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The Steps in a Civil Litigation Action

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Pleadings

Pleadings consist of a statement of claim, statement of defence and reply.

The plaintiff prepares a statement of claim, which must contain a concise statement of the material facts on which the plaintiff relies. The plaintiff must serve the statement of claim on all defendants and file an affidavit of service with the court.

The defendant must then serve and file a statement of defence, otherwise they will be noted "in default", which means that they have admitted the truth of all factual allegations in the plaintiff's statement of claim.

The defendant may counterclaim against the plaintiff, crossclaim against a co-defendant, or make a third party claim against a person who is not a party to the action.

Documentary Discovery

The parties must agree on a discovery plan if they wish to obtain evidence through the discovery process.

Documents, including electronic documents, are disclosed to each party by way of an affidavit that lists all relevant documents in the party's power, possession or control that it does not object to producing.

The parties are entitled to copies of the documents listed in each other's affidavits and inspection of originals of each other's documents.

Examinations for Discovery

Examinations are conducted by litigation counsel outside of court before a certified court reporter who generates a transcript of the examination.

The primary purpose of examinations is to avoid surprises at trial. Examinations also allow parties to obtain admissions to facilitate settlement and eliminate narrow issues in the action.

In general, the maximum time limit that each party has to examine persons for discovery is seven hours.

Mediation

In certain jurisdictions, including Ottawa, the parties are required to attend at mediation either before or after discoveries (it usually depends on the nature of the action which time frame is more appropriate) in an effort to resolve the matter. At a mediation the parties will generally start the process in the same room with a mediator, and each side will have an opportunity to set out their position. Following these statements, the parties usually break out into two (or more) rooms and the mediator than acts as a go between and facilitates negotiations between the parties in an attempt to resolve the matter.

In jurisdictions where parties are not required to attend mediation, it is still an option if both parties agree it would be a productive exercise.

If mediation fails, the mediator advises the Court that mediation has taken place and failed, which enables the parties to officially move forward with the litigation process.

Setting an Action down for Trial

Either party may set the action down for trial by serving or filing the trial record, which includes copies of all pleadings and orders relating to the trial.
By setting the matter down for trial you are advising the Court that the parties have all of their evidence and expert reports and are prepared to proceed with trial of the matter.

Pre-Trial Conference

The parties must attend a pre-trial conference before a judge or court officer to attempt to settle the case or narrow the issues. The judge or court officer will summarize what he or she believes are the strengths and weaknesses of each party's case and encourage settlement.

Trial

If the parties cannot settle an action, it will proceed to trial. A trial is a determination of the issues before a trier of fact, which may be a judge or jury. The court will render a decision once it has had time to consider all of the evidence and arguments.
Civil actions are complex, and it is essential that parties seek professional advice early in the litigation process and throughout any action to ensure that they are fully informed of their rights and obligations.

For more information on our personal injury services and practice area, please contact Caroline Failes, Partner, Head of the Personal Injury Law Group at cfailes@perlaw.ca or 613-566-2849. You can also visit PerlawPersonalInjury.ca.