

## Documents Deadline Essential to Your Defence

In defending a claim against your organization, it is critical that we work together in any way possible with the timely and prompt production of documentation and undertakings.

To date, we have not had any situations where clients who faced claims against their organization did not provide all relevant documents outside of the 60-day deadline, which came into effect as of July 1, 2006. This is good news, because it means that we were able to provide our clients with the best possible defence.

We cannot stress enough, however, how important it is to disclose or produce all relevant documents within this timeframe. Not to do so could have serious negative consequences – including not being able to provide the strongest possible defence.

### The Rules

The rules that govern the handling of lawsuits are known as the Rules of Civil Procedure. The Rules of Civil Procedure require that all documents relating to any matter at issue in a legal action – that are or have been in the possession, control or power of a party to the lawsuit – be disclosed.

A document is anything that discloses information, i.e. evidence. This includes paper documents, sound recordings, videotapes, films, photographs, charts, graphs, maps, plans, surveys, books of account, etc. A party cannot pick and choose which documents to disclose; harmful documents cannot be withheld simply because they are harmful.

During the Examination for Discovery, each party will often request that additional information and/or documentation be provided. The agreement to produce additional documentation is called an undertaking. Undertakings are like promises. For Examinations for Discovery held after July 1, 2006 all undertakings must be compiled within 60 days. The lawyer appointed to work with you in defending the case will assist you in fulfilling these undertakings.

The duty to disclose and produce documents is an ongoing responsibility. That means if any additional documents are located, they must be disclosed.

### The Consequences

As we mentioned above, the failure to disclose or produce relevant documents may have serious consequences. For example, if a favourable document is not produced, we would not be able to make use of it at trial except with leave (permission) of the trial judge. In fact, the court has the power to dismiss the action or strike out a defence for failure to produce relevant documents.

If documents are not produced in a timely fashion, it may also affect the credibility of the defence. The court and/or opposing parties may become suspicious and may not believe a party that does not co-operate in the production of relevant documentation.

It is also of great strategic importance that all relevant documents are provided at the earliest possible opportunity so that all of the strengths and weaknesses of the case are known at the earliest opportunity.

We recognize that searching for and providing the necessary documentation in a timely manner can be both laborious and time consuming. This is, however, a necessary step in the litigation process. In order to provide you with the best possible defence and ensure you have complied with your obligations set out in the insurance policy, it is imperative that this deadline be met.