



PRACTICE NOTE NO. 18

(Amended February 10th, 2011)

This note amends Practice Note No. 17, which was issued on January 13, 2010.

PROPOSED RULES AND AMENDMENTS WITH RESPECT TO SETTLEMENT OFFERS, LEAD CASES AND LITIGATION PROCESS CONFERENCES

147(3.1) Settlement offers

(a) Unless otherwise ordered by the Court and subject to paragraph (c), where an Appellant makes a written offer to settle and obtains a judgment as favourable as or more favourable than the terms of the offer to settle, the Appellant is entitled to party-and-party costs to the date of service of the offer **and substantial indemnity costs after that date, as determined by the Court, plus reasonable disbursements and applicable taxes.**

(b) Unless otherwise ordered by the Court and subject to **paragraph (c)**, where the Respondent makes a written offer to settle and the Appellant obtains a judgment as favourable **as or less favourable** than the terms of the offer of settlement, or fails to obtain judgment, the Respondent is entitled to party-and-party costs to the date of service of the offer **and substantial indemnity costs after that date, as determined by the Court, plus reasonable disbursements and applicable taxes.**

(c) Paragraphs (a) and (b) do not apply unless the offer to settle

(i) **is a written offer of settlement;**

(ii) **is served no earlier than 30 days after the close of pleadings and at least 90 days before the commencement of the hearing;**

(iii) is not withdrawn; and

(iv) does not expire earlier than 30 days before the commencement of the hearing.

(d) **The party who claims the benefit of paragraphs (a) or (b) has the burden of proving that:**

(i) **there is a relationship between the terms of the settlement offer and the judgment; and**

(ii) that the judgment is as favourable as the terms of the offer to settle, or more or less favourable, as the case may be.

(e) For the purposes of this section "substantial indemnity" costs means 80% of solicitor and client costs.

147(3.2)(a) In circumstances where a written offer to settle does not provide for the settlement of the issue of costs, if a party requests the Court to consider subsection 147(3.1), the Court, in ascertaining whether the judgment granted is more or less favourable than the offer to settle, shall not have regard to costs awarded in the judgment or that would otherwise be awarded.

(b) For greater certainty, if a written offer to settle that does not provide for the settlement of the issue of costs is accepted, a party to the offer may apply to the Court for an order determining costs.

A Notice to the Public and to the Profession will be published together with this Practice Note.

This practice note will be effective January 31, 2011.

Dated this 10th day of February 2011.

Gerald J. Rip
Chief Justice