No more automatic stay: Five judge panel overrules Handley Estate

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On Monday May 19, a five-judge panel of the Court of Appeal for Ontario overruled *Handley Estate v. DTE Industries Limited*, 2018 ONCA 324, the decision that, for the last eight years, had imposed an automatic stay of the proceeding of any party who failed to immediately disclose a partial settlement agreement that "*entirely changed the litigation landscape.*" In its place, the Court has restored a discretionary abuse-of-process framework and confirmed that the new Rule 49.14 of the *Rules of Civil Procedure*, now governing partial settlement agreements, operates consistently with that common law approach.

The problem with the rule in Handley Estate

Under *Handley Estate* and the cases that followed it, a partial settlement that was found to have altered the litigation landscape had to be disclosed **immediately**. Failure to do so was automatically treated as an abuse of process, and the only available remedy to judges was a stay of proceedings. The Court of Appeal noted that although the rule was intended to deter strategic non-disclosure, it generated significant criticism within the legal community, including academic articles and judicial attempts to create exceptions to avoid its harshness through flexible interpretations of what constituted a change that “entirely” altered the landscape and what qualified as “immediate” disclosure. The Court also noted that new Rule 49.14, which came into force in 2025, was enacted specifically to address the uncertainty and harsh consequences that had developed under the *Handley Estate* line of cases.

The Court of Appeal therefore convened a five-judge panel to hear four appeals[1] from decisions that engaged in the *Handley Estate* analysis and consider whether to overrule the Court’s earlier precedent. The unanimous five-judge panel concluded that *Handley Estate*—which was decided less than a decade ago—was wrongly decided and should be overruled.

The Court held that its previous decision in *Handley Estate* was inconsistent with the foundational principles of abuse of process, as these principles require a contextual, discretionary inquiry into unfairness, prejudice, oppression, or harm to the administration of justice, and a proportionate remedy. The decision in *Handley Estate* and the considerable jurisprudence that followed was contrary to these principles as it

mandated a finding of abuse of process without any inquiry into prejudice, and the most severe remedy regardless of the gravity of the conduct. The Court held that overruling *Handley Estate* would prevent disproportionate outcomes, resolve uncertainty around its interaction with the new Rule 49.14, and assist other provinces that had begun importing the rule in recent years.

The new order—judicial discretion is restored

With *Handley Estate* overruled, the Court confirmed that the common law and Rule 49.14 now operate harmoniously. Overall, Rule 49.14 establishes a clear procedural regime for partial settlements in multi-party proceedings, including when disclosure must be made and what information must be provided to the court and to non-settling parties. In doing so, it expands the disclosure obligation to all partial settlement agreements, rather than only those that "entirely" change the litigation landscape and replaces the automatic stay with a range of discretionary remedies.

The Court of Appeal emphasized that a breach of r. 49.14 is a "strong indicator" of abuse of process, but is not determinative, and whether an abuse has occurred, and what remedy is appropriate, remains a contextual and discretionary exercise under both the Rule and the common law. In this way, the Court held that Rule 49.14 reflects, rather than displaces, the approach that the common law would have reached had it continued to develop free from the rigid framework imposed by *Handley Estate*.

Key takeaways

The decision has immediate practical implications for litigants. Firstly, a stay of proceedings is no longer the default remedy for a failure to disclose a partial settlement agreement, and will likely be reserved for the clearest cases. Parties seeking a stay will need to establish meaningful prejudice to their litigation position or to the integrity of the judicial process.

At the same time, because of Rule 49.14, the disclosure obligation is broader than it was under *Handley Estate*, as Rule 49.14 applies to all partial settlement agreements, not only those that significantly alter the litigation landscape.

Finally, the Court clarified appellate jurisdiction in this context. Orders granting a stay remain final and are appealable to the Court of Appeal as of right. Orders denying a stay, or imposing lesser remedies, are generally interlocutory and appealable to the Divisional Court with leave.

Footnote

[1] Borden Ladner Gervais LLP was counsel to The Corporation of the City of Kawartha Lakes on one of the four appeals.

By

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