



Recent amendments to the B.C. Supreme Court Rules 26 and 27

As of July 1, 2007, amendments to the B.C. Supreme Court Rules have significantly altered the law of insurance policy production in the province.

Although innocuous on its face, Order in Council No. 414 has greatly expanded document disclosure and the scope of examination for discovery with respect to the existence and details of policies of insurance.

Specifically, Rule 26 now requires that any insurance policy under which an insurer may be liable to satisfy or indemnify a judgment must be included in a party's List of Documents.

With respect to Rule 27, the scope of examination for discovery has been expanded to specifically allow examination on the existence and contents of those producible insurance policies. In addition, examination is permitted on the amount of money available under a policy as well as any communications denying or limiting liability under the policy.

On the bright side, information concerning insurance policies is not to be disclosed at trial unless that information is relevant to the action. The new Rules apply to all litigation currently underway, regardless of the stage to which the litigation has progressed. In fact, even for those actions currently in trial, the obligation to produce a supplemental list of documents disclosing this documentation arises.

These amendments introduce new potential problems for defendants and defence counsel in certain actions. For example, they foreclose defence counsel's ability to use policy information at a time and place most advantageous to the settlement or other resolution of a claim. Further, it is conceivable that the early disclosure of policy limits to plaintiffs may affect the manner in which some plaintiffs counsel will litigate claims that could potentially exceed policy limits. In particular, we expect to see counsel artificially inflate claims and use the knowledge of policy limits to pressure insurers to settle within limits rather than face situations requiring independent counsel and possible bad faith allegations.

Also of potential concern is that plaintiffs will be in a better position to amend claims to trigger a duty to defend, where the insured may otherwise have been in breach or outside the scope of the policy.

This type of insurance disclosure provision is not unheard of in Canada. Ontario has had provisions similar to these in place since 1990. However, the Ontario provisions do not go as far as these recent B.C. amendments, in that Ontario's do not permit examinations for discovery on communications with

respect to denying or limiting liability under an insurance policy.

At this stage it appears that the amendments only affect the Supreme Court Rules. They do not deem information about insurance policies relevant, but merely make that information producible regardless of relevance. Therefore, with no such corresponding Small Claims Court provisions, information about insurance policies should not be producible in that jurisdiction.

In terms of active Supreme Court files, we will be asking that insurers locate and forward copies of the relevant policy and declarations pages, plus relevant correspondence on coverage reservations (if any). We will then determine and advise you as to what has to be produced. Certain insurers have developed guidelines for dealing with requests pursuant to these amendments and, where such guidelines exist, we will act according to those guidelines wherever possible.

For more information, please contact:

*Robert McLennan at 604 484 1718 or rmclennan@ahbl.ca
Darryl Pankratz at 604 484 1721 or dpankratz@ahbl.ca*

For more breaking news and e-bulletins, visit our website at www.ahbl.ca.

The content of this e-bulletin is intended to provide information on Alexander Holburn Beaudin & Lang LLP, our lawyers, and recent developments in the law. Items and comments contained in our e-bulletin are not intended to be legal advice. Readers should consult with one of our lawyers before acting on any information contained in our newsletter. For more information on the firm or to comment on our e-bulletin, please contact our Director of Marketing & Business Development, Heather Gray-Grant, at 604 628 2720 or hgraygrant@ahbl.ca.

Should you wish to unsubscribe from this e-mail list, please click [here](#) and type "unsubscribe" in the subject line.

©2007 Alexander Holburn Beaudin & Lang LLP

2700 - 700 West Georgia St.
Vancouver, BC V7Y 1B8
(Tel) 604 484 1700
(Fax) 604 484 9700