

Thursday, December 29, 2016

## Suing Others > Demanding Even More During the Lawsuit

Recently one of our clients found, during the course of his lawsuit against the defendants, that their claim ought to be increased from the initial demand of \$100,000 to \$500,000.

While it is rare for our clients to issue lawsuit claims that limit themselves to \$100,000 - which is the monetary threshold for cases which fall in Ontario's *Simplified Rules* procedure - in this specific case, it was the correct move due to the advantages that are found in [Simplified Rules](#).

### **THE ISSUE:**

What happens if, during the lawsuit itself, new information comes out that causes you to re-assess the value of your lawsuit? What if you've claimed "too little" initially and now need to claim more by way of damages?

### **WHY THIS MATTERS:**

The advantage, in this case, to my client committing to Simplified Rules was the cost consequences; moving through the lawsuit more quickly; and a streamlined Trial procedure. But given some new information that arose during the course of the lawsuit, the calculus for my client's claim has changed dramatically, so that their prayer for relief needs to be amended to \$500,000. Simply put, the case got a lot better, quickly, due to new information not available to us before starting the lawsuit.

### **THE SOLUTION TO THIS ISSUE:**

A motion was required for our client, to amend the Statement of Claim's prayer for relief from \$100,000 to \$500,000.

The specific Rule applicable to this amendment is found in Rule 26:

*RULE 26 AMENDMENT OF PLEADINGS*

*GENERAL POWER OF COURT*

26.01 *On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment. R.R.O. 1990, Reg. 194, r.26.01.*

**WHEN AMENDMENTS MAY BE MADE**

26.02 *A party may amend the party's pleading,*

*(a) without leave, before the close of pleadings, if the amendment does not include or necessitate the addition, deletion or substitution of a party to the action;*

*(b) on filing the consent of all parties and, where a person is to be added or substituted as a party, the person's consent; or*

*(c) with leave of the court. R.R.O. 1990, Reg. 194, r.26.02.*

Typically, an Ontario Court will allow the prayer for relief to be amended, claiming a higher amount of damages, at any point of the lawsuit. This is predicated on the directive word, "shall", as found in Rule 26.01 above.

Illustrative of this general principle includes the following cases:

- despite expiration of the limitation period, the plaintiff was allowed to amend their pray for relief to claim an extra \$71,000 (which was missed due to an accounting inadvertence), which amount was known to the defendants all along. This amendment was sought early in the lawsuit, prior to Discoveries and prior to service of the Affidavit of Documents: [\*\*Tabrco Management Ltd. v. First Gulf Design Build Inc.\*\*](#), CanLII 35705 (ON SC)
- amending prayer for relief allowed even after plaintiff file its Trial Record: [\*\*St. Takla v. Pharmoy\*\*](#), 2014 ONSC 3598 (CanLII).
- the plaintiff's counsel moved at the opening of trial, which was over seven-and-a-half years after the delivery of the statement of claim, six-and-a-half years after examinations for discovery, and over two years after setting down and six months after the pre-trial, to amend the prayer for relief increasing the claim for damages from \$10,000 to \$100,000 - [\*\*370866Ontario Ltd. v. Chizy \(1987\), 1987 CanLII 4122 \(ON SC\)\*\*](#).

In our specific case, the demand to revise the damages sought was made immediately after Discoveries and prior to the filing of the Trial Record, thereby removing further defence arguments of prejudice.

**See Other Blog Comments on this Topic:**

- [Adding PTSD To Your Claim &gt; 3.5 Years After a Thunder Bay Car Accident.](#)

Gregory Chang

Toronto Personal Injury and Insurance Lawyer