Appeals

"While the proposed reforms to the Rules of Civil Procedure will have several direct impacts on appeals, perhaps its largest impact will come from its changes to pre-trial procedure."

What was the most interesting development of 2025, and why?

The Civil Rules Review Working Group advanced the far-reaching reform to Ontario's *Rules of Civil Procedure* slated to begin in 2026. The headline change for appeals relates to the distinction between interlocutory and final orders. The Civil Rules Review Working Group proposes to provide an objective list of final orders and define interlocutory orders by exclusion. These changes should save litigants time and costs by reducing unnecessary appeals and re-direction to the Divisional Court by the Court of Appeal on matters it considers interlocutory.

To minimize interlocutory appeals, the Civil Rules Review Working Group recommends merging all interlocutory orders with the final order and providing a right of appeal at interlocutory orders with a broader appeal in the merits.

For instance, instead of appealing a discovery ruling mid-case, parties could wait until the final judgment, which should streamline litigation and reduce costs.

To facilitate access to justice, judges issuing orders will be required to:

- label each order as final or interlocutory
- identify the appropriate appellate court
- indicate the deadline for filing a notice of appeal

Finally, the Civil Rules Review Working Group recommends codifying commonly applied procedural tests in the *Rules of Civil Procedure*, including tests for:

- extending the time to file or perfect appeals
- seeking an expedited appeal
- introducing fresh evidence on appeal

What's the primary takeaway for businesses from the past year?

The Supreme Court of Canada confirmed the broad and ongoing disclosure obligations of publicly traded companies in its first securities decision in several years: *Lundin Mining Corp v Markowich*. Lenczner Slaght represented the intervener, CFA Societies Canada, in this important matter.

The Supreme Court clarified the distinction between a "material fact" and a "material change" in Canadian securities regulation. Under the Ontario *Securities Act*, a "material fact" is "a fact that would reasonably be expected to have a significant effect on the market price or value of the securities." While a company must disclose a "material fact" periodically, it need not do so "forthwith." A "material change" is a "change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any securities of the issuer" and must be disclosed "forthwith."

Emphasizing the goal of alleviating informational asymmetry between issuers and investors, the Supreme Court adopted a flexible model for interpreting "material change," holding that a development in the business, operations, or capital of an issuer need not be important or substantial to constitute a change. The Supreme Court declined to provide a rigid definition of "change" or "business, operations or capital." Instead, it held that the interpretation of these terms is a matter of judgment and common sense unique to the circumstances of each case.

Bottom line: when in doubt, issuers should err on the side of disclosure to avoid regulatory risk.

What's one trend you are expecting in 2026?

While the proposed reforms to the *Rules of Civil Procedure* will have several direct impacts on appeals, perhaps its largest impact will come from its changes to pre-trial procedure. The proposed reform includes several changes to reduce the pre-trial motions culture in litigation. If successful, these changes should mean a reduction in pre-trial appeals.

That said, the proposed reform is liable to come with some growing pains. Where the changes to the *Rules* produce confusion or conflict, parties will seek authoritative guidance from Ontario's appellate courts. We therefore expect an early increase in appeals to clarify the new *Rules*.

Businesses and their counsel should prepare by closely monitoring appellate decisions following the new *Rules* and updating their litigation strategies accordingly. Early adaptation will be key to avoiding procedural missteps.

Read our guide, A New Vision for Litigation, for a full summary of the proposed changes and important considerations for in-house teams to prepare for a smooth transition.

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