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INTERLOCUTORY PROCEEDINGS
Christopher Wirth
Release No. 2, December 2021

Publisher's Special Release Note 2021

The pages in this work were reissued in August 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the August 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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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 Injunctions), Chapter 4 (Motions to Stay Proceedings), Chapter 5 (Interventions), Chapter 11 (Summary Judgment) and Chapter 12 (Jury Notices).

Chapter 4—Motions to Stay a Proceeding—Choice of Law/ Venue—In circumstances where a Canadian subsidiary of an American parent company was sued in addition to the American parent, the fact that a forum selection clause in an agreement with the American parent would preclude an action against it in Ontario did not mean that this would create a multiplicity of proceedings whereby the American parent would be sued in the United States and the Canadian subsidiary in Ontario, as the plaintiff had no contract with the Canadian subsidiary and it could not resist the otherwise proper enforcement of a forum selection clause by suing what appeared to be an improper party and then arguing that it would create a multiplicity of proceedings to stay the action against the American parent company: see *Loan Away Inc. v. Facebook Canada Ltd.*, 2021 ONCA 432 (Ont. C.A.).

Chapter 11—Summary Judgment—Evidence on the Motion— In *Johnson v. Rajanna*, the Court of Appeal set aside an order granting summary judgment and dismissing an action which had occurred where the plaintiff had failed to deliver an expert report to support her dental malpractice claim, as the court permitted the plaintiff to file fresh evidence which included an expert report which the Court of Appeal concluded that had the motion judge had been aware of it when he faced the 77 year old self-represented party seeking compensation for injuries resulting from a dental procedure, the court would have concluded that it was in the interests of justice and appropriate to adjourn the motion to permit the plaintiff extra time to obtain the report. *Johnson v. Rajanna*, 2021 ONCA 453 (Ont. C.A.).

Chapter 12—Jury Notices—Tactical and Procedural Considerations— In *Rumney v. Nelson*, the court decided to conditionally

strike a jury notice filed by the defendants such that the matter would proceed as a non-jury matter unless by the time it was called to trial it became possible to pick and conduct a jury trial. If at that time it would be possible to pick and to conduct a second jury trial, then without the need of a further motion, the jury notice would be reinstated. This was done in the context of a claim arising from a motor vehicle accident which had occurred in December 2012. In September 2019, the parties requested and were granted a fixed trial date. The matter was scheduled to be tried before a judge and jury for four weeks commencing on October 4, 2021. In the interim, the COVID-19 pandemic prevented jury trials from proceeding. As a result, in order to preserve the fixed trial date which had taken approximately 2 years to secure, and with the court being concerned that if the trial was adjourned a new fixed trial date might not be for another 2 years, the court decided that the jury notice should be struck but that it could be reinstated if by the time the matter was called to trial it was possible to pick and conduct a jury trial. *Rumney v. Nelson*, 2021 ONSC 5632 (Ont. S.C.J.).

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