

# Amendments to the Rules of Civil Procedure



# Changes to the Rules:

- Small Claims Jurisdiction
- Proportionality
- Timetables
- Experts
- Bifurcation
- Summary Judgment Motions
- Examinations for Discovery
- Motions
- Status Hearings
- Pre-Trial Conferences
- Simplified Rules

# Background



The Honourable  
Mr. Justice C. Osborne

The changes to the Rules come as a result of the recommendations of the Civil Justice Reform Project, lead by the Honourable Mr. Justice Coulter A. Osborne, Q.C.

The amendments will come into force on **January 1, 2010.**

# Small Claims Court Jurisdiction

Ontario Regulation 626/00 will increase the Small Claims Court Jurisdiction from \$10,000 to \$25,000 effective January 1, 2010.

# RULE 1.04 (1.1) – PROPORTIONALITY

## Rule 1.04 – Interpretation

**1.04 (1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.**

# RULE 4.1.01 – DUTY OF EXPERTS

**4.1.01 (1)** It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a proceeding under these rules,

- (a) to provide opinion evidence that is fair, objective and non-partisan;
- (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and
- (c) to provide such additional assistance as the court may reasonably require to determine a matter in issue.

# DUTY OF EXPERTS (Continued)

## *Duty Prevails*

- (2) The duty in subrule (1) prevails over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

## RULE 53.03 – EXPERT WITNESSES

- Expert reports must be served no less than 90 days before the Pre-Trial
- 60 day and 30 day rules for responding reports also changed
- Report must contain :
  - Name address, and area of expertise
  - The expert's CV
  - Instructions given to the expert



## RULE 53.03 – EXPERT WITNESSES (Continued)

- The nature of the opinions being sought
- The expert's opinion on each issue and reasons
- Any factual assumptions
- Description of research conducted
- A list of documents relied on
- An acknowledgement of the expert's duty.

# Rule 20 – Summary Judgment

- **OLD TEST** = no genuine issue for trial.
- **NEW TEST** = no genuine issue requiring a trial.

## Rule 20 – Summary Judgment (Continued)

- Motions Court Judge may exercise the following powers:
  - Weighing evidence
  - Evaluating the credibility of a deponent
  - Drawing any reasonable inference from the evidence.

## Rule 20 – Summary Judgment (Continued)

### *Directions and Terms*

**Rule 20.05 (2)** following an unsuccessful summary judgment motion, a judge is encouraged to play a proactive role in case management

## Rule 20 – Summary Judgment (Continued)

**Costs on a Summary Judgment Motion may be ordered on a substantial indemnity basis if:**

- (a) a party acted unreasonably by making or responding to the motion; or
- (b) the party acted in bad faith for the purpose of delay.

# RULE 29.1 – DISCOVERY PLAN

## *Requirement for Plan*

**29.1.03** (1) Where a party to an action intends to obtain evidence under any of the following Rules, the parties to the action shall agree to a discovery plan in accordance with this rule:

Rule 30 (Discovery of Documents).

Rule 31 (Examination for Discovery).

Rule 32 (Inspection of Property).

Rule 33 (Medical Examination).

Rule 35 (Examination for Discovery by Written Questions).

## RULE 29.1 – DISCOVERY PLAN (Continued)

### *Timing*

**29.1.03 (2)** The discovery plan shall be agreed to before the earlier of,

- (a) 60 days after the close of pleadings or such longer period as the parties may agree to; and
- (b) attempting to obtain the evidence.

## RULE 29.1 – DISCOVERY PLAN (Continued)

### *Contents*

(3) The discovery plan shall be in writing, and shall include,

- (a) the intended scope of documentary discovery under rule 30.02, taking into account relevance, costs and the importance and complexity of the issues in the particular action;
- (b) dates for the service of each party's affidavit of documents (Form 30A or 30B) under rule 30.03;



## RULE 29.1 – DISCOVERY PLAN (Continued)

- (c) information respecting the timing, costs and manner of the production of documents by the parties and any other persons;
- (d) the names of persons intended to be produced for oral examination for discovery under Rule 31 and information respecting the timing and length of the examinations; and
- (e) any other information intended to result in the expeditious and cost-effective completion of the discovery process in a manner that is proportionate to the importance and complexity of the action.

## RULE 29.1 – DISCOVERY PLAN (Continued)

### **FAILURE TO AGREE TO PLAN**

If there is no Discovery Plan or the Discovery Plan is not up-to-date, the Court may refuse to grant any relief

## RULE 29.2 – PROPORTIONALITY IN DISCOVERY

### CONSIDERATIONS

If a dispute arises regarding productions or oral exam (s), the Courts will consider the following factors:

- (a) the time required for the party or other person to answer the question or produce the document would be unreasonable;
- (b) the expense associated with answering the question or producing the document;

## RULE 29.2 – PROPORTIONALITY IN DISCOVERY (Continued)

- (c) requiring the party or other person to answer the question or produce the document would cause him or her undue prejudice;
- (d) requiring the party or other person to answer the question or produce the document would unduly interfere with the orderly progress of the action; and
- (e) the information or the document is readily available to the party requesting it from another source.

## RULE 29.2 – PROPORTIONALITY IN DISCOVERY (Continued)

### *Overall Volume of Documents*

**29.2 (2)** In addition to the considerations listed in subrule (1), in determining whether to order a party or other person to produce one or more documents, the court shall consider whether such an order would result in an excessive volume of documents required to be produced by the party or other person.

## RULE 30 – DISCOVERY OF DOCUMENTS

Changes to Rule 30 will narrow the scope of documentary discovery.

**OLD RULE = “RELATING TO”**

**NEW RULE = “RELEVANT TO”**

# RULE 31 – EXAMINATION FOR DISCOVERY

## TIME LIMIT

Examinations for Discovery are not to exceed **SEVEN HOURS**, except with the consent of the parties or with leave of the court.



## RULE 31 – EXAMINATION FOR DISCOVERY (Continued)

- The scope for Examinations for Discovery will be narrowed.

**OLD RULE** = Examinations may cover areas that relate to any matter in issue.

**NEW RULE** = Examinations may only cover areas relevant to any matter in issue.



## RULE 37 – MOTIONS & APPLICATIONS

- Moving Party's Motion Record and Factum to be *served* and *filed* at least seven days before the hearing date.
- Responding Party's Motion Record and Factum to be *served* and *filed* at least four days before the hearing date.
- The court file shall not be placed before the judge or master hearing the motion unless he or she requests it or a party requisitions it.

## RULE 37 – MOTIONS & APPLICATIONS (Continued)

- Confirmation of motion must be submitted to the Registrar (Form 37B) no later than 2pm, 3 days before the motion date. [Rule 37.10.1 (1) (b)]

# RULE 37 – MOTIONS & APPLICATIONS (Continued)

## Applications

- Timelines for serving, filing and confirming Applications follows the same timelines established for Motions.

# RULE 48 – LISTING FOR TRIAL and STATUS HEARINGS”

- Status Notices shall be served on parties if matter is NOT placed on trial list or disposed of by some other means within 2 years after the Statement of Defence is filed.

## RULE 48 – LISTING FOR TRIAL and STATUS HEARINGS (Continued)

- A lawyer who receives a Status Notice shall forthwith give a copy of the notice to his or her client. Rule 48.14 (3)
- A lawyer who receives a Notice of Status Hearing shall forthwith give a copy to his or her client. Rule 48.14 (9)
- A lawyer who is served with an Order dismissing the action for delay shall forthwith serve a copy on his or her client. Rule 48.14 (7)

# RULE 48 – LISTING FOR TRIAL and STATUS HEARINGS (Continued)

## **ACTION DISMISSED AS ABANDONED**

- **48.15 (1)** The Registrar shall make an order dismissing an action as abandoned if the following conditions are satisfied, unless the court orders otherwise:
  1. More than 180 days have passed since the date the originating process was issued; and
  2. The registrar has given 45 days notice in Form 48E that the action will be dismissed as abandoned; and
  3. No statement of defence has been filed; or
  4. The action has not been disposed of by final order or judgment; or
  5. The action has not been set down for trial.

## RULE 50 – PRE-TRIAL CONFERENCES

- 90 days after an action is set down for trial, the Registrar shall set down a Pre-Trial Conference. Rule 50.02
- Pre-Trial Briefs to be served and filed at least five days before the Pre-Trial Conference.
- Lawyers and parties shall participate, unless otherwise ordered.

## RULE 50 – PRE-TRIAL CONFERENCES (Continued)

- Must at least have ready telephone access to principal for purposes of receiving settlement instructions.
- The presiding Judge shall complete a Pre-Trial Conference Report.
- Costs of the Conference may be awarded.



## RULE 76 – SIMPLIFIED PROCEDURE

- As of January 1, 2010, the limit will be increased to \$100,000.00.
- Affidavit of Documents – disclosure of *relevant* documents only.
- Two hour oral examination for discovery.

## RULE 76 – SIMPLIFIED PROCEDURE (Continued)

- Within 60 days of the filing of the first Statement of Defence or Notice of Intent to Defend a meeting shall be scheduled to determine whether all *relevant* documents have been disclosed.
- Notice of Readiness for Pre-Trial shall be served within 180 days of the filing of the first Statement of Defence or Notice of Intent to Defend.

# RULE 76 – SIMPLIFIED PROCEDURE (Continued)

- At least 5 days before the Pre-Trial Conference the parties shall,
  - File Affidavits of Documents
  - Copies of Schedule “A” documents
  - Copies of expert reports
  - Any other necessary materials
  - A two-page statement of issues and positions
  - A trial management checklist (Form 76D)

# Conclusion

- Each office will need to review the changes in detail
- Consider practice management changes