



COURT OF APPEAL FOR ONTARIO
COUR D'APPEL DE L'ONTARIO

May 2, 2023
Sent by email

Vicki White
CEO, The Advocates' Society
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Dear Vicki White:

I am writing to you as the Chair of the Partial Settlement Subcommittee of the Civil Rules Committee to invite a representative from The Advocates' Society to attend a stakeholder meeting with our subcommittee in order to provide us with input about the issues set out below.

The Partial Settlement Subcommittee is a newly-formed subcommittee of the Civil Rules Committee to consider whether or not a new Rule is needed to address the disclosure of partial settlements.

As you may be aware, in Ontario, when there are multiple parties to litigation and some enter a settlement that changes the landscape of the litigation, the settlement must be immediately disclosed to the other parties and the court must be advised as soon as reasonably necessary. Failure to comply with this disclosure obligation results in an abuse of process, the remedy for which is a permanent stay of the proceedings. The absence of prejudice does not excuse the failure to immediately disclose the terms of the settlement agreement that alters the landscape of the litigation.¹

Our subcommittee will consider whether these common law rules should be set out in a Rule to ensure that the disclosure obligations are clear to all litigants and if so, to consider what terms should and should not be included.

The members are me (Chair), Regional Senior Justice Firestone, Divisional Court Team Lead Justice Matheson, Michael Watson, Nadia Effendi, and David Liblong.

¹ *Aecon Buildings v. Stephenson Engineering Limited*, [2010 ONCA 898](#), leave to appeal refused, [2011] S.C.C.A. No. 84; *Handley Estate v. DTE Industries Limited*, [2018 ONCA 324](#); *Waxman v. Waxman*, [2022 ONCA 311](#), leave to appeal refused, [2022] S.C.C.A. No. 188; *Poirier v. Logan*, [2022 ONCA 350](#), leave to appeal refused, 2022 CarswellOnt 17554; *Tallman Truck Centre Limited v. K.S.P. Holdings Inc.*, [2022 ONCA 66](#), leave to appeal refused, [2022] S.C.C.A. No. 170; *CHU de Quebec-Universite Laval v. Tree of Knowledge International Corp.*, [2022 ONCA 467](#); *Crestwood Preparatory College Inc. v. Smith*, [2022 ONCA 743](#); *Skymark Finance Corporation v. Ontario*, [2023 ONCA 234](#). Please also see the attached article by Edwin G. Upenieks and Julia M.E. Chumak, "The Balancing Act for Canadian Litigators: Encouraging Settlement Between Parties and the Procedural Risks of Entering Into Settlement Agreements in Multi-Party Litigation".

The subcommittee wishes to consult with your representative and seek their input on this issue and more specifically, the following questions:

1. What does “changing the litigation landscape” mean? What are the triggering events?
2. What parts of the settlement agreement have to be disclosed?
3. What does “immediate disclosure” mean and should there be residual discretion?
4. How does one notify the court? (Motion for directions? If so how soon?)
5. What is the effect of lack of prejudice/bad faith/inadvertence/delay in disclosure?
6. Should the only remedy for failure to disclose in accordance with the rules be a stay of proceedings or should there be room for other types of relief?
7. Should there be a rule, and if so, what discretion should be afforded to the court?

We have scheduled a stakeholder meeting on **Tuesday, May 23 at 4:00 p.m. at Osgoode Hall, Toronto** to provide stakeholder representatives with an overview of the current legal landscape, to discuss the issues set out above (and raise others where appropriate) and seek your input.

We would be grateful if a representative from The Advocates’ Society attended the meeting for a discussion on these issues. In addition, if your organization wishes to send written submissions either before or after the meeting, we would be happy to receive them. If your representative is unable to attend on the above date please let us know as soon as possible and we will endeavour to make alternative arrangements.

Kind regards,



Justice Julie Thorburn
Court of Appeal for Ontario