Changes to Small Claims Court and the Rules of Simplified Procedure

October 25, 2019

The Attorney General for Ontario has recently confirmed that the limit for claims proceeding in Small Claims Court will increase from $25,000 to $35,000 effective January 1, 2020. Similarly, the limit for actions proceeding under Rule 76 of the Rules of Civil Procedure in Superior Court (under “Simplified Procedure”) will increase from $100,000 to $200,000.

Small Claims Court

There are no further changes proposed to the Small Claims Court Process apart from this increased limit. We anticipate that this increased limit will lead to more actions commencing in Small Claims Court, as opposed to Superior Court. There are a number of significant procedural differences to proceeding in Small Claims Court, including:

- A mandatory settlement conference is scheduled immediately following the filing of the Statement of Defence;
- There is no right to examinations for discovery; and
- Cost awards are limited to 15 per cent of the amount claimed in the proceeding.

Simplified Procedure

For actions proceeding under Simplified Procedure, the increased limit, from $100,000 to $200,000, will be accompanied by a number of further changes coming into effect on January 1, 2020.

The time limit for examinations for discovery, currently to two hours, will be increased to three hours.

A pre-trial date will have to be scheduled within 180 days of the action being set down for trial. Parties will be required to agree on a trial management plan, to be filed five days before the pre-trial. The Judge or Master hearing the pre-trial must fix a date for the trial, the number of witnesses and a schedule for the exchange of affidavits to be used at trial.

Trials under Simplified Procedure will be limited to five days. All trials will be required to proceed by way of a summary trial, with evidence being introduced by way of an affidavit. The current option to proceed by way of an ordinary trial will no longer be available.

Jury trials will no longer be permitted under Simplified Procedure. This provision will not apply where a jury notice is delivered prior to January 1, 2020. Jury trials will continue to be permitted for actions alleging malicious prosecution, false imprisonment, defamation, libel or slander; however, these actions must be continued under the ordinary procedure.

The changes to the Simplified Procedure also introduce, for the first time, a limit on costs. Costs will be limited to $50,000 exclusive of HST (subject to the provisions of any other Act or the existing adverse consequences under rule 76.13). Reimbursement for disbursements will be limited to $25,000, exclusive of HST, with the same caveats.

Comment

The above changes aim at having fewer claims proceed by way of ordinary procedure in the Superior Court of Justice, in an effort to free up judicial resources. These changes, particularly to Simplified Procedure, will raise a myriad of strategic considerations for plaintiff counsel in determining under what procedure to commence their claim. In particular, the new $200,000 Simplified Procedure limit should be sufficient to cover many negligence claims where injuries and property damage are not catastrophic in nature. Jury trials, however, will no longer be available for these claims.

Given the limits on potential costs and disbursements, parties and their counsel will have to strategically consider the extent of expert evidence that is required. The limit on disbursements may be quickly surpassed in a claim with multiple experts where their attendance is required at trial.

By

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