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CHANGES TO THE ONTARIO RULES OF CIVIL PROCEDURE

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Significant changes to the Rules of Civil Procedure, the rules that govern the litigation of disputes in court in Ontario, will come into effect on January 1, 2010. These rules are designed to make access to the courts more efficient and affordable for litigants. Also, in complex litigation such as medical malpractice cases, the new rules will provide judges with tools to move matters forward expeditiously and efficiently.

Overall Theme: Proportionality

While some of the changes are technical, the overall theme is proportionality. That is, the rules are being refined to give counsel and the courts the tools to adjust the scope and complexity of the litigation process, to be in proportion to the issues and amounts at stake.

Increase in Limit of Small Claims Court

Small Claims Court has always been the most efficient and least expensive route to a trial. It does not provide all of the procedural protections and steps, but can be a quick and inexpensive way to achieve a court order.

The jurisdiction of the Small Claims Court will be increased substantially from \$10,000.00 to \$25,000.00. That is, effective January 1, 2010, a claimant will be able to seek up to \$25,000.00 in Small Claims Court.

Increase in Limit of Simplified Procedure

A so called "simplified procedure" is already available to litigants involved in disputes claiming damages up to \$50,000.00. Effective January 1, 2010, this monetary limit will be increased to \$100,000.00.

If a matter is commenced pursuant to the simplified procedure, the matter is still litigated in Superior Court, but the pre-trial steps are more limited. The changes to the rules will not only increase the monetary jurisdiction of proceeding in this manner, but will also further expedite these summary trials.

Changes Applicable to All Litigation

With the increases of the monetary jurisdiction as described above, more matters will be brought in Small Claims Court or commenced under the simplified procedure in Superior Court.

For those matters that exceed \$100,000.00, litigation will still proceed in Superior Court under the regular rules. However, changes have also been made to these rules in an attempt to limit the scope of the litigation and to keep the procedure in proportion to the complexity of the issues or the damages being pursued.

Mini-Trials and Expanded Scope of Motions

For example, under the new rules, the court will have the power to conduct separate hearings or mini trials within a proceeding to determine a particular issue or issues, either on consent or by court order. Sometimes the resolution of one or two issues is all that is necessary to provoke a settlement of the entire dispute.

The rules currently provide for a “motion for summary judgment”. Currently, when such a motion is brought, a party adduces documentary and affidavit evidence and asks the Court to make a decision on the basis of that evidence, without any actual testimony from witnesses. Judicial interpretation of the previous rules have limited the motion judge’s ability to make a determination where there was any dispute as to the material facts. The rationale was that the motion judge was not in as good a position as the trial judge to make findings of credibility or to resolve factual disputes, since the motion judge could not see nor hear from actual witnesses.

Under the new rules, judges hearing motions for summary judgment will be given broader powers. They will even be able to order that witnesses attend and give evidence in their presence. The new rules specifically give motion judges the power to weigh evidence, evaluate the credibility of witnesses and draw inferences from the evidence. Previously, case law had prohibited motion judges from performing that role, reserving that function solely for the trial judge. Therefore, parties were forced to continue the litigation through to trial if there was any factual dispute. The changes to the rules may mean that a summary judgment motion is available in more cases, leading to earlier resolution of all or some of the issues more often.

Limits on the Scope of Examinations for Discovery

The new rules will put limits on examinations for discovery, which is the process whereby counsel question the parties in the presence of a court reporter who transcribes all of the evidence. Under the current rules, there is no limit to the length or scope of these examinations and they can drag on for days at considerable expense, regardless of the amounts in dispute.

Under the new rules, no party will be entitled to conduct examinations for discovery in excess of seven (7) hours, except on consent or with a court order. In determining whether to grant leave to examine in excess of seven (7) hours, the court will consider things like the amount of money in issue and the complexity of the case.

Conclusion

The new rules do not come into effect until January 2010 and it will be some time until counsel fully understand and appreciate all of the flexibility that they have to move matters forward expeditiously and efficiently. Courts will also need to interpret the rules that give them discretionary powers and outline the circumstances in which they are prepared to exercise those powers.

Nevertheless, if the rules are applied and interpreted reasonably, they should provide for more efficient and economical access to justice.

About the Author:

Valerie Wise is the leader of the Litigation Practice in the Health Industry Group at Miller Thomson in Toronto. The litigation group supports Health Industry clients with all aspects of litigation, including contract disputes, product liability, representation before administrative tribunals and medical negligence defence.

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