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| Law 433C.001 | Personal Injury Advocacy | 2024 Term 2 |
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| Professors:MARC KAZIMIRSKI and SANDRA KOVACS | Tel: (604) 681-9344Email: mak@kazlaw.ca Email: sk@kazlaw.ca Office: 1900-570 Granville Street, Vancouver BC  | Mondays 5:00 – 8:00 pmUBC Faculty of LawRoom 121 |
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**WEEK TEN: Monday, March 18, 2024**

**Occupiers’ Liability Case Study:**

 ***Ramos v. Translink,*** [**2023 BCSC 966 (CanLII)**](https://canlii.ca/t/jxkpg)

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

*Case study:* ***Ramos v. Translink,*** [**2023 BCSC 966 (CanLII)**](https://canlii.ca/t/jxkpg)

* 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,*** [**2023 BCSC 966 (CanLII)**](https://canlii.ca/t/jxkpg)

* 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
* Review of the Reasons
* Changing the world, one painted curb at a time!
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