**WHAT IS PLEADING**

Before any dispute can be adjusted or decided it is necessary to ascertain the actual points at issue between the disputants. Conceivably this may be done in several ways. Perhaps the simplest is a process of direct questioning of the parties by the arbitrator or judge. Another method is the exchange of written statements in advance of a direct hearing of the parties. Under our Anglo-American system of legal procedure, we are committed by tradition and history, by present practice and, probably, by general inclination, except in exceptional cases, to the latter method. - Our system calls for the development of issues by the parties themselves in formal manner in advance of the actual trial. This is accomplished by requiring the serving on the opposing party or the filing in court alternately by the parties of pleadings - written instruments wherein are set forth the statements and contentions of each as to the points and facts in dispute. These pleadings are to be distinguished from the lawyer's oral argument or "plea" made to the court or jury at the trial of the case.

**Pleading**, in law, written presentation by a litigant in a lawsuit setting forth the facts upon which he claims legal relief or challenges the claims of his opponent. A pleading includes claims and counterclaims but not the evidence by which the litigant intends to prove his case. This chapter covers the following Rules of Court: 1. Parties to an action pleading to include a petition, a summons and the statement in writing of: 1. the claim or demand of: (a) a plaintiff against a defendant; (b) a defendant against a third party; (c) a third party against a subsequent party; or (d) a subsequent party against any other subsequent party. 2. a defense or counterclaim of a defendant, third party or subsequent party to a claim or demand mentioned in clause 1; 3. a reply to defense or counterclaim mentioned in clause 2; and 4. a rejoinder to a reply mentioned in clause 3. The helpfully vague “include” catches cross-claims, defenses to cross-claims, and other documents normally thought to be “pleadings”.

FUNCTION The function of pleadings is: 1. to clearly and precisely define the question in controversy; 2. to give notice of the case which the opposing party has to meet; 3. to aid the court in its investigation of the truth of the allegations; and to form a record of the issues involved in the action.

PURPOSE The purpose of pleadings, as well as defining the real issues dividing the parties, includes fair warning to the other side of what is going to be claimed. This in turn serves to delimit the scope of discovery, to prevent surprise, to avoid adjournments and to reduce cost by facilitating the orderly and disciplined preparation of evidence for trial.

. IMPORTANCE Pleadings define the questions in controversy and outline the scope and range of: 1. the discovery of documents; 2. questions that may be asked at examinations for discovery; and 3. questions that may be asked at trial.

The importance and power of the pleadings in civil litigation cases is often underestimated, especially in smaller firms when manpower and resources can be somewhat limited. The purpose of this paper is to illustrate the importance of the pleadings and why taking extra time at the outset of a case to properly frame a client’s claim can pay big dividends in the long run. This paper will also deal with some recent case/developments in sub-categories of the law relating to pleadings that may be of use and interest in your legal practices. 1. GENERAL OVERVIEW ON THE LAW OF THE IMPORTANCE OF PLEADINGS Probably the most oft quoted statement in Alberta jurisprudence about the importance of pleadings comes from the Mikisew Cree First Nation v. Canada case involving an application for extensive amendments to the pleadings (2002 CarswellAlta 603), where the Court of Appeal, at paragraph 85 states the following: “Pleadings are not a meaningless ritual incantation or medieval superstition; they fulfil the first rule of natural justice, knowledge of the case against one.” In the case of Ignition Energy Ltd. v. Creswick Petroleum Ltd. (2011 CarswellAlta 195) Justice Macleod of the Court of Queen’s Bench states: “The Court’s discretion to amend pleadings recognizes the importance of accurate pleadings. Pleadings inform the other side as to the case being put forth against them and the Court is bound to make a decision based on what is plead before it

It is curious to note that pleading to state material facts and not evidence. Particulars of facts to be given where necessary. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation f fact inconsistent with the previous pleadings of the party pleading the same. Bare denial of contract shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract. As to material contents of a document, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material. Neither party need in any pleading allege any matter of fact which the law presumes in his favor or as to which the burden of proof lies upon the other side unless the same has first been specifically denied. Every pleading shall be signed by the party and his pleader (if any). where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. Pleadings shall contain address for service of notice. Verification of pleadings is also an important task. Sequentially, striking out pleadings and amendment of pleadings are significant factors. See. Order VI of CPC.