



DOLDEN WALLACE FOLICK <sup>LLP</sup>

# Insurance Law Update

*Insurance Law Expertise... It's our policy.*

February 6, 2009

## BRITISH COLUMBIA'S NEW RULES OF COURT APPROACH COMPLETION



### A NEW ERA BEGINS

British Columbia is the most expensive jurisdiction in Canada in which to take an action to trial, beset by cost, complexity, and delay. New *Rules of Court* for the British Columbia Supreme Court may soon be introduced to address those problems.

In 2004, the Law Society of British Columbia set up the Civil Justice Reform Working Group to overhaul the rules governing civil actions. It circulated draft of proposed new rules in July, 2007. After much outcry from lawyers, a second draft was issued for comment in March, 2008. The Working Group is now considering whether to make further amendments, but the new rules will likely come into effect in January, 2010.

Insurers should be aware that the new rules will change virtually every aspect of claims handling in British Columbia, from the moment a claim is made through investigation to settlement or trial.

### SOME KEY POINTS OF THE NEW RULES

Under the current draft,<sup>1</sup> civil actions will no longer be initiated by Writ and Statement of Claim. Instead, a Plaintiff (now referred to as a "Claimant") will file a "Notice of Civil Claim". The Notice must be served within 120 days of being filed, with the possibility of a 60-day extension. It must also be personally signed by the Claimant or his or her representative, not by the Claimant's lawyer. In subrogated claims, a representative of the insurer will be allowed to sign the Notice of Civil Claim.

<sup>1</sup> Available at [http://www.bcrulesrevisioncommittee.ca/downloads/Proposed\\_Rules\\_Civil\\_Procedure\\_Supreme\\_Court.pdf](http://www.bcrulesrevisioncommittee.ca/downloads/Proposed_Rules_Civil_Procedure_Supreme_Court.pdf).



DOLDEN WALLACE FOLICK <sup>LLP</sup>

# Insurance Law Update

*Insurance Law Expertise... It's our policy.*

The Defendant will be referred to as a "Respondent". The Respondent must file its Response with 21 days after service. If it wishes to file a Third Party Notice, it must do so within 42 days (*i.e.*, 7 weeks) of being served with the Notice of Civil Claim. The Response must also be signed by the Respondent directly, or, in insured claims, by a representative of the insurer.

After the exchange of pleadings, and before taking any other steps, the parties must assent to a Case Plan Order covering many aspects of the litigation, including a litigation timeline, agreed limits on discoveries, and the exchange of witness lists. If the parties cannot agree, they must attend a case planning conference, where a judge will make the Case Plan Order. If such a conference is held, a representative of the insured must attend. Counsel may not appear alone, or as the insurer's agent.

Discovery rights will be severely curtailed in the new rules, both with respect to documentary discovery and examinations. Each party must produce all of the documents referred to in its pleadings, or within its possession and control, within 7 days of receiving a request for disclosure. Except by consent or court order, examinations for discovery will be held to a maximum of 3 hours.

The new civil rules will also affect the parties' use of experts. If the expert evidence is not authorized in the Case Plan Order, it may not be introduced at trial. Experts (other than medical and paramedical practitioners) must meet at least 35 days before the trial and prepare a statement setting out any disagreements between them. The court will be able to appoint its own expert, on its own initiative, and direct that one or more of the parties pay the expert's fees.

The new rules run to some 475 pages. It is not certain that they will significantly reduce the cost, complexity and delay they were intended to address.

## IMPLICATIONS FOR INSURERS

The new rules have serious implications for insurers. Claims handlers will become much more involved in lawsuits, *e.g.*, by signing pleadings and attending judicial conferences. Because of the shortened time frames for commencing actions, and especially third party proceedings, insurers will have to have virtually completed their claims investigations by the time the Notice of Civil Claim is served. Limits on documentary and examination discovery will inhibit counsel's ability to



DOLDEN WALLACE FOLICK <sup>LLP</sup>

# Insurance Law Update

*Insurance Law Expertise... It's our policy.*

thoroughly explore all issues relating to a claim and any available defences. This will have particularly negative repercussions in complex cases.

The new rules will also create uncertainty, as they eliminate the body of case law developed under the current Rules of Court. This could potentially increase costs and delay civil actions. Insurers should be prepared for a completely new system of civil justice in this province. Although the time for making submissions on the proposed new rules has now passed, this firm encourages insurers to review the rules and make their views known to the Provincial Government's Rules Revision Committee at [info@BCRulesRevisionCommittee.ca](mailto:info@BCRulesRevisionCommittee.ca).

**AUTHOR** Amelia J. Staunton

*Direct Line:* 604-891-0359 *E-mail:* [astaunton@dolden.com](mailto:astaunton@dolden.com)

**EDITOR** Paul C. Dawson

*Direct Line:* 604-891-0378 *E-mail:* [pdawson@dolden.com](mailto:pdawson@dolden.com)