



Top 10 Surprising Things You Didn't Know About Litigation In Canada

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Some Interesting Aspects of Canadian Litigation



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CANADIAN LAWYERS

Is there a choice of venue?

- Federal Court jurisdiction is limited by subject-matter (tax, immigration, admiralty and intellectual property)
- All other civil matters are litigated before the provincial courts
- Proper venue - civil claims within a province
- Proper venue - civil claims as between provinces



Juries

- Juries rare in civil trials
- Any party to action may elect
- Jury request can be challenged
- Right to juries in some cases
 - libel
 - slander
 - malicious arrest
 - false imprisonment
- Do not need to be unanimous



How to Obtain Discovery in Canada

- For Canadian litigation
 - one representative with duty to inform
 - the dreaded undertakings
 - no discovery of third parties without leave

Evidence for U.S. Litigation: Letters Rogatory

- Evidence sought must be:
 - Relevant
 - Necessary
 - Not otherwise obtainable
 - Identified with reasonable specificity
 - Not unduly burdensome having in mind Canadian obligations
 - Not contrary to public policy
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Potentially Unanticipated Issues

- Obtainability refers to subject-matter, not deponent
- Burden and public policy issues
- Canadian rules may apply to the examination

Contingency Fees

- Well established in some provinces
- Now available in all provinces
- Written agreement essential
- Typical amount 20 - 40%
- Some provinces cap percentage
- Common in class actions - requires court approval



Is There a *Daubert* Standard in Canada?

- Not a *Daubert* standard *per se*
- Expert evidence can be excluded for lack of qualifications, relevance or scientific reliability
- Analysis of scientific reliability not as structured or sophisticated
- In most jurisdictions no pre-trial deposition of experts and no robust pre-trial motion process to deal with admissibility issues




"I know nothing about the subject, but I'm happy to give you my expert opinion."


Multiple Proceedings

- Limited ability to proactively manage parallel proceedings
- No consolidation regime equivalent to an MDL
- Class proceedings most widely used vehicle
- Otherwise, relatively weak management tools:
 - joinder (of claims or parties)
 - consolidation or hearing together (of proceedings)
 - stay of proceedings
 - *ad hoc* special arrangements

Are Attorneys' Fees Recoverable?

- Varies by province
 - Some “loser pays” jurisdictions
 - Quantum recoverable: partial or substantial indemnity
 - Some rules regarding offers to settle attract additional cost consequence
 - Some claims (for example, fraud) may attract additional cost consequences
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Communications with Experts

- Expert duty to court, not parties
 - Recent Ontario decision determined improper for counsel to review expert drafts and suggest revisions
 - Firestorm of reaction
 - Many advocacy groups sought and obtained leave to intervene in the appeal
 - Appeal to be heard in late September
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The Canadian Reach

- Google global Restraining Order
- British Columbia Action
- Plaintiff manufactured computer network devices
- Plaintiff claims defendant stole trade secret
- Google not a party
- Court ordered Google not to include Defendant's websites in their search results - worldwide



Random Unique Customs

- Trial lawyers wear robes to court (yes, just like the Old Bailey, but minus the wigs)



Random Unique Customs

- In open court your opponent is referred to as “my friend” (used to be worse, used to be “my learned friend”)



Random Unique Customs



- Trial lawyers stand and bow to the judge (if it is any consolation, the judge stands and bows back)

Random Unique Customs

- Some judges must be addressed as My Lord or My Lady



Faculty Biography: Jill Lawrie

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Jill's litigation and dispute resolution practice focuses on product liability matters and class actions. She has appeared at all levels of the courts in Ontario, as well as the Supreme Court of Canada. Jill has acted for both start-up and established clients involved in numerous industries, including manufacturers of medical devices, pharmaceuticals, automobiles and all manner of food and consumer products, as well as for professional service organizations, financial institutions and insurers.

Jill is regularly asked to provide proactive advice to corporations on product warnings, recalls and litigation risks including advice related to various regulatory issues under the Canadian Food Inspection Agency Act and the Canada Consumer Product Safety Act. Much of her litigation experience has been gained in large, document-intensive cases involving complex financial, technical, scientific and medical issues, often with a cross-border or multi-jurisdictional focus.

Practices

- Class Actions
- Product Liability
- Marketing & Health Regulatory
- Litigation & Dispute Resolution

Awards and Recognition

- The Best Lawyers in Canada 2014 (Class Action Litigation and Personal Injury Litigation)
- Legal Media Group's Guide to the World's Leading Women in Business Law 2013 (Product Liability)
- Law Business Research's The International Who's Who of Life Sciences Lawyers 2013 (Product Liability)
- Legal Media Group's LMG Life Sciences: The Definitive Guide to the Leading Life Sciences Firms and Attorneys in North America 2013 (Life Sciences Star)
- Legal Media Group's Guide to the World's Leading Product Liability Lawyers 2012
- Legal Media Group's Guide to the World's Leading Women in Business Law 2012

Education

- Admitted to the Ontario Bar - 1993
- LL.B., University of Western Ontario - 1991
- B.A. (Political Science), York University - 1989

Faculty Biography: James Sullivan
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Jim has appeared as counsel in British Columbia, Alberta and Ontario, as well as before the Federal Court and the Supreme Court of Canada. He has also frequently appeared before the British Columbia Environmental Appeal Board and other administrative tribunals. In February 2013 Benchmark Canada named Jim Canada's Class Action Litigator of the Year.

Jim has represented clients in numerous major corporate commercial, class action, energy, contaminated site, regulatory offence, constitutional and product liability cases. He also advises clients on national and international compliance with foreign and domestic anticorruption legislation.

Practices

- Litigation & Dispute Resolution
- Class Actions
- Corporate Litigation
- Product Liability
- Business Crimes, Investigations & Compliance
- Energy
- Environmental Litigation & Enforcement
- Competition Litigation
- Aboriginal Law

Awards and Recognition

- The Lexpert Guide to the Leading US/Canada Cross-border Litigation Lawyers in Canada 2012
- Report on Business Magazine, December 2012 (recognized as one of Canada's highest ranked business focused litigation lawyers)
- Law Business Research's Who's Who Legal: Canada 2012 (Product Liability Defence - "Highly Recommended" for his advice to corporate clients regarding the prevention of product liability claims and his "fabulous abilities" at defending leading manufacturers in the courts)
- The Lexpert 2012 Guide to the Leading US/Canada Cross-border Litigation Lawyers in Canada (Class Actions - the only British Columbia lawyer so recognized)
- Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms and Attorneys (Canada's Class Action Litigator of the Year 2013)
- Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms and Attorneys (a litigation star in British Columbia and a litigation star in Aboriginal Law, Class Actions, Competition, Environmental Law, White Collar Crime)
- Chambers Global: The World's Leading Lawyers for Business (Dispute Resolution, describing Jim as "an excellent advocate - very customer focused and good at figuring out what clients need")

Education

- Admitted to the British Columbia Bar - 1988
- Harvard Law School PIL Mediation Training - 1999
- Harvard Law School PIL Negotiation Training - 1997
- L.L.B., University of Saskatchewan - 1987
- B.A., University of Saskatchewan - 1984