

Ontario Court of Appeal overrules Handley Estate, restores discretion to remedies for non-disclosure of partial settlement agreements



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Key Takeaways

- In a ruling on May 19, 2026, governing proceedings involving multiple defendants, the Ontario Court of Appeal overruled its prior decision in *Handley Estate v. DTE Industries Limited* which required an automatic stay of proceedings arising from a plaintiff's failure to make immediate disclosure of a partial settlement agreement.
- The disclosure of a partial settlement will be governed by a new rule that was adopted in June 2025, and the appropriate sanction for a failure to disclose a partial settlement is a discretionary decision made in light of all the relevant circumstances of the case and normal abuse of process principles.
- A stay of proceedings remains available for non-disclosure of a partial settlement, but is now reserved for the "clearest of cases", where the prejudice to a party or to the integrity of the judicial process is such that no lesser remedy would suffice.
- This decision has important implications for ordinary civil and class proceedings in Ontario and across Canada where a plaintiff seeks to settle its claims with one defendant to the actual or potential prejudice of other defendants. But the Court's decision reaffirms the importance of timely disclosure of such agreements, and we expect that non-settling defendants will continue to raise fairness concerns where partial settlements affect their rights.

Background

In multi-party litigation, it is common for a plaintiff to reach a partial settlement agreement with certain defendants at various stages of the proceeding, while continuing to pursue the proceeding against other defendants. But a partial settlement can directly engage fairness considerations in respect of the remaining defendants, since the remaining defendants were not privy to the settlement negotiations and will not know the terms of the settlement, including the identity of the settling party, the amount of the settlement, the level of

cooperation, the limits on future discovery and whether there is a “bar order” on future contributions against the settling defendant. A partial settlement can dramatically change the landscape of an ongoing proceeding, often to the prejudice of the non-settling defendants.

In light of these fairness considerations, in a decision in 2018, the Ontario Court of Appeal ruled in *Handley Estate v. DTE Industries Limited*^[1] that a plaintiff is required to make immediate disclosure of a partial settlement, absent which, the non-settling defendants are entitled to seek a remedy of an automatic stay of proceedings. But this ruling has faced criticism from some members of the bar on the basis that it imposed a heavy remedy that was disproportionate to any prejudice resulting from non-disclosure.

In *1086289 Ontario Inc. (Urban Electrical Contractors) v. Welland (City)*,^[2] the Ontario Court of Appeal convened a five-judge panel to consider the ongoing authority of *Handley Estate* in the context of a number of parallel appeals. In its ruling, the Ontario Court of Appeal delivered an important decision respecting the disclosure of such partial settlement agreements to non-settling defendants in multi-party civil litigation.

The decision arose from four grouped appeals — *Welland*, *Evertz*, *Howran*, and *Thrive* — heard together because they raised common issues, including: (i) the characterization of non-disclosure of partial settlement agreements as an abuse of process; (ii) the appropriate remedy; and (iii) the interaction between the common law and the recently enacted Rule 49.14 of the *Rules of Civil Procedure*. The unanimous Court overruled its prior decision in *Handley Estate v. DTE Industries Limited*, which had established an “automatic and exceptionless” rule: failure to immediately disclose a partial settlement agreement changing the adversarial landscape of the litigation constitutes an abuse of process, regardless of actual prejudice, with a permanent stay of proceedings being the sole available remedy.

The Court observed that the *Handley Estate* rule had become “unduly rigid, capable of producing disproportionate outcomes, and a source of uncertainty and satellite litigation”, as illustrated by the near-dozen cases before the Court of Appeal on this issue between 2022 and 2024. The serious nature of the automatic stay had also driven courts to narrow the scope of the disclosure obligation itself, limiting it to agreements that “chang[e] entirely the landscape of the litigation in a way that significantly alters the dynamics of the litigation”. Fundamentally, the Court noted, the rule had become a “trap for the unwary” and a tool for parties seeking to exploit “minor breaches of procedural rules.”

A proportionate and discretionary approach

The Court’s central holding is that the *Handley Estate* rule represents “the antithesis of the discretionary approach that is at the heart of the abuse of process doctrine”, which otherwise requires a contextual inquiry into whether impugned conduct gives rise to “unfairness, prejudice, oppression, or otherwise undermines the integrity of the administration of justice.” Neither the question of whether there has been an abuse of process, nor the selection of the appropriate remedy, can properly be determined categorically. As a result, the Court concluded that “the time has come to exchange the *Handley* axe for a more precise scalpel, that can better achieve justice in individual cases.”

The Court further emphasized that the appropriate remedy to non-disclosure must be proportionate to its nature and consequences. Among other things, the Court stated that a stay of proceedings — described as the “most draconian option” — is now reserved for the “clearest of cases.”

The Court’s analysis also relied on the newly enacted Rule 49.14, which came into force on June 16, 2025. In short, in light of the concerns raised by *Handley Estate*, the Civil Rules

Committee adopted an express rule that governs the disclosure of partial settlements. Under Rule 49.14, a plaintiff who enters into a partial settlement agreement must disclose the terms of the agreement (other than the monetary value) to all non-settling parties. Disclosure must generally occur within seven days of the agreement or before any further step in the proceeding is taken, whichever is earlier, and immediately if the hearing has commenced. Notably, the disclosure obligation prevails over any confidentiality or non-disclosure agreement between the settling parties. Rule 49.14 differs from the *Handley Estate* rule in several material respects, in that it

- expands the range of available remedies for non-disclosure to include costs orders, further examinations for discovery, additional document production, striking out evidence, or adjournments, depending on the circumstances
- broadens the scope of the disclosure obligation to all partial settlement agreements (i.e., not only those that “entirely” or “significantly” change the litigation landscape or dynamics)
- clarifies the timing and extent of the disclosure obligation (i.e., all settlement terms other than the monetary value of the settlement must be disclosed and, in most circumstances, such disclosure must occur within seven days of settlement)

The Court observed that Rule 49.14 reflects the state the common law would have reached had *Handley Estate* not curtailed its development.

Analysis

The wide range of outcomes across the four appeals illustrates how application of the new discretionary framework produces different remedies tailored to the specific facts and circumstances of each case:

- In *Thrive*, the motion judge had expressly stated that a stay of proceedings was “not the remedy that [she] would have imposed if [she] had any discretion to impose a different one,” but felt compelled by *Handley Estate* to stay the proceedings. The Court of Appeal allowed the appeal and remitted the matter to the motion judge for a discretionary assessment of the appropriate remedy for the non-disclosure.
- In *Howran*, the motion judge refused to stay the action where the non-settling party suffered no prejudice and was never misled. The Court dismissed the appeal, finding that there was simply “nothing to remedy.”
- In *Evertz*, the Court upheld the stay, finding that the deliberate and misleading eight-month delay in disclosure, combined with active misrepresentations to the court, constituted one of the “clearest cases” warranting a stay of proceedings even under the new approach.
- In *Welland*, the appeal was allowed and remitted for a fresh hearing under the new framework because the motion judge’s findings had been made within the now-overruled *Handley Estate* framework, and did not address the question of prejudice.

It is important to note that, in *Evertz*, the Court upheld the remedy of a stay, underscoring that even under the new framework, there are a range of remedies for non-settling defendants where there is a non-disclosure of a partial settlement.

Implications

The Ontario Court of Appeal’s decision is noteworthy since the Court held that the principles

of *stare decisis* must be set aside to overrule a prior decision that was only eight years old. The Court's ruling will have a significant impact on ordinary proceedings and class proceedings that involve multiple defendants.

The Court's ruling restores the common law governing undisclosed partial settlement agreements to what the Court describes as "a principled and flexible footing," that is consistent with Rule 49.14, which will govern partial settlement disclosure moving forward. There remains the possibility of a further appeal to the Supreme Court of Canada. But for now, under the Court's framework, litigants should expect courts to engage more deeply with the specific facts of each case — the nature of the non-disclosure, its timing, its effect on the litigation, and any resulting prejudice.

While this new framework affords courts greater discretion to fashion a proportionate remedy, parties who withhold, conceal or misrepresent the terms of partial settlement agreements may continue to face serious consequences, up to and including a stay of proceedings.

[1] 2018 ONCA 324

[2] 2026 ONCA 352