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The Supreme Court of Canada's Holiday Present: Simpler Rules for 2021

The Supreme Court of Canada has announced important changes to the *Rules of the Supreme Court of Canada* that will take effect on January 27, 2021. The amendments were published in the Canada Gazette here, and the Supreme Court of Canada has also published a plain language guide for these amendments here. While these changes are fairly minor in the grand scheme of Supreme Court practice, they will simplify the process for seeking leave to the Supreme Court of Canada.

There are three primary categories of changes.

The first change is that parties to leave applications or appeals to the Supreme Court of Canada are no longer required to use an agent from the National Capital Region. Previously, all parties were required to use Ottawa agents. Depending on the particular agent's role, some agents would merely assist with filing of documents, others would assist with formatting to accord with the Supreme Court's requirements, and some would provide substantive input and guidance.

An Ottawa agent can be extremely valuable in helping parties with leave applications and appeals to the Supreme Court of Canada. Lawyers who have a significant agent practice have extensive experience with the *Rules of the Supreme Court of Canada* and Supreme Court practice. No doubt many lawyers will continue to employ the services of agents on significant cases, much as they would retain local counsel when dealing with cases in a jurisdiction in which they have less familiarity.

That being said, the elimination of the universal requirement for an agent will in some cases improve access to justice. In cases where clients have limited resources, agency fees add an additional cost to a leave application or an appeal. Indeed, particularly in pro bono matters, even if the agent provided their own pro bono rates and modest disbursements, agency fees could continue to pose a problem.

The second broad change the Supreme Court has made is in the number of copies of materials that have to be filed as part of the process for seeking and responding to leave to appeal. Under the amended *Rules*, parties will only need to file the original and two copies of the leave application and responding

and reply materials, instead of the current requirement of filing an original and five copies. This is a minor change, but it will again reduce the costs of disbursements that all parties have to incur.

The third change pertains to the content of leave application materials. The *Rules* in their previous form allowed the parties to file “documents, including any affidavit in support of the application for leave to appeal, that the applicant intends to rely on, in chronological order”. This provision allowed for filing affidavits and contemplated filing transcripts or evidence, but was not expressly limited to transcripts or evidence. The amended *Rules* merely provide that if an applicant intends to rely on transcripts or evidence from the record filed from the court appealed from, the relevant excerpts from that transcript or evidence are to be filed. This seemingly eliminates any option to file an affidavit, which will simplify the contents of leave applications.

None of these changes are revolutionary or will fundamentally overhaul the practice at the Supreme Court of Canada. However, the changes will make it somewhat easier and less costly for parties to seek leave to appeal. This is a welcome development. As we have previously observed, the number of cases heard by the Supreme Court of Canada has declined slightly over the past decade. Anything the Court can do to take more cases or encourage parties to seek leave in more cases of national importance would be a welcome development.