

Monday, April 21, 2014

## **Faster Lawsuits > Practice Reminder: Tickler System for Service of Statement of Claim**

A busy litigation practice involves juggling priorities and managing the deadlines which naturally occur in each lawsuit.

One requirement, designed to move lawsuits forward, is to serve the defendants formally with your Statement of Claim within six months of issuance.

If you fail to and do not obtain consent from the defendant, then you have to bring a motion seeking a Court order extending the time for service of the Statement of Claim past six months, as happened in: ***Bernardo v. Faroqi, 2014 ONSC 377 (CanLII)***.

In this case, the plaintiff's solicitor had engaged the defendant's insurer within the six month period and inadvertently failed to serve the Statement of Claim. Further delay in securing this motion date, through unfortunate circumstances, added to the overall complaint by the defendant of delay and prejudice.

Master Muir stated, starting at paragraph 9:

[9] The decision of the Court of Appeal in *Chiarelli v. Weins*, [2000] O.J. No. 296 (C.A.) is the leading authority on motions to extend the time for service of a statement of claim. The principles to be considered are set out at paragraphs 14 to 17 of that decision and can be summarized as follows:

- a) the court should not extend the time for service if to do so would prejudice the defendant;
  
- b) the plaintiff bears the onus of demonstrating that the defendant would not be prejudiced by the extension;

c) the defendant has an evidentiary obligation to provide some details of prejudice to him or her which would flow from an extension of time for service;

d) the defendant cannot create prejudice by the failure to do something that he or she reasonably could have or ought to have done; and,

e) prejudice that will defeat an extension of time for service must be caused by the delay.

[10] Ultimately, the role of the court on a motion of this nature is to exercise its discretion on the facts of each particular case focusing on whether the defendant has been prejudiced by the plaintiff's delay. See Chiarelli at paragraph 17. The Rules and the relevant authorities favour the just determination of civil proceedings on their merits. Relief from strict compliance with the Rules should be granted where it can be done without prejudicing a party's ability to advance its claim or to defend itself.<sup>2</sup>

[11] In my view, the facts of this case justify the granting of the relief sought by the plaintiffs.

The motions Court allowed the motion and extended the time for service, noting that the defendant failed to specify concrete examples of prejudice suffered as a result of this delay. Fortunately for the plaintiff, no motion costs were awarded.

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