

Five Fundamental Principles of Pleadings: Lessons & Reminders from Recent Case Law

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Drafting Pleadings, Affidavits, and Orders: The Pleading Edge

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INTRODUCTION

In the context of civil procedure, it is easy to think of the drafting and filing of pleadings as a formal or technical step which must be fulfilled in order to trigger more functional components of litigation, such gathering information through the exchange of Affidavits of Records and Questioning, engaging in settlement discussions, and participating in a trial or alternate dispute resolution mechanism. This thinking may be bolstered by the fact that most of the requirements for the content of pleadings are set out in Part 13 of the Alberta Rules of Court, which is titled “Technical Requirements.” In reality, however, pleadings do much more than just serve as a gateway to litigation processes and, as a result, counsel should give serious attention to the content of pleadings. This paper considers five fundamental and interrelated principles of pleadings which make this point and discusses the treatment of these principles in selected court decisions in Canada and, more specifically, in Alberta. These principles are not new, but, as suggested by their treatment in recent case law, they are lessons which bear reinforcing, especially when considered in the context of the 2010 reforms to the Alberta Rules of Court. This paper also offers a brief comment on how judicial expectations regarding pleadings have been or might yet be affected by the Supreme Court of Canada’s recent call for a “culture shift” in litigation.