

Parties usually consent to minor claim amendments: O'Connor

By Paul Russell, [AdvocateDaily.com](#) Contributor



Parties in civil cases can usually amend statements of claim at any stage of litigation, says Toronto civil litigator [Sarah O'Connor](#).

"Generally speaking, the court is going to allow your amendments as long as you're not trying to claim a completely new cause of action after the expiry of a limitation period. Then the court will refuse an amendment when it seeks to advance a fundamentally different claim based on facts not originally pleaded after the expiry of the limitation period," says O'Connor, principal of [O'Connor Richardson Professional Corporation](#).

She notes that Rule 26.01 of the [Rules of Civil Procedure](#) states: "On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment."

O'Connor says that parties will usually consent to minor amendments, though there will have to be a discussion about costs if the changes result in the other side spending more time and money in its defence.

"Let's say one side files a claim, and the other side defends it and does examination, and then something comes up where the first party needs to amend the claim," she tells [AdvocateDaily.com](#). "The other side may have to amend its defence, and undertake a re-examination or other steps, and that will cost the client money."

If new information becomes available during trial, an adjournment may be sought so that either side can amend their pleadings and/or gather evidence for that amendment.

"Legal counsel will need time to figure out what is happening," O'Connor says.

The limitation period for making amendments is generally two years from the date of action, she says, citing a recent Ontario Court of Appeal [case](#) where the plaintiff wanted to amend his statement of claim to plead for a larger portion of outstanding shares in a dispute with a company where he once held part ownership.

The company argued his amended statement of claim was a new action, and therefore not admissible, but the court held there was no deemed or actual prejudice to the request for the amendment, and granted leave to amend the statement of claim.

"A new cause of action is not asserted if the amendment pleads an alternative claim for relief out of the same facts previously pleaded and no new facts are relied upon, or amount simply to different legal conclusions drawn from the same set of facts, or simply provide particulars of an allegation already pled or additional facts upon [which] the original right of action is based," the judgment reads, drawing from the text [Law of Civil Procedure in Ontario](#).

O'Connor gives the example of someone suing a homeowner after falling on an icy sidewalk outside their home. If in the original statement of claim the plaintiff said the sidewalk was not shovelled or salted properly, then found out later it was also uneven, that amendment to the statement of claim would probably be accepted, she says.

"However, if the plaintiff wants to change their statement and say that the homeowner's dog chased them and bit them, causing the fall, that may not be allowed as an amendment," O'Connor says. "Changes are only going to be allowed as long as you are not asserting a new cause of action after the limitation period."

She says many amendments are minor in nature, such as correcting the names of individuals and companies involved in the case.

Amendments are also common if someone switches lawyers, or goes from self-representation to having legal counsel, O'Connor says, adding, "It's very difficult taking over someone else's file, since you will have a different idea how to run the case, and you may want to put your own spin on the argument."