



Fleury, Comery LLP
Barristers & Solicitors

NEW SIMPLIFIED PROCEDURE

The purpose of this memorandum is to provide to our clients who are considering the commencement of litigation an outline of the Simplified Procedure which became available for civil claims effective March 11, 1996 (and amended January 1, 2010 to increase the applicable claim value to \$100,000).

ELIGIBILITY

All civil claims commenced after March 11, 1996, except for construction lien, class proceedings and family law (including divorce) proceedings are eligible for the simplified procedure. The simplified procedure will apply automatically when the plaintiff's claim is for an amount of \$100,000 or less, exclusive of interest and costs. The plaintiff may elect for it to apply for a larger claim, subject to an objection by a defendant. If the parties consent, even existing claims may be transferred to the simplified procedure.

SUMMARY OF THE PROCEDURE

The major elements of the simplified procedure are as follow:

- examinations for discovery are extremely limited
- there must be full disclosure of documents and trial witnesses from one party to the other
- there is a possibility of a "summary trial" where the evidence is brought by affidavit and then there are short cross-examinations allowed
- there are very significant and serious cost penalties which are outlined below.

BENEFITS OF THE SIMPLIFIED PROCEDURE

The aim of this reform is of course to make litigation cheaper and faster for cases in which there is less money involved. While the very extensive rights of discovery available under the present rules of procedure have assisted in making the results of litigation more predictable because of the disclosure of each party's case, the discovery process has become extremely time consuming and expensive. To "win" a case involving less than \$100,000 a plaintiff often ends up spending almost as much or even more in legal fees and disbursements. For

straightforward cases, the simplified procedure is an undoubted benefit.

COSTS

A plaintiff who obtains judgment for under \$100,000 and who did not bring the case under the simplified procedure will not recover any costs except in very limited circumstances. Even more serious, a plaintiff who ought to have proceeded under the simplified procedure may be ordered to pay all or part of the costs of the defendant.

SOME CONSIDERATIONS

It is very important to establish before commencement of litigation the probable value of a claim. We must have at the outset of the claim full documentation and must spend the time to prepare proof of the claim as if it were proceeding to trial forthwith.

Trials under the simplified procedure will be much less predictable in their result, in the same way that Small Claims Court matters now proceed.

In our opinion, the simplified procedure is a significant benefit to the client of modest means who has a legitimate civil claim. Such claimants must, however, bear in mind that such summary procedures come at a cost of some loss of fairness and predictability.

The decision whether or not to request the simplified procedure or to abandon, in certain cases, a claim for an amount in excess of \$100,000 must remain with you the client after considering the merits of your case and the consequences set out above. Naturally, if you have any questions regarding this procedure, we ask that you consult us in that regard as soon as possible.

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