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**INTERLOCUTORY PROCEEDINGS**

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This service details the various proceedings that may be used before trial explaining how to obtain the desired order so you can be one step ahead of the game. With this resource you will know how to: obtain the order; identify the proper test for granting the order in specific proceedings; enforce the order; identify the inherent risks; analyze the cost benefit considerations; and access the precedents you need to obtain the order. The service also covers motions to stay a proceeding, and discusses issues such as: when such a motion can be brought forward; statutory and regulatory provisions which govern such a motion; *forum non-conveniens*; how to determine whether a real and substantial connection exists and choice of law and venue.

**What's New in this Update:**

Based on new case law, and legislative amendments, the author has updated commentary in the following chapters: Chapter 1 (General

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Injunctions), Chapter 2 (Mareva Injunction), Chapter 4 (Motions to Stay Proceedings), Chapter 5 (Intervention), Chapter 7 (Obtaining Evidence and Documents from Non-Parties), Chapter 9 (Security for Costs), Chapter 10 (Norwich Pharmacal Orders), Chapter 11 (Summary Judgment), and Chapter 12 (Jury Notice).

**Chapter 1 - General Injunctions - Test for Granting and Injunction:** In order to obtain a stay of a law pending a review of its validity, the test as established by *RJR-MacDonald Inc.*, must be met, namely: there must be a serious issue to be tried; irreparable harm if the stay is not granted; and the balance of convenience must favour the granting of the stay. Irreparable harm would be established where the law in question will cause a clear violation of a constitutionally protected fundamental right. With respect to the balance of convenience, it should only be in rare and exceptional cases that the effect of a democratically enacted law be suspended before a finding of its unconstitutionality or validity is ultimately made. In this regard, the court must consider whether it is more important to maintain the status quo which existed before the passage of the legislation or to apply the principle of constitutional conformity in that a stay could have the effect of depriving the public of the benefits of a statute which may in the end be held to be valid. This must be balanced against the fact that denying the stay may deprive the applicant of his/her constitutional rights until the court is able to make a final decision: see *National Council of Canadian Muslims (NCCM) v. Attorney General of Quebec*, 2018 QCCS 2766 (C.S. Que.).

**Chapter 4 - Motions to Stay Proceedings - No Jurisdiction over Subject Matter:** In determining whether a court has jurisdiction over a claim by unionized employees for unpaid severance against a bankrupt corporation and other purportedly related but non-bankrupt family companies and individuals, the Court of Appeal in *United Food and Commercial Workers Canada, Local 175, Region 6 v. Quality Meat Packers Holdings Limited* concluded that a court did not have jurisdiction over the matter but rather that the Ontario Labour Relations Board did, as it is the substance of the dispute that governs the analysis and if the essential character of the dispute rises from the interpretation, application, administration or violation of the collective agreement, then the dispute falls within the exclusive jurisdiction of a labour arbitrator. Accordingly, the motion judge's decision staying the proceeding for lack of jurisdiction was upheld. *United Food and Commercial Workers Canada, Local 175, Region 6 v. Quality Meat Packers Holdings Limited*, 2018 ONCA 671 (Ont. C.A.).

**Chapter 7 - Obtaining Evidence and Documents from Non-Parties - Examination for Discovery of a Non-Party in Ontario - Test:** The court cannot decide a motion for summary judgment based upon a theory not plead or advanced by the parties without first affording the parties an opportunity to properly brief those issues and develop the record to address them as it would otherwise be materially unfair to them: see *Toronto-Dominion Bank, N.A. v. Lloyd's Underwriters*, 2017 ONCA 1011 (Ont. C.A.) and *Rodaro v. Royal Bank* (2002), 59 O.R. (3d) 74 (Ont. C.A.). Generally speaking, if a defendant wishes to have an issue such as whether a limitation period has expired determined, the Court of Appeal in *Brozmanova v. Tarshis*, 2018 ONCA 523 (Ont. C.A.), has made it clear that such a motion should be brought as either a summary judgment motion or a motion under Rule 51.06(2) - concerning admissions of the truth of the facts in the pleading, and that it should not be brought pursuant to Rule 21.01(1)(a), as the restrictions on evidence which a defendant can put forward to respond such a motion, makes it unfair to have a limitations issue dealt with under that rule.

**Chapter 9 - Security for Costs - Introduction - When to seek Security for Costs:** Before being able to obtain an order pursuant to Rule 31.10(1) to examine a non-party, you must first establish that you have been unable to obtain that information both from a party to the proceeding and from the non-party, as before the court will compel a non-party to attend an examination for discovery there must be an actual or constructive refusal to provide the information sought: see *Ozdemir v. Economical Mutual Insurance Group*. In that case, the requirement was met as the plaintiff had refused to make the third party available and the correspondence filed with the court made it clear that the defendant was unable to obtain the information without the courts assistance. *Ozdemir v. Economical Mutual Insurance Group*, 2018 ONSC 214 (Ont. S.C.J.).