QB File No. CI 12-01-79879

THE QUEEN'S BENCH

Winnipeg Centre

BETWEEN:

MARTIN GREEN,

plaintiff,

- and -

HIEP TRAM, ARLENE SKULL, DEB WOLOSHYN, WALLY STEWART, JOHN ANCHAN, AND THE UNIVERSITY OF WINNIPEG.

defendants.

RESPONDING BRIEF
OF MARTIN GREEN
Re: Motion for Summary Judgement

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RESPONDING BRIEF Re: Motion for Summary Judgement

INTRODUCTION: The Nature of Summary Judgement

1. In the present motion, the applicant is seeking Summary Judgement based on three separate arguments. These can most clearly be understood as:

a) Summary Judgement on Evidence
b) Summary Judgement on Pleadings
c) Summary Judgement on Jurisdiction

Each of the above requires its own separate analysis, which we will proceed with by way of introduction to this brief.

> (Note that much of the introductory portion of this brief is written for the purpose of clarifying various abstract legal issues in the writer's own mind; if the reader is not interested, he may skip paragraphs 3-7 and 10-15, as indented below.)

2. It might be said that Summary Judgement on Evidence is the "purest" form of summary judgement. We note that every definition of summary judgement relies on the

phrase “no genuine issue for trial”; indeed, no motion for summary judgement is complete without the inclusion of that phrase (see para. 9 of the present motion). We will argue that therein lies the clue as to the true essence of “summary judgement”. We proceed by way of a short digression:

3. As long as there have been Summary Judgements, there have also been Summary Trials. One might ask: how can you have a Summary Trial if there is no genuine issue for trial? To ask the question is to answer it: the “issues” which are absent are issues of fact. A summary trial can proceed when there are no issues of fact to be resolved, only issues of law; and the resulting trial is a perfectly respectable judicial proceeding between two equally meritorious litigants.

4. And yet an application for Summary Judgement seems to carry with it a very different flavor; it conveys the strong implication that there is no merit to one party’s case. How can this be? If there are “no genuine issues for trial”, doesn’t that mean that the parties agree on the facts, as they do in Summary Trials?

5. Not necessarily. There are two ways there can be no *factual* issues for trial. One way is if the parties agree on all the facts. The other way is that one party or the other has no evidentiary basis to sustain the facts on which it is basing its argument. The first circumstance leads to a Summary Trial; the second circumstance leads to a motion for Summary Judgement. Both cases can be described by the phrase “no genuine issues for trial, and in both cases, the “issues” in question are *factual* issues. But the two circumstances are clearly opposite ends of the same spectrum.

6. There can be little doubt that orignially, this “factual basis” was the essence of summary judgement. One only has to read the “test for summary judgement” cited by countless authorites, consisting of such elements as the two-step process, the *prima facie* argument by the moving party, the shifting onus to the reponding party, the filing of affidavits, the duty to “put one’s best foot forward”…all these apply to the test for genuine issues of *fact*. Why then do the courts also entertain motions for summary judgement based on pleadings or jurisdiction?

7. It ought to be appreciated that the original concept of summary judgement represented a nice, clean legal principle; and in an ideal world it might have remained just that. But in the real world, the court system faces a practical necessity: there are thousands of cases brought forward every year with no legal merit and no chance of success; and the court system needs a way to deal with them. The phrase “no genuine issue for trial”, when broadened from its precise

legal meaning to a more general colloquial sense, provides a convenient hook to hang one's hat on: and so the term "summary judgement" seems to have devolved into a catch-all for a way to throw out cases with no merit.

8. This has lead to the evolution of two new classes of summary judgement. Firstly there is now Summary Judgement on Pleadings, which is essentially identical to the older Motion to Strike, except that now, if it is moved before filing a defence, it is called a Motion to Strike, and if it is moved afterwards, it is called a Motion for Summary Judgement. Either way, it argues that the Plaintiff's case, even assuming the facts pleaded can all be proven, nevertheless fails to disclose a valid Cause of Acti on. These nuancess have generally evolved as a matter of common law, but in the Nova Scotia rules, they have been written in explicitly.

Poirer v White [2010 NSSC 406] ("Poirer") **[TAB 1]** at paras. 6 and 16

9. The other innovation is the Summary Judgement on Jurisdiction, which in some provinces (including Manitoba) is classified under a separate rule as a Motion to Dismiss (Rule 21), and in others (such as Nova Scotia) as a special case of the Motion for Summary Judgement on Pleadings (Rule 13.03) (*Poirer*, para 16). Nor are the definitions identical in those two provinces: in Manitoba, it is available if "the court has no jurisdiction", whereas in Nova Scotia it is only available if the Plaintiff's claim is found to be "in the exclusive jurisdiction of another court". These two formulations hardly seem to cover identical circumstances.

Queen's Bench Rule 21 **[TAB 9]**

10. Both of these newer forms of Summary Judgement are almost always invoked by the defendant in an action rather than the plaintiff.

11. If there is doubt that the foregoing analysis is a reasonably valid interpretation of the judicial history, note that until quite recently, in many jurisdictions, summary judgement was not even available to defendants. For example it was only in 2002 that Nova Scotia allowed defendants to apply for summary judgement. (*TJ Inspection Services v Halifax Shipyards* [2004 NSSC 181] ("Shipyards") **[TAB 2]**). It was assumed until then that this remedy was something that would be sought only by plaintiffs. This contrasts sharply with the

other (newer) types of summary judgement which hardly make sense if sought by a plaintiff.

12. Vestiges of this historical evolution of summary judgement, as portrayed in the foregoing paragraphs, are to be found in the Court Rules of many jurisdictions, which read quite awkwardly when applied to motions other than for Summary Judgement on Evidence, as for example in Rule 214 of the Federal Court **[TAB 3]**:

> **Facts and evidence required**
>
> **214.** A response to a motion for summary judgment shall not rely on what might be adduced as evidence at a later stage in the proceedings. It must set out specific facts and adduce the evidence showing that there is a genuine issue for trial.

13. The above passage hardly makes sense if the defendant is applying for Summary Judgement on Pleadings or Jurisdiction. In those instances, the Rules of the Court provide little guidance and the parties must instead rely on the unwritten rules which have evolved through the case law.

14. There is one more peculiar aspect to the passage quoted in para.12 from the Federal Court Rules that ought to be noted. In Rule 214, the responding party is told that he must set out specific facts and evidence. Oddly enough, there is no corresponding duty assigned to the *moving party*. Surely we are not to believe that the respondent is responsible for adducing hard evidence in response to what may be merely bald assertions by the applicant?

15. The Manitoba QB rules are interesting by comparison:

> 20.02(1) In response to affidavit material or other evidence supporting a motion for summary judgment, a responding party may not rest on the mere allegations or denials of the party's pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue for trial.

Comparing this with the Federal rules, we see that Manitoba at least stipulates (in a slightly roundabout way) that the respondent's duty to set out evidence is only activated in response to the evidence put forward by the moving party.

16. In fact, regardless of how a particular jurisdiction has framed its written rules, it is the universal practise of the courts to rely on the two-stage test as set out by Justice Bryson in *Canada v. Lameman* (2008 SCC) and quoted by Justice Boudreau in *Bell Aliant v. Cabletec* [Supreme Court of Nova Scotia, 2011] ("Bell Aliant") **[TAB 4]**:

> The defendant who seeks summary dismissal bears the evidentiary burden of showing that there is "no genuine issue of material fact requiring trial"….The defendeant must prove this; it cannot rely on mere allegations or the pleadings….If the defendant does prove this, the plaintiff must either refute or counter the defendant's evidence, or risk summary dismissal.

Bell Aliant at para 21

17. Justice Boudreau goes on to draw attention to the seeming philosophical contradiction apparent in requiring the respondent to refute evidence that has already been "proven" by the applicant! He further points out that the two-step process implied by the quoted passage is in fact rarely if ever applied:

> It is difficult to separate step one and step two of the test, as suggested in the cases, when one is faced with "all" the evidence presented on such a motion; unless a two stage hearing was held, which is not usually the case. It is difficult to see how step one can be proven, as suggested in *Lameman, supra*; and the unproven in step two of the test. I am not a philosopher, but I have trouble with this concept.

Bell Aliant at para 26

18. In contrast with Boudreau's thoughtful and incisive analysis, it appears that some authorities are still not sufficiently careful to balance the duties of the applicant and respondent. The authorities quoted by opposing counsel are particulary unhelpful in this regard. In particular Justice Helper at paras. 34-35 in *Atlas* (Defendant's Brief, Tab 2) places great emphasis on the responding party's onus without even addressing the question of the onus on the moving party.

19. Opposing counsel compounds this error by further referencing Scott at para 14 of Coral Reef (Defendant's Brief, Tab 3) in support of Helper, while neglecting to quote Scott on the onus of the moving party just one paragraph earlier:

> "On that application, the (moving party) will be required to satisfy a judge by affidavit evidence that he has a prima facie case. Once that is established, the onus shifts to the (responding party) to raise, by evidence, a genuine issue".

We will see that the defendants in the present action have neglected to heed Scott's admonition to establish a prima facie case; and therefore, the onus does not shift to the plaintiff to raise a genuine issue.

20. As Boudreau argues in *Bell Aliant* (quoting extenstively from Saunders in *Young v Meery* [2009 NSCA 47]),

> It is well established that when the moving party has established a prima facie case, the buden on the responding party is not so heavy as to require them to disprove the case; they merely have to demonstrate that their case is arguable. In a motion for summary judgement, the court will not weigh evidence. The court will only grant summary judgement against a party which has adduced no genuine evidence whatsovever to support its case.

It is tacitly assumed that this would naturally be the responding party.

Bell Aliant at para 23

21. But what if it is the moving party which has failed to adduce evidence? It is well established that the Court shall assume that both parties have "put their best foot forward". (*Connerty and Coles et al* [2012 ONSC 5218] ("Connerty") **[TAB 5]**). If the responding party has put forward its best evidence and then it turns out that the moving party has neglected to put forward any evidence, then there is nothing to weigh and literally no genuine issue for trial. It follows logically that in such a circumstance, the court ought not to merely dismiss the motion, but instead grant summary judgement in favor of the responding party.

22. This conclusion is enthusiastically supported by Herold in *Elliot v Gead* [1998 CANLII 14666, ON SC] ("Eliot") **[TAB 6]**:

> The next issue which arose was whether or not in disposing of a summary judgment motion by the plaintiff the court can, in addition to granting judgment for the plaintiff or directing a trial, grant judgment for the defendant dismissing the action. In my view, it can and should, bearing in mind the policy considerations referred to above. The defendant would be on much more solid footing obviously if it served a notice of cross-motion for summary judgment dismissing the plaintiff's claim, but in my view this is not necessary. The whole purpose of the exercise is to take a good hard look at the case and to give judgment, unless it would be unjust to decide the issues on the motion. The failure of a defendant to have served a notice of cross-motion might be a factor in the disposition

> of costs but should not in my view, preclude judgment dismissing the action where appropriate.

The passage quoted here deals with a case where the plaintiff is the moving party, but in view of the modern trend to symmetrize the rules with respect to both parties, the conclusion should apply equally to the present case where the moving party is the defendant.

The Applicants' Notice of Motion

23. In their Motions Brief, the defendants have applied for summary judgement based on all three of the reasons discussed above: evidence (paras. 34-44), pleadings (paras. 45-54), and jurisdiction (paras. 55-75). It may be noted that the sequential ordering of these arguments is opposite to their ordering in the Notice of Motion, where "jurisdiction" is claimed in paras. 2-7, "pleadings" are claimed ambiguously if at all in para. 8, and "evidence" is claimed only by the vaguest implication in paras. 9-10.

Motions Brief of the Defendants, Notice of Motion

24. Furthermore the correspondence between the Notice of Motion and the arguments made in the defendants' Motions Brief is tenuous at best:

a) In their Notice of Motion, the defendants argue "jurisdiction" based on Secs. 12(2) and 34(2) of the University of Winnipeg Act, but in their Brief they argue only Section 34(2).
b) In their brief, they argue both statutory and common law grounds for lack of jursidiction, but in their Notice of Motion they list only statutory grounds.
c) In their Notice of Motion, they argue that the tort of conspiracy "does not apply…in these circumstances", but in their brief they argue only that the conspiracy has not been properly pleaded. The Notice of Motion makes no claims as to defective pleadings.

d) In their brief they argue that there is no factual basis for the Plaintiff's claim of conspiracy, but there is no statement to that effect in the Notice of Motion beyond the unsupported declaration in para. 9 that "there is no genuine issue for trial."

Motions Brief, Notice of Motion

25. In *Grand Tank v Destiny* [2004 FC 1082] ("Grand Tank") **[TAB 7]** the court strongly admonished the applicants at para 4 for failing to adequately set out their claim in their Notice of Motion:

> Opposing counsel and indeed the Court ought not have to plough through an affidavit in support of the motion and hunt and seek in the Statement of Claim in order to try to determine what the particular motion thrust of the motion. When one takes into account the affidavit and the Defendants' written representations, apparently particulars are sought as to four paragraphs, but even then, as between the affidavit and the written representations, there seem to be differences in what the Defendants seek.

And further, at para 5:

> To begin, Stroud's Judicial Dictionary of Words and Phrases, Sweet & Maxwell, London, defines notice as "a direct and definite statement of a thing, as distinguished from supplying materials from which the existence of such thing may be inferred", relying upon Baron Parke's Reasons in *Burgh v. Legge* (1839) 5 M & W 418 at 420 and following, 151 ER 177 and *Vallee v. Dumergue* (1849) 4 Ex. 290 at 301 and following, 154 ER 1221, being the judgment of the court delivered by Baron Alderson. Key here is that the contents of a notice must be specific and are not to be implied from some other source.

26. If one seeks reasons to understand the glaring disconnect between the applicants' Notice of Motion and their Motion Brief, one can hardly overlook the fact that the Notice of Motion was filed only days before the Plaintiff was scheduled to commence discovery – a discovery for which the Defendants had made no preparations and for which they had indicated they did not intend to produce the witness who had been summoned. It is hard to escape the conclusion that the present motion was filed as a delaying tactic to forestall the Plaintiff's right to proceed with discovery.

Correspondence Not Entered in Affidavit Evidence

26(a). The Plaintiff claims that no adverse inference should be drawn by the Court for his failure to introduce evidence supporting the assertions made in para 26, because prior to seeing the Defendant's brief, he would have had no way of knowing that such evidence would be relevant.

The Applicant's Arguments

27. In responding to the applicant's arguments below, we have been able to number our paragraphs to correspond to the numbering in the applicant's brief. In other words, our Paragraph 31 is in response to Paragraph 31 of the applicant's brief. For this reason we have not added the usual citation "Motions Brief" after each paragraph of the ensuing arguments.

28. The defendants are seeking summary judgement based on three different types of arguments, which we have described previously as:

a) Summary Judgement Based on Evidence
b) Summary Judgement Based on Pleadings
c) Summary Judgement Based on Jurisdiction

Our response to these arguments is therefore organized accordingly in the paragraphs which follow.

Summary Judgement Based on Evidence

29 - 30. The assertion of the Defendants that they acted independently and in good faith is unsupported by evidence, and therefore the onus has not shifted to the Plaintiff to adduce evidence to support his claim that the Defendants acted maliciously.

Motions Brief paras. 29-30 (etc. for paras. 31-75)

31. Whether the Plaintiff's removal from the teaching practicum occurred independently or as a consequence of his suspension from the Faculty has no bearing on the claim of conspiracy.

32. Whether the Plaintiff was suspended from the University in accordance with NACD policy is irrelevant to the claim of conspiracy.

33. The assertion of the defendants that the Plaintiff has suffered no harm from the alleged conspiracy not only flies in the face of common sense, but is in addition unsupported by evidence. Therefore the onus has not shifted to the Plaintiff to adduce evidence to support his claim of damages.

34 - 38. The short analysis offered by opposing Counsel of the test for summary judgement neglects to identify the burden on the moving party to establish a *prima facie* case. The onus as stated in para. 38 does not shift to the responding party until the applicant has first met this burden.

39 - 41. Contrary to the Defendants' assertions, the Plaintiff has in paras. 35(a,b,c…n) of his Statement of Claim pleaded both the existence of a conspiracy to injure the Plaintiff on the part the named Defendants, and the factual basis upon which a determination can be made of the said conspiracy. The Defendants have not presented any evidence in their Affidavit to contradict the facts asserted by the Plaintiff in said paragraphs, and therefore the onus has not shifted to the Plaintiff to adduce evidence to support those claims.

Statement of Claim at para 35

42. Since the Defendants have introduced no evidence to contradict the facts of the conspiracy as pleaded by the Plaintiff and as supported by the evidence already before the court; and since the Defendants have introduced no evidence to contradict the Plaintiff's assertion of malice as pleaded in his claim and as supported by the evidence already before the court; and furthermore, since the Court is entitled to presume at this stage of the proceedings that the Defendants have "put their best foot forward" and will have no additional evidence to place before the court at trial beyond what is already before the court, therefore, the Plaintiff agrees that there is at this moment no genuine issue for trial, and that the Court ought to award summary judgement in his favor.

43. Contrary to the Defendants' assertion, should the matter proceed to trial the Plaintiff will have the right to introduce evidence not available to him pending discovery, including but not limited to material would already have been available to him by this stage of the proceedings if the Defendants had met their obligations under the QB Rules to file an Affidavit of Documents and respond to Interrogatories.

44. In view of the foregoing, summary judgement ought to be granted in favor of the plaintiff. In the alternative, the motion for summary judgement ought to be dismissed and the matter allowed to proceed to trial. The Plaintiff further claims that summary judgement should not be granted to the defendants on the grounds argued in paras. 29-44 because insufficient notice was provided in their Notice of Motion of their intent to make this argument.

Summary Judgement Based on Pleadings

45. The Plaintiff does not dispute opposing counsel's analysis herein of the two types of conspiracy, and asserts that the present case is of the first type, i.e. the predominant purpose being to cause injury.

46. The plaintiff notes that in quoting from *Conversions*, para. 40, opposing counsel has omitted the stipulation: "The requisite agreement is not an agreement in the contractual sense, but rather a joint plan or common intention to do the act which is the object of the alleged conspiracy."

47. The plaintiff notes that in quoting from *Conversions* opposing counsel has omitted the stipulation: "The agreement may be proved by direct evidence or may be inferred from the facts where the facts cannot fairly admit of any other inference being drawn. The standard of proof is "a preponderance of probability" with the degree of probability being commensurate with the subject matter.

Conversions at para 40

48 - 49. Contrary to the Defendant's assertion of defective pleading, the Plaintiff has in fact pleaded in paras. 35(b), 35(f), 35(g), 35(h), 35(i), 35(j), 35(k), and 35(n) specific actions intentionally undertaken by one or another of the individual defendants

in concert with one or another of the other defendants in furtherance of their common intention to injure the Plaintiff.

Statement of Claim at para 35

50-51. Contrary to the Defendant's assertions, the Defendants have introduced no factual evidence to contradict the Plaintiff's claims of conspiracy with respect to either agreement or motivation. Furthermore, because the Defendants are here arguing the inadequacy of the pleadings, the present argument is equivalent to a Motion to Strike and therefore the Plaintiff is not required to adduce factual evidence in support of his pleadings; rather, the Court should, for purposes of this argument, assume that the Plaintiff's pleadings can be proven at trial.

52-53. The Defendants have introduced no evidence as to the purpose of their conduct other than their own unsupported assertions of pure hearts; therefore, the onus of proof has not shifted and the Plaintiff is entitled to stand on his pleadings of malice.

54. The Plaintiff has not had the opportunity to examine the defendants for discovery and therefore the Defendants are wrong in claiming that the evidence currently before the court is the same as would be presented at trial. In any event, based on the Defendants argument of the inadequacy of pleadings, which is essentially the same as a Motion to Strike, the Plaintiff is not responsible for introducing factual evidence at this stage in order to maintain his right to go to trial.

54(a). The Plaintiff further claims that Summary Judgement should not be granted on the grounds argued in these paragraphs because insufficient notice was provided of this argument in the Notice of Motion.

Summary Judgement Based on Jurisdiction

55. Contrary to assertions of opposing counsel, Summary Judgement is not available on purely jurisdictional grounds, at least in the Province of Manitoba. If it were true that this Court does not have jurisdictional authority over the matters set forth in the Plaintiff's claim, then the Defendants ought to have sought relief under Queen's Bench Rule 21.03. They have not in fact pleaded Rule 21, but rather Rule 20; nor have they

introduced any authority to support their assertion that Summary Judgement may be awarded on the grounds argued in these paragraphs.

56-62. The Defendant attempts to draw a paralle between Sec 34(2) of the University of Winnipeg Act and Sec 69(1) of the BC Act. A straightforward reading of the respective Acts shows this is a simple blunder on the part of opposing counsel. The Manitoba passage corresponding to BC's Sec 69(1) is clearly Sec 34(1) which, unlike the mistakenly-cited Sec 34(2), mirror's the BC Act's exception for acts of bad faith. Since the Plaintiff's claim is predicated on bad faith, the passage in question does not preclude the present action.

The Act [TAB 8] (Defendant's Tabs)

63. The Defendant has failed to give notice in his Notice of Motion that he would be arguing lack of jurisdiction on common law grounds, and therefore the arguments in this and the subsequent paragraphs should be disregarded by the Courts.

64-66. The Defendants cite three cases in which the courts declined to intervene in disputes of an academic nature. The present dispute is not one of an academic nature in which the Plaintiff is seeking the overturning of a faliing grade on an examination, but rather an action in the tort of conspiracy. Therefore the cases cited by the Defendant are not relevant.

71. The principle enunciated in *Paine* that the courts should be "slow to intervene" in University affairs does not satisfy the Defendant's burden of establishing that the Court has no jurisdiction.

72-75. In any event the arguments over jurisdiction made in the present case are essentially the same as those put forward by the defendants in *Hozaima v Perry et all* [2008 MBQB 199] (*"Hozaima"*) **[TAB 8]** and rejected by Chief Justice Monnin:

> "I am of the view that the suggestion that the appeal process of the University is adequate to provide a remedy to the plaintiff is not consistent with my findings that the plaintiff's claim here is for breaches of contract and tortious liability, which are beyond what is available within the University mechanicsm."

For these reasons the Plaintiff argues that the court should dismiss the Defendants motion for summary judgement on jurisdictional grounds.

Conclusions

76. In light of all the foregoing, the Plaintiff claims that the present motion is frivolous and vexatious and launched for improper purposes, to wit:

a) to interfere with and delay the Plaintiff's right to proceed with examination for discovery; and,
b) to intimidate the Plaintiff into disclosing his evidence and arguments before going to discovery without the Defendants meeting their reciprocal obligation to produce discovery information, including an Affidavit of Documents and a Response to Interrogatories, and
c) to thereby subvert the order of discovery already established by the Plaintiff's early filing of Notices of Examination, so that in effect the Defendants would have "discovery" before the Plaintiff.
d) The Defendant knew, or ought to have known, that the present motion would have no chance of success.

and that therefore in the alternative that the Court does not award summary judgement to the Plaintiff, the Court ought to dismiss the motion with costs to the Plaintiff on a solicitor-client basis.

77. The plaintiff notes that in *Connerty* where the defendant applied for summary judgement at an early stage in the proceedings, before the plaintiff had had an opportunity for discovery, the defendant was admonished by the Court (para 10) for having demanded evidence from the plaintiff without having first satisfied his onus to establish a prima facie case:

> "Before this court the solicitor argues that the absence of expert evidence supporting the plaintiff's (the responding party's) allegations is sufficient to satisfy that burden without expert evidence filed on her (the moving party's) behalf. This is in the face of the requirement that "each side must put its best foot forward" with respect to the material issues."

78. In *Connerty* the Plaintiff was awarded costs of the motion fixed in the sum of $6000.

79. The Plaintiff further notes that subsequent to the filing this motion, the witness who was to be examined on January 15th has moved to Edmonton. The plaintiff argues that as a result of this motion, he should not be saddled with the travel costs of bringing this witness back to Winnipeg for discovery. He therefore requests that the Court order the Defendants to be responsible for said costs.

80. The Plaintiff further requests that this Court make such other orders as it deems appropriate to ensure that the Plaintiff's is not otherwise disadvantaged with respect to the discovery process as compared to his strategic position prior to the moment when this motion was filed.

81. The Plaintiff submits that in the event this Court awards summary judgement in his favor on the question of conspiracy, that the issue of damages ought to be set forth for trial.

LIST OF AUTHORITIES

Poirer v White [2010 NSSC 406] ("Poirer") **[TAB 1]**

TJ Inspection Services v Halifax Shipyards [2004 NSSC 181] ("Shipyards") **[TAB 2]**

Rule 214 of the Federal Court **[TAB 3]**

Bell Aliant v. Cabletec [Supreme Court of Nova Scotia, 2011] ("Bell Aliant") **[TAB 4]**

Connerty and Coles et al [2012 ONSC 5218] ("Connerty") **[TAB 5]**

Elliot v Gead [1998 CANLII 14666, ON SC] ("Eliot") **[TAB 6]**

Grand Tank v Destiny [2004 FC 1082] ("Grand Tank") **[TAB 7]**

Hozaima v Perry et all [2008 MBQB 199] (*"Hozaima"*) **[TAB 8]**

Queen's Bench Rule 21 **[TAB 9]**