

RULE 605(7) & THE PROVINCIAL COURT LIMIT OF \$25,000

Memo from Taxing Officers Morin & Christensen:

Disclaimer

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November 1st, 2002 **Provincial Court Civil Division Regulation 215/2002** changed the Provincial Court limit from **\$7,500** to **\$25,000**. Taxation offices across the Province have been receiving queries concerning the application of **Rule 605(7)(a)** to Court of Queen's Bench actions which began when the limit was \$7,500 but settled or were otherwise resolved after the limit became \$25,000. Hence this brief explanation of our understanding of how taxing officers might and likely should address the issue.

Issue: If an action was commenced in the Court of Queen's Bench on October 31st, 2002 for \$24,000 (an amount in excess of the then \$7,500 Provincial Court limit) and if it settled, with costs, on November 1st, 2002 for (a) \$5,000 or, alternatively, (b) \$20,000, how would **Rule 605(7)(a)** be applied?

Answer:

- (a) If settled for \$5,000 **Rule 605(7)(a)** would apply and costs would be reduced by 25% for steps taken up to and including judgment.
- (b) If settled for \$20,000 **Rule 605(7)(a)** would not apply and costs would not be reduced by 25%.

Reason: **Queen's Bench Rule 605(7)** states:

"Notwithstanding anything in this Rule, unless otherwise ordered

"(a) in the case of an action commenced in the Court of Queen's Bench when the amount sued for or the amount of the judgment does not exceed the amount for which the Provincial Court has jurisdiction under section 9.6 of the Provincial Court Act, the costs to and including judgment shall be taxed in the amount of 75% of that provided for under Column 1 of Schedule C;

"(b) in respect of subrule (a), post judgment matters shall be taxed in the amount of 100% of that provided for under Column 1 of Schedule C."

Provincial Court Civil Division Regulation 215/2002 changed the Provincial Court's jurisdiction "for the purposes of . . . any claim or counterclaim referred to in section 9.6(1)(a)(i) of the Act," from \$7,500 to \$25,000: see **Rules of Court**, Provincial Court, Civil Division Regulation, p. 12.1.1.

Case Authority - As of February 25th, 2002, there is only one reported decision directly on point. In *Ritchie v. Edmonton Eskimo Football Club* [2003] ABQB 59, 2003 CarswellAlta 57, Lee J. awarded Mr. Ritchie a judgment of \$10,400.00 which figure, at the time the action was initiated and the Certificate of Readiness was filed, exceeded the Provincial Court limit of \$7,500.00. That limit changed to \$25,000.00 one month prior to

the trial. Addressing the issue of whether the increased limit obliged the application of **Rule 605(7)(a)** to the plaintiff's costs, the court ruled:

"[9] My analysis of the situation is that **Rule 605(7)(a)** does not apply to this case given that at the time the action was commenced and at the time the Certificate of Readiness was filed, the amount of the ultimate Judgment still exceeded the small claims limit. This analysis is further supported by the actual amendments themselves to the *Provincial Court Act* which greatly increased the jurisdiction of the Civil Claims Division of that court, which themselves do not purport to give jurisdiction to that court unless the cause of action arose after the proclamation of increased limits.

"[10] Accordingly the Provincial Court never had jurisdiction with respect to the case at bar even after the amendment raised the monetary limits in that court approximately one month before this trial was heard by me. As such I conclude that **Rule 605(7)(a)** is not applicable, and the costs should not be taxed at 75 percent."

Application: Taxing Officers are bound by this decision.

N/B: **Regulation 215/2002** leaves a gap between the Provincial Court limit of \$25,000.00 and the **Schedule C, Column 1** starting figure of \$10,000.00. Since some claims seeking relief in the form of the payment of money (eg: builders' lien or defamation suits) could never fall within the jurisdiction of the Provincial Court and since **Rule 605(8)** ensures that **Rule 605(7)(a)** only applies to "actions the subject matter of which is within the jurisdiction of the Provincial Court," it is suggested that, until further notice, **Schedule C, Column 1** be treated as constituting amounts from \$0.01 up to and including \$50,000.