

update

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Friday Facts: What to do when you don't have enough information to sue

Sometimes clients find themselves in a position where they don't have enough information to issue proceedings against a party they believe they are entitled to sue.

In those situations and in circumstances where requests for information are ignored by the party, an application for preliminary discovery can be made to the Court.

The application will allow discovery to be obtained in circumstances where access to documents would not otherwise be available until well after legal proceedings have been issued.

Such an application can be made when discovery is required to enable a party who wishes to commence proceedings in a Court to either identify the correct defendant or obtain documents from a party because there is reasonable cause to believe that they may have the right to sue.

An application to identify the correct defendant can include a request for the discovery of documents which will confirm the name or entity of a party or an oral examination before the Court to ascertain that information, or both.

Where there is reasonable cause to believe that a person has or may have the right to obtain relief in the Court from another person who has been identified, discovery of classes of documents which will enable commencement of a proceeding

can be ordered.

For example, an application can be made in the case where a party believes they may have had insurance which would cover a particular event that occurred, but is unsure of the exact entity whom the insurance policy was with or whether the policy was in place at the time of the insurable event. The application for preliminary discovery against the insurer would include a request for a copy of the policy, a copy of the terms and conditions of the policy and any other information relating to the policy including for example whether there are any parties noted as having an interest in the policy such as a mortgagee.

The result is that once preliminary discovery is obtained, details of the policy and whether there is a cause of action can be more readily determined and proceedings can be properly drawn and issued against the correct entity. The advantage is that proceedings are not issued against the incorrect party or in circumstances where there is no proper basis for the claim. As an added bonus if the party requested to provide documents either refuses, neglects or fails to provide documents or information before the application, then a costs order will

be made in favour of the party applying for preliminary discovery.

The application may also assist in making it clear that the claim will be pursued which may lead to an earlier resolution of the dispute.

For more information

For more information, please contact:

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