

Amendments to the Rules of Civil Procedure



Changes to the Rules:

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

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.**

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 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 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.

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)

Oral Evidence

- **Rule 20.04 (2.2)** judge may order oral evidence to be heard
- **Motion Management??**

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)

Judges may order:

- Affidavit of documents
- Motions
- Discovery plans
- Details of discovery plan
- Taking sworn evidence of a witness before trial
- Witnesses to swear affidavit

RULE 20 Summary Judgment (continued)

- Experts to meet and create a statement of agreed/disagreed issues
- Concise summary of opening statements
- To reappear at a specified date for further orders to be made
- Action be set for a particular date
- Payment into court for the claims
- Security for costs

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)

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

- Courts will make orders about the scope of production and oral examinations;
- Courts will consider the complexity of the litigation and the cost to the litigants

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

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 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 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 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.

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.

Conclusion

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