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HOLMESTED AND WATSON ONTARIO CIVIL PROCEDURE

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This is the encyclopaedia of civil litigation in Ontario. It has been designed as a general treatise on civil procedure through section-by-section and rule-by-rule analytical commentary to the *Courts of Justice Act* and the *Rules of Civil Procedure*. It may be used as a research tool in the preparation of any type of application to court as well as preparation for trial and beyond.

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What's New in this Update

Commentary has been updated for Rule 4 Court Documents; Rule 6-1 Separate Hearings; and Rule 53 Evidence at Trial.

Highlights

Rule 4 Court Documents—In this section, the author reviews and discusses the various rules amendments (O. Reg. 300/24; O. Reg. 301/24 and O. Reg. 384/24). He provides information regarding the amendments as well as insight into the implications of the amendments.

Rule 6-1 Separate Hearings—Effective July 1, 2024 the former iteration of Rule 6.1 was revoked and replaced in its entirety. The authors discuss the highlights of the new rule changes to the rules. The author discusses the case *Wynn v. Wynn*, 2024 CarswellOnt 12495, 2024 ONSC 4624 (S.C.), which was decided after the 2024 amendments. In that case, the court granted an opposed motion to bifurcate property issue from a marriage contract issue on the grounds that, (a) the case was highly complex and it would be unfair to involve parties connected only to one issue in the trial of the other; (b) the issues were clearly severable; (c) determining the property issue would have a cascading effect on the remainder of the case and increase chance of settlement; and there was no evidence that bifurcation would unfairly advantage or prejudice either party. *LaPointe v. Simcoe Muskoka Catholic District School Board*, 2024 CarswellOnt 10767, 2024 ONSC 4040 (S.C.) (the court refused to bifurcate issues of liability and damages in a personal injury case; emphasizing the mandatory phrasing on the dual grounds that: (a) the moving defendant failed to lead “evidence decisively showing” a benefit of bifurcation—including in the event that the plaintiff prevailed at first instance on the issue of liability; (b) liability issues of standard of care and causation were not clearly severable from the issue of damages; (c) the service of a jury notice militated against splitting the case; (d) the plaintiff had already begun trial preparation in earnest; and (e) the action was already 6 years old and any additional delay might hinder the ability of witnesses to accurately recall events).

Rule 53 Evidence at Trial—Cases refusing to draw inference from non-party's failure to testify—*Middlesex Condominium Corp. v. Aluminum Window Designs Ltd.*, 2024 CarswellOnt 15199, 2024 ONSC 5440 (S.C.) (In an action over leaking windows, the court refused to draw an adverse inference from the plaintiff's failure to call as witnesses the persons who performed “water testing” of the windows where the evidence was clear about how the testing was to be performed and the results of the testing as performed).