

June 29, 2023

Dayna Murczek
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Court of Appeal for Ontario
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VIA EMAIL: dayna.murczek@ontario.ca

Dear Ms. Murczek,

RE: CALL FOR COMMENT: MEETING OF THE PARTIAL SETTLEMENT SUBCOMMITTEE OF THE CIVIL RULES COMMITTEE

I am writing to you on behalf of the Toronto Lawyers' Association ("TLA"). The TLA represents the interests of more than 3,700 members who practice law in all disciplines across the Greater Toronto Area. Our membership, and our Board of Directors, represents the full diversity of our profession in Ontario. Included among our members are many lawyers who practice regularly before the Superior Court of Justice.

I write further to the meeting of the Partial Settlement Subcommittee of the Civil Rules Committee (the "Subcommittee"), which I understand took place on May 23, 2023. Matthew Karabus, a Director of the TLA, attended the meeting on behalf of our Association. The TLA's Board of Directors has had an opportunity to review the Subcommittee's draft rules regarding the disclosure of partial settlement agreements. I am pleased to offer below the TLA's comments in respect of the draft rule.

Regarding draft rule 2, we are concerned that the seven-day timeframe currently contemplated in the draft rule is very short. We are particularly concerned about this timeframe in light of the proposed requirement to disclose a partial settlement "whether or not the agreement has been reduced to writing". It is conceivable that there may be uncertainty regarding when a partial settlement agreement has been reached and, accordingly, when the seven-day period has started to run.

We understand the Subcommittee's objective is to ensure the disclosure of *all* partial settlement agreements, including those that may not be reduced to writing. While we agree that this is a valid objective, we believe it would be more practical if claimants were to be required to disclose the terms of the partial settlement agreement within seven days of the agreement *being reduced*

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to writing. To require claimants to comply with the proposed rule within seven days of the agreement being reached would be unduly onerous. As currently drafted, the proposed rule contemplates that within seven days of reaching an agreement, the parties will have confirmed all of the terms of the agreement, reduced the agreement to writing, executed the agreement *and* properly disclosed all of the terms of the partial settlement agreement (except the amount).

In order to ensure that both oral and written agreements are properly disclosed to the non-settling parties, and in order to ensure that litigants have a sufficient amount of time within which they are required to meet their disclosure requirements, we propose the following language for draft rule 2:

At any stage of the proceeding, a claimant is required to disclose to all non-settling parties all terms of the partial settlement agreement except the amount,

- a. In the case of an agreement that is not reduced to writing, within seven days after the agreement is reached;
- b. In the case of an agreement that is reduced to writing, within seven days after the agreement is executed; or
- c. before any further step is taken in the proceeding,

whichever occurs earlier.

We are of the view that the language used above captures the following scenarios: (1) circumstances where the partial settlement agreement is never reduced to writing; (2) circumstances where the partial settlement agreement is reduced to writing more than seven days after the agreement is reached; (3) circumstances where immediate disclosure is required because a further step in the proceeding will take place less than seven days after the agreement is reached.

With respect to draft rule 5(b), we propose that the term “examinations for discovery” be replaced with “examinations”. In our view, this language would better reflect the potential remedy of ordering further examinations in the context of an application.

Thank you for considering these comments. Our Executive Committee would be pleased to discuss these comments at your convenience, should you find additional consultation beneficial.

Yours very truly,

A handwritten signature in black ink, appearing to be 'Aitan Lerner', written over a circular scribble.

Aitan Lerner
President
Toronto Lawyers' Association