judge Model, online: <<https://www.ontariocourts.ca/scj/practice/civil-case-management-pilot/>>



- *Commercial Mediation Act, 2010*, S.O. 2010, c.16, Sch. 3 (skim)
- *Arbitration Act, 1991*, S.O. 1991, c. 17 (skim)

Further Optional Background Materials

- Ministry of the Attorney General, “Fact Sheet: Civil Case Management” (1 January 2021), online: Ontario Government <https://www.attorneygeneral.jus.gov.on.ca/english/courts/civil/fact_sheet_civil_case_management.html>
- Department of Justice, “Dispute Resolution Reference Guide” (19 January 2015), online: Government of Canada <<http://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/intro.html>>
- *Seidel v. TELUS Communications Inc.*, [2011] 1 S.C.R. 531
- *Douez v. Facebook, Inc.*, 2017 SCC 33
- *Uber Technologies Inc. v. Heller*, 2020 SCC 16

9. Motions, Interlocutory Relief

Issues to Consider

- What are motions and what are they for?
- What is the basic motion procedure?
- Judges, Associate Judges and Masters
- What evidence is typically used on motions?
- What is interlocutory and final relief?
- What are injunctions?

Materials

- *Rules of Civil Procedure*, rr. 1.03(1) (“motion”, “moving party”), 4.06, 37, 39, 40, and skim rr. 41-45
- *Courts of Justice Act*, R.S.O 1990, c. C.43, ss. 87, 101
- *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at pt. I (“Factual Background”) and pt. VI (“Analysis”)

Further Optional Background Materials

- *Harper v. Canada (Attorney General)*, 2000 SCC 57
- Ontario Superior Court of Justice, “About Judges and Judicial Officers”, online: Ontario Courts <<https://www.ontariocourts.ca/scj/judges/about/>>

10. Disposition Without Full Trial

Issues to Consider



- What are various disposition without full trial tools
- Compare adversarial tools (summary judgment, striking pleadings, etc.) with non-adversarial tools (negotiation, mediation, etc.)
- Summary trial (in jurisdictions where available)

Materials

- *Rules of Civil Procedure*, rr. 2.1, 19-24, 25.11; see also r. 48.14 (skim)
- *Hryniak v. Mauldin*, [2014] 1 S.C.R. 87 at paras. 1-7, 23-33, 34-79

Further Optional Background Materials

- *Royal Bank of Canada v. 1643937 Ontario Inc.*, 2021 ONCA 98, paras. 23-27
- *Jane Doe v. Board of Commissioners of Police for the Municipality of Metropolitan Toronto* (1990), 74 O.R. (2d) 225 (Div. Ct.)
- *Eliopoulos v. Ontario (Minister of Health & Long Term Care)* (2006), 82 O.R. (3d) 321, leave to appeal to S.C.C. dismissed, [2006] S.C.C.A. No. 514
- *Brown v. Canada (Attorney General)*, 2014 ONSC 6967
- *Brown v. Canada (Attorney General)*, 2017 ONSC 251

11. Trials, Applications, References, Judgments, Appeals

Issues to Consider

- Trials, applications and references (brief overview)
- Admissions (brief overview)
- Orders and judgments (brief overview)
- Appeals (brief overview)

Materials

- *Rules of Civil Procedure*, rr. 38-39, 46-48, 51-55, 59-60, 61-63 (skim)

Further Optional Background Materials

- *Juries Act*, R.S.O. 1990, c. J.3
- *Evidence Act*, R.S.O. 1990, c. E.23
- *Canada Evidence Act*, R.S.C. 1985, c. C.5

12. Pluralism of Participants and Processes

Issues to Consider

- Pluralism of norms, laws, cultures, participants, processes and social context
- What process works for what dispute? Why? Options and alternatives?



- The role of lawyers and the legal profession
- Connecting procedural tools with just outcomes
- Critiques and other considerations

Materials

- Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Truth and Reconciliation Commission of Canada, 2015), pp. 164-165, 166-170 (and skim balance), online: TRC <<https://nctr.ca/records/reports/>>
- *Commercial Mediation Act, 2010*, S.O. 2010, c.16, Sch. 3 (skim)
- *Arbitration Act, 1991*, S.O. 1991, c. 17 (skim)

Further Optional Background Materials

- Trevor C.W. Farrow, *Civil Justice, Privatization, and Democracy* (Toronto: University of Toronto Press, 2014)
- *Elias Restaurant v Keele Sheppard Plaza Inc*, 2020 ONSC 5457 at paras. 1-3, 16-21, 32-38 (appeal to Court of Appeal for Ontario dismissed, 2021 ONCA 371)
- *First Nations Representation on Ontario Juries*, Report of the Independent Review Conducted by The Honourable Frank Iacobucci (February 2013), online: Ontario Government <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/First_Nations_Representation_Ontario_Juries.html>
- Karen Drake, “Indigenous Constitutionalism and Dispute Resolution Outside the Courts: An Invitation” (2020), online: Osgoode Digital Commons <https://digitalcommons.osgoode.yorku.ca/scholarly_works/2812>
- Val Napoleon and Hadley Friedland, “Indigenous Legal Traditions: Roots to Renaissance” (2013) Ontario Law Foundation 1-20, online: <https://www.law.utoronto.ca/utfl_file/count/users/mdubber/CAL/13-14/Napoleon%20and%20Friedland,%20Roots%20to%20Renaissance,%20formatted.pdf>
- Nisha Sikka, George Wong and Catherine Bell, “Indigenous Centered Conflict Resolution Processes in Canada”, available on Centre of Excellence for Matrimonial Real Property webpage <<https://www.coemrp.ca/resources/dispute-resolution/>>
- Rebecca Ratcliffe and Catherine Bell, “Western ADR Processes and Indigenous Dispute Resolution”, available on Centre of Excellence for Matrimonial Real Property webpage <<https://www.coemrp.ca/resources/dispute-resolution/>>
- Trevor C.W. Farrow, “Ethical Lawyering in a Global Community” (2013) 37:1 Man. L.J. 61, available online: Osgoode Digital Commons: <http://digitalcommons.osgoode.yorku.ca/ethical_lawyering/2/>; SSRN <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2192512>
- *Seidel v. TELUS Communications Inc.*, [2011] 1 S.C.R. 531
- *Douez v. Facebook, Inc.*, 2017 SCC 33

13. Costs and Fees



Issues to Consider

- Paying for dispute resolution
- What are “costs” and “fees” and how are they different?
- Rules-based settlement incentives (e.g. *Rules of Civil Procedure*, r. 49)
- Contingency fees
- Litigation funding
- Security for costs

Materials

- *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 131
- *Rules of Civil Procedure*, rr. 1.03, 1.04, 49, 56-57, 58 (skim), 76.13, Tariff A (skim)
- *Class Proceedings Act, 1992*, S.O. 1992, c. 6, ss. 31-33.1
- *Solicitors Act*, R.S.O. 1990, c. S.15, ss. 15, 16, 20, 28.1
- *Model Code*, r. 3.6

Further Optional Background Materials

- Noel Semple, “The Cost of Seeking Civil Justice in Canada” (2015) 93 Can. Bar. Rev. 639
- *R. v. Caron*, [2011] 1 S.C.R. 78 (and follow-up decision on the merits, 2015 SCC 56)
- *Little Sisters Books and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2
- *Fehr v. Sun Life Assurance Company of Canada*, 2012 ONSC 2715

14. Access to Justice

Issues to Consider

- What is “access to justice” and how should we define it?
- What are some key access to justice problems? Possible solutions?
- What specific role(s) should lawyers and law societies play in this discussion?

Materials

- *Law Society Act*, R.S.O. 1990 c. L.8, s. 4.2
- *Hryniak v. Mauldin*, [2014] 1 S.C.R. 87 (skim regarding a “culture shift”)
- *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, [2014] 3 SCR 31 (skim)
- Trevor C.W. Farrow, “What is Access to Justice?” (2014) 51:3 Osgoode Hall L.J. 957, online: Digital Commons <<http://digitalcommons.osgoode.yorku.ca/ohlj/vol51/iss3/10/>>
- Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice, A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and



Family Matters, October 2013), online: CFCJ <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf> (skim)

Further Optional Background Materials

- United Nations, Sustainable Development Goals, Goal 16, online: <<https://sustainabledevelopment.un.org/sdg16>>
- Task Force on Justice, *Justice for All – Final Report* (New York: Centre on International Cooperation, 2019), online: <https://bf889554-6857-4cfe-8d55-8770007b8841.filesusr.com/ugd/90b3d6_746fc8e4f9404abeb994928d3fe85c9e.pdf>
- Canada’s Justice Development Goals, online: <<http://www.justicedevelopmentgoals.ca/>>
- Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada* (Ottawa: Canadian Bar Association, August 2014), online: CBA <http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDF/S/Futures-Final-eng.pdf>
- Canadian Bar Association, *Reaching Equal Justice Report: An Invitation to Envision and Act* (Ottawa: Canadian Bar Association, November 2013), online: CBA <http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf>
- The National Self-Represented Litigants Project, *Identifying and Meeting the Needs of Self-Represented Litigants*, Final Report (May 2013), online: <<https://representingyourselfcanada.files.wordpress.com/2014/05/nsrlp-srl-research-study-final-report.pdf>>
- Lisa Moore and Trevor C.W. Farrow, *Investing in Justice: A Literature Review in Support of the Case for Improved Access* (Toronto: Canadian Forum on Civil Justice, 2019), online: Osgoode Digital Commons <<https://digitalcommons.osgoode.yorku.ca/reports/214/>>; SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3474594>; CFCJ <<https://cfcj-fcjc.org/reports-publications/>>
- Rod Macdonald, “Access to Justice and Law Reform” (1990) 10 Windsor Y.B. Access Just. 287
- *British Columbia (Attorney General) v. Christie*, [2007] 1 S.C.R. 873
- Trevor C.W. Farrow & Lesley A. Jacobs, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020; paperback, 2021)

15. Other Topics and Issues

Issues to Consider

- *Res judicata* and *estoppel* (brief overview)
- Delay
- Dismissal
- Default
- Discontinuance
- Contempt
- Other proceedings



- COVID-19 pandemic, remote hearings and virtual courts

Materials

- *Rules of Civil Procedure*, rr. 19, 23-24, 48.14, 60.11, and skim rr. 64-75.2
- *Penner v. Niagara (Regional Police Services Board)*, [2013] 2 S.C.R. 125 (skim)
- Joint E-Hearings Task Force of The Advocates' Society, Ontario Bar Association, Federation of Ontario Law Associations & Ontario Trial Lawyers Association, *Best Practices for Remote Hearings* (13 May 2020), online: Advocates' Society <https://www.advocates.ca/Upload/Files/PDF/Advocacy/BestPracticesPublications/BestPractices_for_Remote_Hearings_oct30.pdf> (skim)



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Online Resources

The majority of case law and legislative resources needed by NCA students are available on CanLII, the free legal information resource funded by the Federation of Law Societies of Canada (www.canlii.org). That includes all decisions of the Supreme Court of Canada, and all federal, provincial, territorial and appellate courts.

Your registration fee also includes free access to the Quicklaw resources of Lexis Nexis. Your ID and password will be arranged and emailed to your email address on file a few weeks after the end of the registration session.

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