|  |  |  |
| --- | --- | --- |
|  |  |  |
| Law 435C.001 | Personal Injury Advocacy | 2023 Term 2 |
|  |  |  |
| Professors:  MARC KAZIMIRSKI and SANDRA KOVACS | Tel: (604) 681-9344  Email: mak@kazlaw.ca  Email: sk@kazlaw.ca  Office: 1900-570 Granville Street, Vancouver BC | Mondays 5:00 – 8:00 pm  UBC Faculty of Law  Room 121 |
|  |  |  |

**WEEK TEN: Monday, March 20, 2023**

**Occupiers’ Liability Case Studies:**

***Stanton v. District of North Vancouver  
versus  
Saloojee v Gibsons (Town),*** [***2023 BCSC 249 (CanLII)***](https://canlii.ca/t/jvr2p)

***Ramos v. Translink***

**Medical Malpractice case study: *Crawford v. Osuteye***

1. **TEACHING OBJECTIVES & OVERVIEW**

The goal of this week’s class is to learn how to litigate an occupiers’ liability claim and a medical malpractice claim using specific case studies as examples.

1. **READINGS & REFERENCES**

* [Occupiers Liability Act (gov.bc.ca)](https://www.bclaws.gov.bc.ca/civix/document/id/consol2/consol2/96337_01)

*Saloojee v. Gibsons (Town),* [***2023 BCSC 249 (CanLII)***](https://canlii.ca/t/jvr2p)

*Stanton v. District of North Vancouver*

* Pleadings
  + NOCC
  + RTCC
* Expert report on liability

*Ramos v. Translink*

* Pleadings
  + NOCC
  + RTCC
* Rule 9-7 Summary Trial Notice of Application
* Response to Application
* Written Submissions of the plaintiff
* Defendant’s Written Submissions

*Crawford v. Nazif*

* Further Amended Notice of Civil Claim
* Oral Reasons of August 9, 2019, Crossin, J., in Chambers re Mediation Default
* Will Says
* [*“Jury Openings: Persuading Without Advocating,” by Mike Slater, Q.C.*](https://docs.wixstatic.com/ugd/682071_b38eca7a172e4c5783cf6f7986086103.pdf)
* Plaintiff’s Opening
* Condensed Trial Transcripts, Days 1-5, September 3-9, 2019
* Notice of Demonstrative Evidence
* *Crawford v. Nazif,* [2019 BCSC 2337](https://www.canlii.org/en/bc/bcsc/doc/2019/2019bcsc2337/2019bcsc2337.pdf)
* *Crawford v. Osuteye,* [2019 BCSC 2336](https://www.canlii.org/en/bc/bcsc/doc/2019/2019bcsc2336/2019bcsc2336.html?autocompleteStr=crawford%20v.%20nazi&autocompletePos=1)
* Expert report of Dr. Ian Gillespie, January 23, 2019
* Expert report of Dr. George Pawliuk, June 19, 2019

1. **OCCUPIERS LIABILITY CASE STUDIES:**

* Review of the [Occupiers Liability Act (gov.bc.ca)](https://www.bclaws.gov.bc.ca/civix/document/id/consol2/consol2/96337_01)

***Ramos v. Translink (Awaiting judgment)***

* Review of the Pleadings
  + NOCC
  + RTCC
* Review of [Rule 9-7](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/168_2009_01#rule9-7)

#### Definition

(1)In this rule, **"summary trial application"** means an application referred to in subrule (2).

#### Application

(2)A party may apply to the court for judgment under this rule, either on an issue or generally, in any of the following:

(a)an action in which a response to civil claim has been filed;

(b)a proceeding that has been transferred to the trial list under Rule 22-1 (7) (d);

(c)a third party proceeding in which a response to third party notice has been filed;

(d)an action by way of counterclaim in which a response to counterclaim has been filed.

#### When application must be heard

(3)A summary trial application must be heard at least 42 days before the scheduled trial date.

#### Setting application for hearing

(4)Unless the court otherwise orders, a summary trial application must be set for hearing in accordance with Rule 8-1.

#### Evidence on application

(5)Unless the court otherwise orders, on a summary trial application, the applicant and each other party of record may tender evidence by any or all of the following:

(a)affidavit;

(b)an answer, or part of an answer, to interrogatories;

(c)any part of the evidence taken on an examination for discovery;

(d)an admission under Rule 7-7;

(e)a report setting out the opinion of an expert, if

(i)the report conforms with Rule 11-6 (1), or

(ii)the court orders that the report is admissible even though it does not conform with Rule 11-6 (1).

* Review of the Summary Trial application materials and evidence filed
* Review of the written submissions submitted on both sides
* Discussion and debate…. And now we wait! Reasons pending.

1. **MEDICAL MALPRACTICE CASE STUDY: *CRAWFORD v. NAZIF***

Pleadings

* The importance of pleadings: Further Amended Notice of Civil Claim
* Theory of the Case

Meet the parties

* Review of photographs and the facts

Duty of Care and Standard of Care

* Discussion
  + Did Dr. Nazif owe Donna Crawford a duty of care?
  + Did Dr. Nazif breach the requisite standard of care in decertifying Mr. Osuteye?

Mediation

* Mediation Default: Oral Reasons of August 9, 2019, Crossin, J., in Chambers

Opening

* [*“Jury Openings: Persuading Without Advocating,” by Mike Slater, Q.C.*](https://docs.wixstatic.com/ugd/682071_b38eca7a172e4c5783cf6f7986086103.pdf) 
  + The *David Ball* approach
  + Review Plaintiff’s Opening

Lay Witness Evidence

* Will Says
* Order of witnesses to fit the theory of the case
* Condensed Trial Transcripts, Days 1-5, September 3-9, 2019

Real Evidence

* Notice of Demonstrative Evidence
  + *Crawford v. Nazif,* [2019 BCSC 2337](https://www.canlii.org/en/bc/bcsc/doc/2019/2019bcsc2337/2019bcsc2337.pdf)
  + Review of the visual and audio evidence

Expert Evidence

* *Crawford v. Osuteye,* [2019 BCSC 2336](https://www.canlii.org/en/bc/bcsc/doc/2019/2019bcsc2336/2019bcsc2336.html?autocompleteStr=crawford%20v.%20nazi&autocompletePos=1)
* Expert report of Dr. Ian Gillespie, January 23, 2019
* Expert report of Dr. George Pawliuk, June 19, 2019

Resolution: Day 13 of 19 days

* Advising the Court
* Discharging (and thanking) the jury
* Discussion and debate