

November 28, 2016

A Matter of Fairness: Pre-Trial Inspection of Property in Product Liability Cases in the Small Claims Court

A recent decision of the Divisional Court of Ontario has opened the door for a limited expansion of the discovery process under the *Small Claims Court Rules* (“*Rules*”). In *Riddell v Apple Canada Inc.*, the Divisional Court upheld an order for inspection of property, made by a Deputy Judge of the Small Claims Court. The decision clarifies the *Rules* concerning discovery-type motions in the Small Claims Court and, in particular, confirms that the Small Claims Court has jurisdiction to make orders for pre-trial inspection of property.

By way of background, Matthew Riddell brought a claim in the Small Claims Court against Apple Canada Inc. for damages in the amount of \$25,000. Mr. Riddell claimed that his iPhone 5 overheated and caused severe burns to his right arm. Apple wanted to have the iPhone 5 examined by an expert, but Mr. Riddell refused to deliver up the iPhone.

Apple then brought a motion for pre-trial inspection of the iPhone. Mr. Riddell opposed the motion on the ground that the Small Claims Court did not have jurisdiction to issue orders for the pre-trial inspection of property. Prior to this motion, there were two conflicting Small Claims Court decisions as to whether the *Rules* permitted the Small Claims Court to issue orders for pre-trial inspection of property.

On the motion, a Deputy Judge of the Small Claims Court concluded that the iPhone was central to the plaintiff’s claims and ordered Mr. Riddell to deliver his iPhone to Apple for inspection. The Deputy Judge concluded that it would not be in keeping “with the principles of natural justice to require the respondent to proceed to trial without the benefit of inspection”.

Mr. Riddell appealed the decision to the Divisional Court, raising numerous arguments about the impropriety of the Deputy Judge’s decision. Chief among his grounds of appeal was Mr. Riddell’s submission that the Deputy Judge did not have jurisdiction to make the inspection order. Mr. Riddell again argued that the *Rules* do not authorize a Deputy Judge to make a discovery-type order for inspection of property.

The Divisional Court disagreed, dismissing the appeal and upholding the decision of the Deputy Judge. Justice Nordheimer explained that the *Rules* do provide for a “very limited form of discovery”, but the issue is to what extent, if any, that limited discovery ought to be expanded.

The Court’s decision has clarified the *Rules* by affirming that pre-trial inspection of property is appropriate and just in situations such as these, where the evidence at issue is “critical to a proper determination” of the issues in the case.

The Court noted that while there is no specific provision in the *Rules* that authorize a Deputy Judge to deliver property to another party for the purposes of inspection, subrule 1.03 enables the Court to make any order that is just where the *Rules* do not cover a matter adequately. Central to the Court’s decision was Mr. Riddell’s continued assertion that he would be calling expert evidence at trial. As a matter of fairness, the Court felt compelled to provide Apple with the same opportunity, despite no specific rule allowing for inspection of property.

Small Claims Court proceedings are designed to be expeditious, cost effective and devoid of the more complex and time-consuming procedural hurdles found in other Superior Court proceedings. It is one of the reasons noted by the Divisional Court that Small Claims Courts are loath to make pre-trial orders for discovery. However, the summary approach to Small Claims Court proceedings does not come at the expense of ensuring fairness and justice to each party. This decision highlights the balance that must be struck in the Small Claims Court between efficiency on the one hand and ensuring justice is done on the other.

Although the Divisional Court has not opened the door for discovery to become a rule in every case before the Small Claims Court, it has set a clear precedent for a limited expansion of the *Rules* concerning discovery. It will no doubt assist parties in cases where pre-trial inspection of property is critical to a fair determination of their rights.

Lenczner Slaght acted as counsel to Apple Canada Inc. in this matter