Amendments to the Rules of Civil Procedure

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Introduction

On December 10, 2008, a regulation was filed to amend 25 rules of the Ontario *Rules of Civil Procedure*. These amendments will come into effect on **January 1, 2010**. The changes to the Rules come as a result of the findings of the Civil Justice Reform Project, which was lead by the Honourable Mr. Justice Coulter A. Osborne, Q.C. on the request of Michael Bryant, who was then, the Attorney General for Ontario[1]

The primary goals of the Civil Justice Reform Project were to propose recommendations and options to make Ontario's civil justice system more accessible, efficient and affordable for Ontarians.

The changes recommended in the *Civil Justice Reform Project* report represent the most significant set of amendments to the *Rules* since perhaps the introduction of the modern rules in 1985. By far, the most significant changes will be the increases to the monetary jurisdiction of the Small Claims Court and under the Simplified Procedures, as well as to the discovery and summary judgement procedures. Other important changes will affect mandatory mediation, expert witnesses, litigation management, pre-trial conferences, motions, and trial scheduling.

It should be noted that many of the FORMS that correspond to the Rules have also been amended.

Below is a summary of many of the amendments to the *Rules*:

SMALL CLAIMS COURT JURISDICTION

Separate from the changes to the Rules of Civil Procedure, Ontario Regulation 626/00 increased the Small Claims Court Jurisdiction from $10,000 to $25,000, effective January 1, 2010.

Numerous other recommendations were submitted for consideration with respect to the Small Claims Court, including expanding the jurisdiction of the Small Claims Court to provide limited jurisdiction for Small Claims Deputy Judges to grant equitable remedies. The report further suggested that Small Claims Administrative Judges be appointed to replace the two full-time Judges who will have both retired by the end of 2009. However, the only changes to the Small

[1] Civil Justice Reform Project – Summary of Findings and Recommendations. Honourable Coulter A. Osbourne, QC. November 2007.

Claims Court contained in O.Reg. 626/00 deal with the increase of the monetary jurisdiction.

RULE 1 – CITATION, APPLICATION AND INTERPRETATION

Definitions

Subrule **1.03(1)**
The word "timetable" is added to the definition section of the Rules.

Subrule 1.03 (1) of Regulation 194 of the Revised Regulations of Ontario, 1990 is amended by adding the following definition:

"timetable" means a schedule for the completion of one or more steps required to advance the proceeding (including delivery of affidavits of documents, examinations under oath, where available, or motions), established by order of the court or by written agreement of the parties that is not contrary to an order.

INTERPRETATION

Rule 1.04 (1) sets out the general interpretation principles through which all of the other Rules must be applied. The addition of **Subrule 1.04 (1.1)** is likely one of the most significant changes to the Rules and will have a broad impact on the practice and on many of the Orders made by the Court. According to the press release published by the government newswire, "The time and expense devoted to any proceeding must now reflect what is at stake. Cases that are straight forward and of lower value should not take as long or cost as much as large, complex cases."[2]

Proportionality

Rule 1.04 is amended by adding:

s. 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.

[2] Government of Ontario – Ministry of the Attorney General http://ogov.newswire.ca/ontario/gpoe/2008/12/11/c9090.html?lmatch=&lang=_e.html

Telephone and Video Conferences

Subrule 1.08(1) paragraph 8 is amended to remove settlement conferences and trial management conferences from the list of proceedings that may be conducted by telephone or video conference.

Order, No Consent

Subrule 1.08 (3) is amended to give the Court the option of ordering a telephone or video conference, either on a motion or on the Court's own initiative, where there is no consent from the parties.

RULE 3 – TIME

Rule 3 is most significantly changed by the formal addition of timetables to the litigation process – Rule 3.04. Timetables, once established, may be altered on consent without a court order, unless the order establishing the timetable states that the timetable shall not be amended. Sanctions are available for noncompliance with timetables – Rule 3.04(4)

Computation

Subrule 3.01 (1) (b) is amended by striking out "less than seven days" and substituting "seven days or less".

The new Rule reads:

COMPUTATION

3.01 (1) In the computation of time under these rules or an order, except where a contrary intention appears,

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words "at least" are used;

(b) where a period of ~~less than seven days~~ **seven days or less** is prescribed, holidays shall not be counted;

EXTENSION OR ABRIDGEMENT
Consent in Writing

Subrule 3.02 (4) is amended by striking out "except as provided in subrule 77.01 (4) (no extension by consent in case management)" at the end.

The new Rule reads:

EXTENSION OR ABRIDGMENT

Consent in Writing

(4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by filing a consent, ~~except as provided in subrule 77.01 (4) (no extension by consent in case management)~~.

Rule 3 is further amended by adding the following rule:

TIMETABLES

Amendment

3.04 (1) Parties may, by written agreement, amend a timetable established by order of a judge or case management master, unless the order expressly prohibits amendment by the parties.

Same

(2) Parties may, by written agreement, amend a timetable established by written agreement of the parties and amended by the order of a judge or case management master, unless the order expressly prohibits amendment by the parties.

Limitation

(3) Despite subrules (1) and (2), in the case of an action, an agreement to amend a timetable shall not amend the date before which the action shall be set down for trial or restored to a trial list, as the case may be.

Non-Compliance

(4) If a party fails to comply with a timetable, a judge or case management master may, on any other party's motion,

(a) stay the party's proceeding;

(b) dismiss the party's proceeding or strike out the party's defence; or

(c) make such other order as is just.

RULE 4 – COURT DOCUMENTS

Changes to Rule 4.05(2) include the addition of subparagraph (4)

Place of Filing

4.05(2) The following requirements govern the place of filing of documents in proceedings, unless the documents are filed in the course of a hearing or these rules provide otherwise:

1. All documents required to be filed in a proceeding shall be filed in the court office in which the proceeding was commenced, subject to ~~paragraphs 2 and 3~~ paragraphs 2, 3, and 4.

4. Documents relating to a motion to transfer a proceeding to another county under rule 13.1.02 shall be filed in the court office of the county to which the transfer is sought, if subrule 13.1.02 (3.1) applies.

DUTY OF EXPERT

The Civil Justice Reform Project Report acknowledged that the prevalent use of experts in litigation both increases the costs of litigation and the time matters take to resolve, due to delays caused by adjournments. Personal injury trials were specifically cited as typically requiring the participation of a host of experts, often including medical experts, experts on future care costs, future loss claims, and any number of other experts. It was suggested that, "It is difficult to contemplate a serious personal injury case being presented (or defended) without more than three expert witnesses."[3] Further problems were identified with respect to the proliferation of experts, including expert bias and

[3] Civil Justice Reform Project – Summary of Findings and Recommendations. Honourable Coulter A. Osbourne, QC. November 2007, at page 68.

lengthy and uncontrolled expert testimony.[4] In light of these considerations, the following amendments have been implemented.

The Rules are amended by adding **Rule 4.1.01(1):**

4.2.01 (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 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.

NOTE: For other changes impacting expert opinion, see amendments to Rule 53.03 on page 42.

RULE 6 – SEPARATE HEARINGS (BIFURCATION)

The changes to Rule 6 will allow for issues such as damages and liability in complex cases, to receive separate hearings. Despite the premise that parties should be able to have all issues resolved in a single process, the Civil Justice Reform Project noted some of the potential advantages of dealing with specific issues through separate hearings. The example used in the Report is the separation of the issues of liability and damages. Citing the case *Bourne* v. *Saunby*[5], the report suggested that bifurcation, in some instances, would help reduce the costs of litigation. "Upon the determination of one issue, parties may be inclined to settle the balance of the issues in dispute. This can result in a significant savings of time, money and judicial resources."[6]

[4] Civil Justice Reform Project – Summary of Findings and Recommendations. Honourable Coulter A. Osbourne, QC. November 2007, at page 68.

[5] (1993), 38 O.R. (3d) 555 (Gen. Div.)

[6] Civil Justice Reform Project – Summary of Findings and Recommendations. Honourable Coulter A. Osbourne, QC November 2007, at page 100.

Rule 6.1.01 is amended by adding:

6.1.01 With the consent of the parties, the court may order a separate hearing on one or more issues in a proceeding, including separate hearings on the issues of liability and damages.

RULE 13.1 – COMMENCEMENT OF PROCEEDINGS

PLACE OF COMMENCEMENT

Rule 13.1.02(1) sets out the rules for transferring a motion to another jurisdiction.

Subrule 13.1.02 is amended by adding the following subrule:

(3.1) Despite subrules 37.03 (1) and 76.05 (2) (place of hearing motions), a motion under subrule (1), (2) or (3) may be brought and heard in the county to which the transfer of the proceeding is sought.

RULE 14 – ORIGINATING PROCESS

Rule 14.08 deals with the time limits for service of an originating process. Rule 14.08(1) sets out that a Statement of Claim shall be served within six months of the date that the claim was issued. Rule 14.08(2) provides that where an action is commenced by way of Notice of Action, that the Statement of Claim and the Notice of Action shall both be served together within 6 months after the Notice of Action is issued.

Subrule 14.08 (3) is amended as follows:

Time For Service In Actions

Dismissal by Registrar

14.08(3) Subrules (1) and (2) are subject to ~~rules 76.06 and 77.08, which provide~~ Rule 48.15, which provides that in certain circumstances the registrar shall make an order dismissing the action as abandoned. O. Reg. 284/01, s. 5.

RULE 20 – SUMMARY JUDGMENT

To date, concerns over potential cost orders have been a disincentive for parties to bring summary judgment motions. The amendments to the Rules will soon allow judges some discretion in determining whether or not the motion was brought improperly and in varying costs awards depending on the merits of the motion. In addition, motions judges will soon be able to order oral evidence at summary judgment motions to assist the court in determining the issues without delay.

Rule 20.02 is revoked and substituted with the following:

EVIDENCE ON MOTION

20.02 (1) An affidavit for use on a motion for summary judgment may be made on information and belief as provided in subrule 39.01 (4), but, on the hearing of the motion, the court may, if appropriate, draw an adverse inference from the failure of a party to provide the evidence of any person having personal knowledge of contested facts.

(2) In response to affidavit material or other evidence supporting a motion for summary judgment, a responding party may not rest solely on the allegations or denials in the party's pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial.

Subrule 20.04 (1) is revoked.

Clause 20.04 (2) (a) is amended by striking out "no genuine issue for trial" and substituting "no genuine issue requiring a trial".

The new Rule reads as follows:

DISPOSITION OF MOTION

General

20.04(2) The court shall grant summary judgment if,

(a) the court is satisfied that there is ~~no genuine issue for trial~~ **no genuine issue requiring a trial** with respect to a claim or defence; or

Rule 20.04 is amended by adding the following subrules:

Powers

(2.1) In determining under clause (2) (a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence.

Oral Evidence (Mini-Trial)

(2.2) A judge may, for the purposes of exercising any of the powers set out in subrule (2.1), order that oral evidence be presented by one or more parties, with or without time limits on its presentation.

Rules 20.05 and 20.06 are revoked and the following substituted:

WHERE TRIAL IS NECESSARY

Powers of Court

20.05 (1) Where summary judgment is refused or is granted only in part, the court may make an order specifying what material facts are not in dispute and defining the issues to be tried, and order that the action proceed to trial expeditiously.

Directions and Terms

(2) If an action is ordered to proceed to trial under subrule (1), the court may give such directions or impose such terms as are just, including an order,

(a) that each party deliver, within a specified time, an affidavit of documents in accordance with the court's directions;

(b) that any motions be brought within a specified time;

(c) that a statement setting out what material facts are not in dispute be filed within a specified time;

(d) that examinations for discovery be conducted in accordance with a discovery plan established by the court, which may set a schedule for examinations and impose such limits on the right of discovery as are just, including a limit on the scope of discovery to matters not covered by the affidavits or any other evidence filed on the motion and any cross-examinations on them;

(e) that a discovery plan agreed to by the parties under Rule 29.1 (discovery plan) be amended;

(f) that the affidavits or any other evidence filed on the motion and any cross-examinations on them may be used at trial in the same manner as an examination for discovery;

(g) that any examination of a person under Rule 36 (taking evidence before trial) be subject to a time limit;

(h) that a party deliver, within a specified time, a written summary of the anticipated evidence of a witness;

(i) that any oral examination of a witness at trial be subject to a time limit;

(j) that the evidence of a witness be given in whole or in part by affidavit;

(k) that any experts engaged by or on behalf of the parties in relation to the action meet on a without prejudice basis in order to identify the issues on which the experts agree and the issues on which they do not agree, to attempt to clarify and resolve any issues that are the subject of disagreement and to prepare a joint statement setting out the areas of agreement and any areas of disagreement and the reasons for it if, in the opinion of the court, the cost or time savings or other benefits that may be achieved from the meeting are proportionate to the amounts at stake or the importance of the issues involved in the case and,

  (i) there is a reasonable prospect for agreement on some or all of the issues, or

  (ii) the rationale for opposing expert opinions is unknown and clarification on areas of disagreement would assist the parties or the court;

(l) that each of the parties deliver a concise summary of his or her opening statement;

(m) that the parties appear before the court by a specified date, at which appearance the court may make any order that may be made under this subrule;

(n) that the action be set down for trial on a particular date or on a particular trial list, subject to the direction of the regional senior judge;

(o) for payment into court of all or part of the claim; and

(p) for security for costs.

Specified Facts

(3) At the trial, any facts specified under subrule (1) or clause (2) (c) shall be deemed to be established unless the trial judge orders otherwise to prevent injustice.

Order re Affidavit Evidence

(4) In deciding whether to make an order under clause (2) (j), the fact that an adverse party may reasonably require the attendance of the deponent at trial for cross-examination is a relevant consideration.

Order re Experts, Costs

(5) If an order is made under clause (2) (k), each party shall bear his or her own costs.

Failure to Comply with Order

(6) Where a party fails to comply with an order under clause (2) (o) for payment into court or under clause (2) (p) for security for costs, the court on motion of the opposite party may dismiss the action, strike out the statement of defence or make such other order as is just.

(7) Where on a motion under subrule (6) the statement of defence is struck out, the defendant shall be deemed to be noted in default.

COSTS SANCTIONS FOR IMPROPER USE OF RULE

20.06 The court may fix and order payment of the costs of a motion for summary judgment by a party on a substantial indemnity basis if,

(a) the party acted unreasonably by making or responding to the motion; or

(b) the party acted in bad faith for the purpose of delay.

RULE 24.1 – MANDATORY MEDIATION

The changes to the Rules with respect to mandatory mediation will see an extension of the timelines for having the mandatory mediation sessions. Mandatory mediation continues only to be required in Ottawa, Toronto and Windsor.

Purpose

Rule 24.1.01 is amended by striking out "in case managed actions" and substituting "in specified actions".

The new Rule reads:

24.1.01 This Rule provides for mandatory mediation ~~in case managed actions~~ **in specified actions**, in order to reduce cost and delay in litigation and facilitate the early and fair resolution of disputes. O. Reg. 453/98, s. 1; O. Reg. 198/05, s. 2.

APPLICATION

Subrules 24.1.04 (1), (2) and (2.1) are revoked and the following substituted:

Scope

(1) This Rule applies to the following actions:

1. Actions that were governed by this Rule immediately before January 1, 2010.
2. Actions that are commenced in one of the following counties on or after January 1, 2010:
   i. The City of Ottawa.
   ii. The City of Toronto.
   iii. The County of Essex.

Exceptions

(2) Despite subrule (1), this Rule does not apply to,

(a) actions to which Rule 75.1 (Mandatory Mediation — Estates, Trusts and Substitute Decisions) applies;

(b) actions in relation to a matter that was the subject of a mediation under section 258.6 of the *Insurance Act*, if the mediation was conducted less than a year before the delivery of the first defence in the action;

(c) actions placed on the Commercial List established by practice direction in the Toronto Region;

(d) actions under Rule 64 (Mortgage Actions);

(e) actions under the *Construction Lien Act*, except trust claims; and

(f) actions under the *Bankruptcy and Insolvency Act* (Canada).

Exceptions, Class Proceedings Act, 1992

(2.1) Despite subrule (1), this Rule,

(a) applies to an action commenced under the *Class Proceedings Act, 1992* only if certification as a class proceeding has been denied; and

(b) does not apply to actions certified as class proceedings under the *Class Proceedings Act, 1992*.

Subrule 24.1.04 (4) is amended by striking out "July 1, 2009" at the end and substituting "January 1, 2010".

The new Rule reads:

Scope

24.1.04 (4) This Rule applies to the following actions:

1. Actions that were governed by this Rule immediately before **January 1, 2010.**

2. Actions that are commenced in one of the following counties on or after January 1, 2010:

i. The City of Ottawa.

ii. The City of Toronto.

iii. The County of Essex. O. Reg. 438/08, s. 16 (1).

Rule 24.1.06 is amended by striking out "the Schedule to".

The new Rule reads:

24.1.06 The Attorney General or his or her delegate may designate a person as mediation co-ordinator for a county named in ~~the Schedule to~~ subrule 24.1.04 (1), to be

responsible for the administration of mediation in the county under this Rule. O. Reg. 453/98, s. 1.

Subrule 24.1.07 (1) is amended by striking out "the Schedule to".

The new Rule reads:

24.1.07 (1) There shall be a local mediation committee in each county named in ~~the Schedule to subrule~~ 24.1.04 (1). O. Reg. 453/98, s. 1.

Subrule 24.1.07 (3) is amended by striking out "a judge" and substituting "a judge or a case management master".

The new Rule reads:

(3) The Chief Justice of the Superior Court of Justice shall appoint ~~a judge~~ **a judge or a case management master** to be a member of each committee. O. Reg. 453/98, s. 1; O. Reg. 292/99, s. 3.

Clause 24.1.08 (2) (b) is amended by striking out "subrule 24.1.09 (6)" and substituting "subrule 24.1.09 (6) or (6.1)".

The new Rule reads:

24.1.08 (1) The mediation co-ordinator for a county shall maintain a list of mediators for the county, as compiled and kept current by the local mediation committee. O. Reg. 453/98, s. 1.

(2) A mediation under this Rule shall be conducted by,

(a) a person chosen by the agreement of the parties from the list for a county;

(b) a person assigned by the mediation co-ordinator under ~~subrule 24.1.09 (6)~~ **subrule 24.1.09 (6) or (6.1)** from the list for the county; or

Subrule 24.1.09 (1) is amended by striking out "90 days" and substituting "180 days".

The new Rule reads:

MEDIATION SESSION

Time Limit

24.1.09 (1) A mediation session shall take place within ~~90 days~~ **180 days** after the first defence has been filed, unless the court orders otherwise. O. Reg. 453/98, s. 1.

Clauses 24.1.09 (2) (c) and (d) are amended by striking out "90-day period" wherever it appears and substituting in each case "180-day period".

The new Rule reads:

MEDIATION SESSION

Extension or Abridgment of Time

(2) In considering whether to exercise the power conferred by subrule (1), the court shall take into account all the circumstances, including,

(a) the number of parties, the state of the pleadings and the complexity of the issues in the action;

(b) whether a party intends to bring a motion under Rule 20 (Summary Judgment), Rule 21 (Determination of an Issue Before Trial) or Rule 22 (Special Case);

(c) whether the mediation will be more likely to succeed if the ~~90-day~~ **180 days** period is extended to allow the parties to obtain evidence under,

(i) Rule 30 (Discovery of Documents),

(ii) Rule 31 (Examination for Discovery),

(iii) Rule 32 (Inspection of Property),

(iv) Rule 33 (Medical Examination), or

(v) Rule 35 (Examination for Discovery by Written Questions); and

(d) whether, given the nature of the case or the circumstances of the parties, the mediation will be more likely to succeed if the ~~90-day~~ **180 days** period is extended or abridged.

Rule 24.1.09 is amended by adding the following subrule:

Transition

(2.1) Despite subrule (1), in the case of an action described in paragraph 1 of subrule 24.1.04 (1), the 180-day period begins to run on January 1, 2010.

Subrule 24.1.09 (3) is revoked and the following substituted:

Postponement

(3) Despite subrule (1), the mediation session may be postponed to a later date if,

(a) the parties consent to the date in writing; and

(b) the consent is filed with the mediation co-ordinator.

Subrules 24.1.09 (5) and (6) are revoked and the following substituted:

The new Rules reads:

(5) Before setting the action down for trial, one of the parties shall file with the mediation co-ordinator,

(a) a notice (Form 24.1A) stating the mediator's name and the date of the mediation session; or

(b) a mediator's report under subrule 24.1.15 (1) indicating that the mediation has been concluded.

Assignment of Mediator

(6) If the mediation co-ordinator does not, within 180 days after the first defence has been filed, receive an order under subrule (1), a consent under subrule (3), a notice under clause (5) (a), a mediator's report or a notice that the action has been settled, he or she shall immediately assign a mediator from the list, unless the court orders otherwise.

(6.1) If the mediation co-ordinator does not, within the time provided by an order under subrule (1) or a consent under subrule (3), receive a notice under clause (5) (a), a mediator's report or a notice that the action has been settled, and the action is set down for trial, he or she shall immediately assign a mediator from the list, unless the court orders otherwise.

Rule 24.1.09 is amended by adding the following subrule:

(7.1) The date fixed for the mediation session shall be within 90 days after the appointment of the mediator, unless the court orders otherwise.

ATTENDANCE AT MEDIATION SESSION

Subrule 24.1.11 (1.1) is revoked and the following substituted:

The new Rule reads:

Representative of Insurer

(1.1) Unless the court orders otherwise, if an insurer may be liable to satisfy all or part of a judgment in the action or to indemnify or reimburse an insured party for money paid in satisfaction of all or part of a judgment in the action,

(a) a representative of the insurer shall attend the mediation session; and

(b) despite subrule (1), the insured party is not required to attend the mediation session.

Subrule 24.1.13 (1) is amended by striking out "a case management master or case management judge" at the end and substituting "a judge or case management master".

The new Rule reads:

24.1.13 (1) When a certificate of non-compliance is filed, the mediation co-ordinator shall refer the matter to ~~a case management master or case management judge~~ **a judge or case management master**. O. Reg. 453/98, s. 1.

Subrule 24.1.13 (2) is amended by striking out the portion before clause (a) and substituting "(2) The judge or case management master may convene a case conference under rule 77.08, and may,"

The new Rule reads:

(2) The case management master or case management judge may convene a case conference under subrule 77.13 (1), and may,

RULE 29 – THIRD PARTY CLAIM

Rule 29 is amended by adding the following rule:

FILE NUMBER

29.14 Third and subsequent party claims shall be given the same file number as the main action, followed by a suffix letter.

RULE 29.1 – DISCOVERY PLAN

Changes to the Rules with respect to the discovery process are likely to have substantial impact on the litigation process. The amendments are geared towards attempting to reduce the costs and delay associated with the discovery process. The amendments impose the added step of having the parties agree to put into writing a discovery plan within 60 days following the close of pleadings (or a longer if both parties consent). The discovery plan will require that a timetable be created at an early point of the litigation in order to set out the scope of the examinations, to schedule the production of documents and the setting of examination dates. In addition to the above changes, each party will also be limited to a total of seven hours of pre-trial examinations for discovery, unless the parties consent to further time or the court orders additional examination time.[7] Rule 29.1 applies to all forms of examination for discovery.

The *Regulations* are amended by adding the following Rules immediately after the heading "Discovery":

NON-APPLICATION OF RULE

29.1.01 This Rule does not apply to parties who are subject to a discovery plan established by the court under clause 20.05 (2) (d).

DEFINITION

29.1.02 In this Rule,

"document" has the same meaning as in clause 30.01 (1) (a).

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:

1. Rule 30 (Discovery of Documents).
2. Rule 31 (Examination for Discovery).
3. Rule 32 (Inspection of Property).

[7] Government of Ontario – Ministry of the Attorney General http://ogov.newswire.ca/ontario/gpoe/2008/12/11/c9090.html?lmatch=&lang=_e.html

4. Rule 33 (Medical Examination).

5. Rule 35 (Examination for Discovery by Written Questions).

Timing

(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.

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;

(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.

Principles re Electronic Discovery

(4) In preparing the discovery plan, the parties shall consult and have regard to the document titled "The Sedona Canada Principles Addressing Electronic Discovery" developed by and available from The Sedona Conference.

DUTY TO UPDATE PLAN

29.1.04 The parties shall ensure that the discovery plan is updated to reflect any changes in the information listed in subrule 29.1.03 (3).

FAILURE TO AGREE TO PLAN

29.1.05 On any motion under Rules 30 to 35 relating to discovery, the court may refuse to grant any relief or to award any costs if the parties have failed to agree to or update a discovery plan in accordance with this Rule.

RULE 29.2 – PROPORTIONALITY IN DISCOVERY

DEFINITION

29.2.01 In this Rule,

"document" has the same meaning as in clause 30.01 (1) (a).

APPLICATION

29.2.02 This Rule applies to any determination by the court under any of the following Rules as to whether a party or other person must answer a question or produce a document:

1. Rule 30 (Discovery of Documents).
2. Rule 31 (Examination for Discovery).
3. Rule 34 (Procedure on Oral Examinations).
4. Rule 35 (Examination for Discovery by Written Questions).

CONSIDERATIONS

General

29.2.03 (1) In making a determination as to whether a party or other person must answer a question or produce a document, the court shall consider whether,

(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 would be unjustified;

(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.

Overall Volume of Documents

(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 narrow the scope of the documentary discovery process, by changing the test from the broader **"relating to"** to the more specific **"relevant to"** any matter in issue.

SCOPE OF DOCUMENTARY DISCOVERY

Disclosure

Subrules 30.02 (1) and (2) are amended by striking out "relating to any matter in issue" wherever it appears and substituting in each case "relevant to any matter in issue".

The new Rules reads:

Disclosure

30.02 (1) Every document ~~relating to any matter in issue~~ **relevant to any matter in issue** in an action that is or has been in the possession, control or power of a party to the action shall be disclosed as provided in rules 30.03 to 30.10, whether or not privilege is claimed in respect of the document. R.R.O. 1990, Reg. 194, r. 30.02 (1).

Production for Inspection

30.02 (2) Every document ~~relating to any matter in issue~~ **relevant to any matter in issue** in an action that is in the possession, control or power of a party to the action shall be produced for inspection if requested, as provided in rules 30.03 to 30.10, unless privilege is claimed in respect of the document. R.R.O. 1990, Reg. 194, r. 30.02 (2).

AFFIDAVIT OF DOCUMENTS

Subrule 30.03 (1) is revoked and the following substituted:

Party to Serve Affidavit

(1) A party to an action shall serve on every other party an affidavit of documents (Form 30A or 30B) disclosing to the full extent of the party's knowledge, information and belief all documents relevant to any matter in issue in the action that are or have been in the party's possession, control or power.

Subrule 30.03 (2) is amended by striking out "relating to any matter in issue" in the portion before clause (a) and substituting "relevant to any matter in issue".

The new Rule reads:

Contents

(2) The affidavit shall list and describe, in separate schedules, all documents ~~relating to any matter in issue~~ **relevant to any matter in issue** in the action,

Subrule 30.03 (3) is amended by striking out "relating to any matter in issue" and substituting "relevant to any matter in issue".

The new Rule reads:

(3) The affidavit shall also contain a statement that the party has never had in the party's possession, control or power any document ~~relating to any matter in issue~~ **relevant to any matter in issue** in the action other than those listed in the affidavit. R.R.O. 1990, Reg. 194, r. 30.03 (3).

Clause 30.03 (4) (a) is amended by striking out "relating to any matter in issue" and substituting "relevant to any matter in issue".

The new Rule reads:

Lawyer's Certificate

30.03 (4) Where the party is represented by a lawyer, the lawyer shall certify on the affidavit that he or she has explained to the deponent,

(a) the necessity of making full disclosure of all documents ~~relating to any matter in issue~~ **relevant to any matter in issue** in the action; and

RULE 31 – EXAMINATION FOR DISCOVERY

Subrule 31.03 (1) is amended by striking out "(3) to (8)" at the end and substituting "(2) to (8)".
The new Rule reads:

WHO MAY EXAMINE AND BE EXAMINED

Generally

31.03 (1) A party to an action may examine for discovery any other party adverse in interest, once, and may examine that party more than once only with leave of the court, but a party may examine more than one person as permitted by subrules ~~(3) to (8)~~ **(2) to (8).** R.R.O. 1990, Reg. 194, r. 31.03 (1).

Rule 31.03 (4) is amended by adding the following subrule:

Requirements for Leave

31.03 (4) Before making an order under clause (2) (b) or (3) (b), the court shall satisfy itself that,

(a) satisfactory answers respecting all of the issues raised cannot be obtained from only one person without undue expense and inconvenience; and
(b) examination of more than one person would likely expedite the conduct of the action.

Rule 31.05.1 (1) is amended by adding the following rule:

TIME LIMIT

Not to Exceed Seven Hours

31.05.1 (1) No party shall, in conducting oral examinations for discovery, exceed a total of seven hours of examination, regardless of the number of parties or other persons to be examined, except with the consent of the parties or with leave of the court.

Considerations for Leave

(2) In determining whether leave should be granted under subrule (1), the court shall consider,

(a) the amount of money in issue;
(b) the complexity of the issues of fact or law;
(c) the amount of time that ought reasonably to be required in the action for oral examinations;
(d) the financial position of each party;
(e) the conduct of any party, including a party's unresponsiveness in any examinations for discovery held previously in the action, such as failure to answer questions on grounds other than privilege or the questions being obviously irrelevant, failure to provide complete answers to questions, or providing answers that are evasive, irrelevant, unresponsive or unduly lengthy;
(f) a party's denial or refusal to admit anything that should have been admitted; and
(g) any other reason that should be considered in the interest of justice.

Subrule 31.06 (1) is amended by striking out "relating to any matter in issue" in the portion before clause (a) and substituting "relevant to any matter in issue".

The new Rule reads:

31.06 (1) A person examined for discovery shall answer, to the best of his or her knowledge, information and belief, any proper question ~~relating to any matter in issue~~ **relevant to any matter in issue** in the action or to any matter made discoverable by subrules (2) to (4) and no question may be objected to on the ground that,

Clause 31.06 (3) (a) is amended by striking out "relating to any matter in issue" and substituting "relevant to any matter in issue".

The new Rule reads:

Expert Opinions

(3) A party may on an examination for discovery obtain disclosure of the findings, opinions and conclusions of an expert engaged by or on behalf of the party being examined ~~that relate to a matter in issue~~ **relevant to any matter in issue** in the action and of the expert's name and address, but the party being examined need not disclose the information or the name and address of the expert where,

(a) the findings, opinions and conclusions of the expert ~~relating to any matter in issue~~ **relevant to any matter in issue** in the action were made or formed in preparation for contemplated or pending litigation and for no other purpose; and

RULE 34 – EXAMINATIONS OUT OF COURT – PROCEDURES ON ORAL EXAMINATIONS

Clause 34.10 (3) (a) is amended by striking out "relating to any matter in issue" and substituting "relevant to any matter in issue".

The new Rule reads:

PRODUCTION OF DOCUMENTS ON EXAMINATION

Notice or Summons May Require Documents and Things

(3) Unless the court orders otherwise, the notice of examination or summons to witness may require the person to be examined to bring to the examination and produce for inspection,

(a) all documents and things ~~relating to any matter in issue~~ **relevant to any matter in issue** in the proceeding that are in his or her possession, control or power and are not privileged; or

RULE 37 – MOTIONS AND APPLICATIONS

Changes to Rule 37 include changes to the number of days allowed for service and filing of motion materials. In most instances, where the Rules allowed for four days to deliver materials, the new Rules have pushed this time back to seven days. Where the old Rules allowed for two or three days to file materials, the new Rules allow for four days. Holidays will not be counted for periods of seven days or less.

JURISDICTION AND PROCEDURE

Subrule 37.03 (1) is amended by striking out "heard" and substituting "brought and heard".

The new Rule reads:
PLACE OF HEARING OF MOTIONS

37.03 (1) All motions shall be ~~heard~~ **brought and heard** in the county where the proceeding was commenced or to which it has been transferred under rule 13.1.02, unless the court orders otherwise. O. Reg. 14/04, s. 17.

Subrule 37.07 (6) is amended by striking out "four" and substituting "seven".

The new Rule reads:
Minimum Notice Period

(6) Where a motion is made on notice, the notice of motion shall be served at least ~~four~~ **seven** days before the date on which the motion is to be heard. R.R.O. 1990, Reg. 194, r. 37.07 (6); O. Reg. 171/98, s. 12.

Subrule 37.08 (1) is amended by striking out "three" and substituting "seven".
The new Rule reads:

FILING OF NOTICE OF MOTION

37.08 (1) Where a motion is made on notice, the notice of motion shall be filed with proof of service at least ~~three~~ **seven** days before the hearing date in the court office where the motion is to be heard. R.R.O. 1990, Reg. 194, r. 37.08 (1); O. Reg. 171/98, s. 13.

Subrule 37.10 (1) is amended by striking out "three" and substituting "seven".

The new Rule reads:
MATERIAL FOR USE ON MOTIONS

Where Motion Record Required

37.10 (1) Where a motion is made on notice, the moving party shall, unless the court orders otherwise before or at the hearing of the motion, serve a motion record on every other party to the motion and file it, with proof of service, in the court office where the

motion is to be heard, at least ~~three~~ **seven** days before the hearing, and 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. R.R.O. 1990, Reg. 194, r. 37.10 (1); O. Reg. 171/98, s. 14 (1).

Subrule 37.10 (3) is amended by striking out "two" in the portion before clause (a) and substituting "four".

The new Rule reads:
Responding Party's Motion Record

(3) Where a motion record is served a responding party who is of the opinion that it is incomplete may serve on every other party, and file, with proof of service, in the court office where the motion is to be heard, at least ~~two~~ **four** days before the hearing, a responding party's motion record containing, in consecutively numbered pages arranged in the following order,

Subrule 37.10 (7) is amended by striking out "four" and substituting "seven".

The new Rule reads:
Factum
37.10 (7) The moving party's factum, if any, shall be served at least ~~four~~ **seven** days before the hearing.

Subrule 37.10 (8) is amended by striking out "two" and substituting "four".

The ne w Rule reads:
37.10 (8) The responding party's factum, if any, shall be served at least ~~two~~ **seven** days before the hearing.

Clause 37.10 (10) (a) is amended by striking out "three" in the portion before subclause (i) and substituting "seven".

The new Rule reads:

Refusals and Undertakings Chart

37.10 (10)(a) On a motion to compel answers or to have undertakings given on an examination or cross-examination satisfied,

(a) the moving party shall serve on every other party to the motion and file with proof of service, in the court office where the motion is to be heard, at least ~~three~~ **seven** days before the hearing, a refusals and undertakings chart (Form 37C) that sets out,

Clause 37.10 (10) (b) is amended by striking out "two" in the portion before subclause (i) and substituting "four".

The new Rule reads:

37.10 (10)(b) the responding party shall serve on the moving party and every other party to the motion and file with proof of service, in the court office where the motion is to be heard, at least ~~two~~ **four** days before the hearing, a copy of the undertakings and refusals chart that was served by the moving party completed so as to show,

CONFIRMATION OF MOTION

Clause 37.10.1 (1) (b) is amended by striking out "two" in the portion before subclause (i) and substituting "three".

The new Rule reads:

37.10.1 (1) A party who makes a motion on notice to another party shall,

(a) confer or attempt to confer with the other party;

(b) not later than 2 p.m. ~~two~~ **three** days before the hearing date, give the registrar a confirmation of motion (Form 37B) by,

(i) sending it by fax, or by e-mail if available in the court office, or

(ii) leaving it at the court office; and

MOTIONS IN A COMPLICATED PROCEEDING OR SERIES OF PROCEEDINGS

Rule 37.15 is amended by adding the following subrule:

37.15 (1) Where a proceeding involves complicated issues or where there are two or more proceedings that involve similar issues, the Chief Justice or Associate Chief Justice of the Superior Court of Justice, a regional senior judge of the Superior Court of Justice or a judge designated by any of them may direct that all motions in the proceeding or proceedings be heard by a particular judge, and rule 37.03 (place of hearing of motions) does not apply to those motions. R.R.O. 1990, Reg. 194, r. 37.15 (1); O. Reg. 292/99, ss. 2 (3), 4.

(1.1) A judge who is directed to hear all motions under subrule (1) may refer to a master any motion within the jurisdiction of a master under subrule 37.02 (2) unless the judge who made the direction under subrule (1) directs otherwise. O. Reg. 348/97, s. 2.

37.15 (1.2) A judge who is directed to hear all motions under subrule (1) and a master to whom a motion is referred under subrule (1.1) may, in respect of the motions, give such directions and make such procedural orders as are necessary to promote the most expeditious and least expensive determination of the proceeding.

Subrule 37.15 (2) is amended by adding "except with the written consent of all parties" at the end.

The new Rule reads:
37.15 (2) A judge who hears motions pursuant to a direction under subrule (1) shall not preside at the trial of the actions or the hearing of the applications **except with the written consent of all parties.** R.R.O. 1990, Reg. 194, r. 37.15 (2).

RULE 38 – APPLICATIONS – JURISDICTION AND PROCEDURE

PLACE AND DATE OF HEARING
Subrule 38.03 (1) is revoked and the following substituted:

The new Rule reads:

Place of Commencement

(1) The applicant shall, in the notice of application, name the place of commencement in accordance with rule 13.1.01.

Place of Hearing

(1.1) The application shall be heard in the county where the proceeding was commenced or to which it has been transferred under rule 13.1.02, unless the court orders otherwise.

Subrule 38.06 (4) is amended by striking out "four" and substituting "seven".

The new Rule reads:
SERVICE OF NOTICE

Filing Proof of Service

(4) The notice of application shall be filed with proof of service at least ~~four~~ **seven** days before the hearing date in the court office where the application is to be heard.

MATERIAL FOR USE ON APPLICATION

Application Record and Factum
Clause 38.09 (1) (a) is amended by striking out "four" and substituting "seven".

The new Rule reads:

Application Record and Factum

38.09 (1) The applicant shall,

(a) serve an application record, together with a factum consisting of a concise argument stating the facts and law relied on by the applicant, at least ~~four~~ **seven** days before the hearing, on every respondent who has served a notice of appearance; and

Clause 38.09 (1) (b) is amended by striking out "two" and substituting "seven".

The new Rule reads:
38.09 (1)(b) file the application record and factum, with proof of service, at least ~~two~~ s**even** days before the hearing, in the court office where the application is to be heard.

Subrule 38.09 (3) is amended by striking out "two" and substituting "four".

The new Rule reads:

Respondent's Application Record and Factum

38.09 (3) The respondent shall serve on every other party, at least ~~two~~ **four** days before the hearing, a factum consisting of a concise argument stating the facts and law relied on by the respondent.

Subrule 38.09 (3.1) is amended by striking out "two" in the portion before clause (a) and substituting "four".

The new Rule reads:

38.09 (3.1) If of the opinion that the application record is incomplete, the respondent may serve on every other party, at least ~~two~~ **four** days before the hearing, a respondent's application record containing, in consecutively numbered pages arranged in the following order,

Subrule 38.09 (3.2) is amended by striking out "two" and substituting "four".

The new Rule reads:

38.09 (3.2) The respondent's factum, and the respondent's application record, if any, shall be filed with proof of service in the court office where the application is to be heard, at least ~~two~~ **four** days before the hearing.

CONFIRMATION OF APPLICATION

Clause 38.09.1 (1) (b) is amended by striking out "two" in the portion before subclause (i) and substituting "three".

The new Rule reads:

Confirmation of Application

38.09.1 (1) A party who makes an application on notice to another party shall,

(a) confer or attempt to confer with the other party;

(b) not later than 2 p.m. ~~two~~ three days before the hearing date, give the registrar a confirmation of application (Form 38B) by,

(i) sending it by fax, or by e-mail if available in the court office, or

(ii) leaving it at the court office; and

(c) send a copy of the confirmation of application to the other party by fax or e-mail. O. Reg. 14/04, s. 22.

RULE 48 – LISTING FOR TRIAL

WHEN AND BY WHOM ACTION MAY BE SET DOWN FOR TRIAL

Clause 48.03 (1) (g) is revoked and the following substituted:

The new Rule reads:

TRIAL RECORD

48.03 (1) The trial record shall contain, in the following order,

(a) a table of contents, describing each document by its nature and date;

(b) a copy of any jury notice;

(c) a copy of the pleadings, including those relating to any counterclaim or crossclaim;

(d) Revoked: O. Reg. 131/04, s. 12 (1).

(e) a copy of any demand or order for particulars of a pleading and the particulars delivered in response;

(f) a copy of any notice of amounts and particulars of special damages delivered under clause 25.06 (9) (b);

(g) a copy of any order respecting the trial, including an order made under Rule 6.1; and

Clause 48.03 (2) (c) is revoked and the following substituted:

The new Rule reads:

48.03 (2) (c) It is the responsibility of the party who filed the trial record to place with the record, before the trial, a copy of,

(a) any notice of amounts and particulars of special damages delivered after the filing of the trial record;

(b) any order respecting the trial made after the filing of the trial record;

(c) any order under rule 50.07 or pre-trial conference report under rule 50.08; and

Clause 48.04 (2) (b) is amended by adding the following subclause:

The new Rule reads:

CONSEQUENCES OF SETTING DOWN OR CONSENT

48.04 (1) Any party who has set an action down for trial and any party who has consented to the action being placed on a trial list shall not initiate or continue any motion or form of discovery without leave of the court. R.R.O. 1990, Reg. 194, r. 48.04 (1).

(2) Subrule (1) does not,

(a) relieve a party from complying with undertakings given by the party on an examination for discovery;

(b) relieve a party from any obligation imposed by,

(i) rule 29.1.03 (requirement for discovery plan),

ACTION NOT ON TRIAL LIST WITHIN TWO YEARS

Rule 48.14 is revoked and the following substituted:

The new Rule reads:

ACTION NOT ON TRIAL LIST

Status Notice

48.14 (1) Unless the court orders otherwise, if an action in which a statement of defence has been filed has not been placed on a trial list or terminated by any means within two years after the filing of a statement of defence, the registrar shall serve on the parties a status notice in Form 48C.1 that the action will be dismissed for delay

unless, within 90 days after service of the notice, the action is set down for trial or terminated, or documents are filed in accordance with subrule (10).

(2) Unless the court orders otherwise, if an action that was placed on a trial list and was subsequently struck off is not restored to a trial list within 180 days after being struck off, the registrar shall serve on the parties a status notice in Form 48C.2 that the action will be dismissed for delay unless, within 90 days after service of the notice, the action is restored to a trial list or terminated, or documents are filed in accordance with subrule (10).

Notice to Client

(3) A lawyer who receives a status notice shall forthwith give a copy of the notice to his or her client.

Dismissal by Registrar

(4) The registrar shall dismiss the action for delay, with costs, 90 days after service of the status notice, unless,

(a) the action has been set down for trial or restored to a trial list, as the case may be;
(b) the action has been terminated by any means;
(c) documents have been filed in accordance with subrule (10); or
(d) the judge or case management master presiding at a status hearing has ordered otherwise.

(5) If an action is not set down for trial, restored to a trial list or terminated by any means within the time specified in an order made at a status hearing, the registrar shall dismiss the action for delay, with costs.

Dismissal Order to be Served

(6) The registrar shall serve an order made under subrule (4) or (5) (Form 48D) on the parties.

Dismissal Order to Client

(7) A lawyer who is served with an order dismissing the action for delay shall forthwith give a copy of the order to his or her client.

Status Hearing

(8) Where a status notice has been served, any party may request that the registrar arrange a status hearing, in which case the registrar shall mail to the parties a notice of the status hearing, and the hearing shall be held before a judge or case management master.

Notice to Client

(9) A lawyer who receives a notice of status hearing shall forthwith give a copy of the notice to his or her client.

When Hearing in Writing

(10) Unless the presiding judge or case management master orders otherwise, the status hearing shall be held in writing and without the attendance of the parties if a party files the following documents at least seven days before the date of the status hearing:

1. A timetable, signed by all the parties, containing the information set out in subrule (11).
2. A draft order establishing the timetable.

Timetable

(11) The timetable shall,

(a) identify the steps to be completed before the action may be set down for trial or restored to a trial list;
(b) show the date or dates by which the steps will be completed; and
(c) show a date, which shall be no more than 12 months after the date of the status hearing, before which the action shall be set down for trial or restored to a trial list.

Status Hearing in Person

(12) In the case of a status hearing that is not to be held in writing, the lawyers of record shall attend, and the parties may attend, the status hearing.

Disposition at Status Hearing

(13) At the status hearing, the plaintiff shall show cause why the action should not be dismissed for delay and,

(a) if the presiding judge or case management master is satisfied that the action should proceed, the judge or case management master may,

(i) set time periods for the completion of the remaining steps necessary to have the action placed on or restored to a trial list and order that it be placed on or restored to a trial list within a specified time,

(ii) adjourn the status hearing to a specified date on such terms as are just, or

(iii) if the action is an action to which Rule 77 may apply under rule 77.02, assign the action for case management under that Rule, subject to the direction of the regional senior judge,

(iv) make such other order as is just; or

(b) if the presiding judge or case management master is not satisfied that the action should proceed, the judge or case management master may dismiss the action for delay.

Plaintiff under Disability

(14) Unless the court orders otherwise, where the plaintiff is under a disability, an action may be dismissed for delay under this rule only if the defendant gives notice to the Children's Lawyer or, if the Public Guardian and Trustee is litigation guardian of the plaintiff, to the Public Guardian and Trustee.

Effect of Dismissal

(15) Rules 24.03 to 24.05 (effect of dismissal for delay) apply to an action dismissed for delay under subrule (4), (5) or (14).

Setting Aside Dismissal

(16) An order under this rule dismissing an action may be set aside under rule 37.14.

ACTION ABANDONED

Dismissal

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.
2. No statement of defence has been filed.
3. The action has not been disposed of by final order or judgment.
4. The action has not been set down for trial.
5. The registrar has given 45 days notice in Form 48E that the action will be dismissed as abandoned.

Service on Parties

(2) The registrar shall serve a copy of the order made under subrule (1) (Form 48F) on the parties.

Effect on Subsequent Action

(3) The dismissal of an action as abandoned has the same effect as a dismissal for delay under rule 24.05.

Plaintiff under Disability

(4) Unless the court orders otherwise, where the plaintiff is under a disability, an action may be dismissed as abandoned under this rule only if the defendant gives notice to the Children's Lawyer or, if the Public Guardian and Trustee is litigation guardian of the plaintiff, to the Public Guardian and Trustee.

Setting Aside Dismissal

(5) An order under this rule dismissing an action may be set aside under rule 37.14.

RULE 50 – PRE-TRIAL CONFERENCE

Pre-trial conferences will now be mandatory for all actions. The purpose of this change is to encourage settlement and to help identify and narrow the issues for trial. The changes require parties to submit a detailed Pre-Trial Conference brief. Both the parties

and their counsel must attend at the conference. The Courts have also been granted the power to set out a timetable for next steps in the action.[8]

Rule 50 of the Regulation is revoked and the following substituted:

The new Rule reads:

RULE 50 PRE-TRIAL CONFERENCE

PURPOSE

50.01 The purpose of this Rule is to provide an opportunity for any or all of the issues in a proceeding to be settled without a hearing and, with respect to any issues that are not settled, to obtain from the court orders or directions to assist in the just, most expeditious and least expensive disposition of the proceeding, including orders or directions to ensure that any hearing proceeds in an orderly and efficient manner.

PRE-TRIAL CONFERENCES FOR ACTIONS

50.02 The registrar shall, within 90 days after an action is set down for trial, give the parties notice to appear before a judge or case management master for a pre-trial conference under this Rule, unless the court orders otherwise.

PRE-TRIAL CONFERENCES FOR APPLICATIONS

50.03 In an application, a judge may direct that a pre-trial conference under this Rule be held before a judge or case management master.

MATERIALS TO BE FILED

50.04 At least five days before a pre-trial conference, each party shall file with proof of service a pre-trial conference brief containing concise statements, without argument, of the following matters:

1. The nature of the proceeding.
2. The issues raised and the party's position.

[8] Government of Ontario – Ministry of the Attorney General http://ogov.newswire.ca/ontario/gpoe/2008/12/11/c9090.html?lmatch=&lang=_e.html

3. In the case of an action, the names of the witnesses that the party is likely to call at the trial and the length of time that the evidence of each of those witnesses is estimated to take.
4. The steps that need to be completed before the action is ready for trial or the application is ready to be heard, and the length of time that it is estimated that the completion of those steps will take.

ATTENDANCE

50.05 (1) The lawyers for the parties shall appear at the pre-trial conference and, unless the presiding judge or case management master orders otherwise, the parties shall participate,

(a) by personal attendance; or
(b) under rule 1.08 (telephone and video conferences), if personal attendance would require undue amounts of travel time or expense.

Authority to Settle

(2) A party who requires another person's approval before agreeing to a settlement shall, before the pre-trial conference, arrange to have ready telephone access to the other person throughout the conference, whether it takes place during or after regular business hours.

MATTERS TO BE CONSIDERED

50.06 The following matters shall be considered at a pre-trial conference:

1. The possibility of settlement of any or all of the issues in the proceeding.
2. Simplification of the issues.
3. The possibility of obtaining admissions that may facilitate the hearing.
4. The question of liability.
5. The amount of damages, if damages are claimed.
6. The estimated duration of the trial or hearing.
7. The advisability of having the court appoint an expert.
8. In the case of an action, the number of expert witnesses and other witnesses that may be called by each party, and dates for the service of any outstanding or supplementary experts' reports.
9. The advisability of fixing a date for the trial or hearing.
10. The advisability of directing a reference.
11. Any other matter that may assist in the just, most expeditious and least expensive disposition of the proceeding.

POWERS

50.07 (1) If the proceeding is not settled at the pre-trial conference, the presiding judge or case management master may,

(a) establish a timetable and, subject to the direction of the regional senior judge or a judge designated by him or her, fix a date for the trial or hearing;
(b) in the case of a proceeding governed by Rule 77, order a case conference under rule 77.08 if it is impractical to establish a timetable; and
(c) make such order as the judge or case management master considers necessary or advisable with respect to the conduct of the proceeding, including any order under subrule 20.05 (1) or (2).

Order Binds Parties

(2) An order made under this rule binds the parties unless the judge or officer presiding at the hearing of the proceeding orders otherwise to prevent injustice.

Copy of Order

(3) A copy of any order made under this rule shall be placed with the trial or application record.

PRE-TRIAL CONFERENCE REPORT

Requirement

50.08 (1) If a date for a trial or hearing is fixed under clause 50.07 (1) (a), the presiding judge or case management master shall complete a pre-trial conference report,

(a) stating what steps need to be completed before the action is ready for the trial or hearing, and how much time is needed to complete those steps;
(b) stating the anticipated length of the trial or hearing; and
(c) setting out any other matter relevant to scheduling the trial or hearing.

Copy of Report

(2) A copy of the pre-trial conference report shall be placed with the trial or application record.

Certificate

(3) Each party or the party's lawyer shall certify on the copy of the pre-trial conference report that is to be placed with the trial or application record that he or she understands the contents of the report and acknowledges the obligation to be ready to proceed on the date fixed for the trial or hearing.

Duty of Lawyer

(4) Each lawyer who represents a party shall, in addition to giving the certificate described in subrule (3), undertake to the court to advise the party of,

(a) the contents of the pre-trial conference report; and
(b) the obligation to be ready to proceed on the date fixed for the trial or hearing.

NO DISCLOSURE

50.09 No communication shall be made to the judge or officer presiding at the hearing of the proceeding or a motion or reference in the proceeding with respect to any statement made at a pre-trial conference, except as disclosed in an order under rule 50.07 or in a pre-trial conference report under rule 50.08.

PRE-TRIAL JUDGE NOT TO PRESIDE AT HEARING

50.10 (1) A judge who conducts a pre-trial conference shall not preside at the trial of the action or the hearing of the application, except with the written consent of all parties.

Conference Before Trial Judge

(2) Subrule (1) does not prevent a judge before whom a proceeding has been called for hearing from holding a conference either before or during the hearing to consider any matter that may assist in the just, most expeditious and least expensive disposition of the proceeding without disqualifying himself or herself from presiding at the hearing.

DOCUMENTS TO BE MADE AVAILABLE

50.11 All documents intended to be used at the trial or hearing that may be of assistance in achieving the purposes of a pre-trial conference, such as any medical reports and reports of experts, shall be provided to the presiding judge or case management master at the conference.

COSTS OF PRE-TRIAL CONFERENCE

50.12 At the pre-trial conference, the presiding judge or case management master may make an order for costs of the conference, but in the absence of such an order the costs shall be assessed as part of the costs of the proceeding.

RULE 53 – EVIDENCE AT TRIAL

EXPERT WITNESSES

Experts' Reports

Subrules 53.03 (1) and (2) are revoked and the following substituted:

53.03 (1) A party who intends to call an expert witness at trial shall, not less than 90 days before the pre-trial conference required under Rule 50, serve on every other party to the action a report, signed by the expert, containing the information listed in subrule (2.1).

53.03 (2) A party who intends to call an expert witness at trial to respond to the expert witness of another party shall, not less than 60 days before the pre-trial conference, serve on every other party to the action a report, signed by the expert, containing the information listed in subrule (2.1).

(2.1) A report provided for the purposes of subrule (1) or (2) shall contain the following information:

1. The expert's name, address and area of expertise.
2. The expert's qualifications and employment and educational experiences in his or her area of expertise.
3. The instructions provided to the expert in relation to the proceeding.
4. The nature of the opinion being sought and each issue in the proceeding to which the opinion relates.
5. The expert's opinion respecting each issue and, where there is a range of opinions given, a summary of the range and the reasons for the expert's own opinion within that range.
6. The expert's reasons for his or her opinion, including,

    i. a description of the factual assumptions on which the opinion is based,
    ii. a description of any research conducted by the expert that led him or her to form the opinion, and

iii. a list of every document, if any, relied on by the expert in forming the opinion.

7. An acknowledgement of expert's duty (Form 53) signed by the expert.

Schedule for Service of Reports

(2.2) Within 60 days after an action is set down for trial, the parties shall agree to a schedule setting out dates for the service of experts' reports in order to meet the requirements of subrules (1) and (2), unless the court orders otherwise.

RULE 62 – APPEALS FROM INTERLOCUTORY ORDERS AND OTHER APPEALS TO A JUDGE

PROCEDURE ON APPEAL

Application of Rule

Clause 62.01 (1) (a) is amended by striking out "master" and substituting "master or case management master".

The new Rule reads:

Application of Rule

62.01 (1) Subrules (2) to (10) apply to an appeal that is made to a judge,

(a) from an interlocutory order of a ~~master~~ **master or case management master**, under clause 17 (a) of the *Courts of Justice Act*;

Subrule 62.01 (5) is amended by striking out "four" and substituting "seven".

The new Rule reads:

Notice of Appeal

62.01 (5) The notice of appeal shall be filed in the court office where the appeal is to be heard, with proof of service, not later than ~~four~~ **seven** days before the hearing date.

Subrule 62.01 (7) is amended by striking out "four" in the portion before clause (a) and substituting "seven".

The new Rule reads:

Appeal Record

62.01 (7) The appellant shall, not later than ~~four~~ **seven** days before the hearing, serve on every other party and file, with proof of service, in the court office where the appeal is to be heard, an appeal record containing, in consecutively numbered pages arranged in the following order,

Subrule 62.01 (8) is amended by striking out "two" in the portion before clause (a) and substituting "four".

The new Rule reads:
62.01 (8) The respondent shall serve on every other party, at least ~~two~~ **four** days before the hearing,

Subrule 62.01 (8.1) is amended by striking out "two" and substituting "four".

The new Rule reads:

62.01 (8.1) The respondent's factum, and any further material, shall be filed with proof of service in the court office where the appeal is to be heard, at least ~~two~~ **four** days before the hearing.

MOTION FOR LEAVE TO APPEAL

Factums Required

Subrule 62.02 (6.1) is amended by striking out "four" and substituting "seven".

The new Rule reads:

62.02 (6.1) The moving party's factum shall be served at least ~~four~~ **seven** days before the hearing.

Subrule 62.02 (6.2) is amended by striking out "two" and substituting "four".

The new Rule reads:

62.02 (6.2) The responding party's factum shall be served at least ~~two~~ **four** days before the hearing.

RULE 76 – SIMPLIFIED PROCEDURE

The existing simplified procedure rules are aimed at streamlining the litigation process for claims under $50,000. The most significant change to the simplified rules is the increase in the monetary limit for cases coming under the Simplified Procedure. As of

January 1, 2010, the limit will be increased to $100,000.00. Other changes to the simplified procedure rules will provide for a greater level of pre-trial information sharing and the potential for an abbreviated examination for discovery process.

AVAILABILITY OF SIMPLIFIED PROCEDURE

When Mandatory

Paragraph 2 of subrule 76.02 (1) is amended by striking out "$50,000" in the portion before subparagraph i and substituting "$100,000".

The new Rule reads:

AVAILABILITY OF SIMPLIFIED PROCEDURE

When Mandatory

76.02 (1) The procedure set out in this Rule shall be used in an action if the following conditions are satisfied:

1. The plaintiff's claim is exclusively for one or more of the following:

    i. Money.

    ii. Real property.

    iii. Personal property.

2. The total of the following amounts is ~~$50,000~~ **$100,000** or less exclusive of interest and costs

Continuance Under Ordinary Procedure – Where Notice Required

Subrule 76.02 (6) is amended by striking out "or under Rule 77, as the case may be" wherever it appears.

The new Rule reads:

Continuance Under Ordinary Procedure — Where Notice Required

76.02 (6) If an action commenced under this Rule may no longer proceed under this Rule because of an amendment to the pleadings under Rule 26 or as a result of the operation of subrule (5),

(a) the action is continued under the ordinary procedure ~~or under Rule 77, as the case may be~~; and

AFFIDAVIT OF DOCUMENTS

Copies of Documents

Clause 76.03 (1) (a) is amended by striking out "relating to any matter in issue" and substituting "relevant to any matter in issue".
The new Rule reads:

AFFIDAVIT OF DOCUMENTS

Copies of Documents

76.03 (1) A party to an action under this Rule shall, within 10 days after the close of pleadings and at the party's own expense, serve on every other party,

(a) an affidavit of documents (Form 30A or 30B) disclosing to the full extent of the party's knowledge, information and belief all documents ~~relating to any matter in issue~~ **relevant to any matter in issue** in the action that are or have been in the party's possession, control or power; and

Rule 76.04 is revoked and the following substituted:

NO WRITTEN DISCOVERY, CROSS-EXAMINATION ON AN AFFIDAVIT OR EXAMINATION OF A WITNESS

76.04 (1) The following are not permitted in an action under this Rule:

1. Examination for discovery by written questions and answers under Rule 35.
2. Cross-examination of a deponent on an affidavit under rule 39.02.
3. Examination of a witness on a motion under rule 39.03.

LIMITATION ON ORAL DISCOVERY

(2) Despite rule 31.05.1 (time limit on discovery), no party shall, in conducting oral examinations for discovery in relation to an action proceeding under this Rule, exceed a total of two hours of examination, regardless of the number of parties or other persons to be examined.

MOTIONS

Motions Form

Subrule 76.05 (1) is amended by striking out "heard" at the end and substituting "brought and heard".

The new Rule reads:
76.05 (1) The moving party shall serve a motion form (Form 76B) in accordance with rule 37.07 and shall submit it to the court before the motion is ~~heard~~ **brought and heard**. O. Reg. 284/01, s. 25.

DISMISSAL BY REGISTRAR
If No Defence Filed

Rule 76.06 is revoked

SUMMARY JUDGMENT
Where necessary

Rule 76.07 is revoked

SETTLEMENT DISCUSSION AND DOCUMENTARY DISCLOSURE
Clause 76.08 (a) is amended by striking out "relating to any matter at issue" and substituting "relevant to any matter in issue".

The new Rule reads:

76.08 (a) Within 60 days after the filing of the first statement of defence or notice of intent to defend, the parties shall, in a meeting or telephone call, consider whether,

(a) all documents ~~relating to any matter at issue~~ **relevant to any matter in issue** have been disclosed; and

HOW DEFENDED ACTION IS SET DOWN FOR TRIAL OR SUMMARY TRIAL
Notice of Readiness for Pre-Trial Conference
Subrule 76.09 (1) is amended by striking out "90 days" and substituting "180 days".

The new Rule reads:
76.09 (1) Despite rule 48.02 (how action set down for trial), the plaintiff shall, within ~~90 days~~ **180 days** after the first statement of defence or notice of intent to defend is filed, set the action down for trial by serving a notice of readiness for pre-trial conference (Form 76C) on every party to the action and any counterclaim, crossclaim or third party claim and forthwith filing the notice with proof of service.

PRE-TRIAL CONFERENCE

Notice
Subrules 76.10 (2) and (3) of the Regulation are revoked.
Documents

Subrule 76.10 (4) is amended by striking out the portion before clause (a) and substituting the following:

The new Rule reads:

76.10 (4) Despite rule 50.04 (materials to be filed before pre-trial conference), at least five days before the pre-trial conference, each party shall,

a) file,

(i) a copy of the party's affidavit of documents and copies of the documents relied on for the party's claim or defence,

(ii) a copy of any expert report, and

(iii) any other material necessary for the conference; and

(b) deliver,

(i) a two-page statement setting out the issues and the party's position with respect to them, and

(ii) a trial management checklist (Form 76D). O. Reg. 284/01, s. 25.

Trial Date & Mode of Trial

Subrules 76.10 (5), (6) and (7) are amended by striking out "master" wherever it appears and substituting in each case "case management master".

Mode of Trial
Clause 76.10 (7) (a) of the Regulation is amended by striking out "set a timetable" and substituting "fix a date".

The new Rule reads:
76.10 (7) (a) If the trial is to be a summary trial under rule 76.12, the pre-trial conference judge or master,

(a) shall ~~set a timetable~~ **fix a date** for the delivery of all the parties' affidavits; and

SUMMARY TRIAL

Procedure

Subrule 76.12 (1) is amended by adding the following paragraphs:

1.1 The plaintiff may examine the deponent of any affidavit served by the plaintiff for not more than 10 minutes.

4.1 The defendant may examine the deponent of any affidavit served by the defendant for not more than 10 minutes.

Subrule 76.12 (3) is amended by striking out "cross-examine" and substituting "examine or cross-examine".

The new Rule reads:

76.12 (3) A party who intends to ~~cross-examine~~ **examine or cross-examine** the deponent of an affidavit at the summary trial shall, at least 10 days before the date fixed for trial, give notice of that intention to the party who filed the affidavit, who shall arrange for the deponent's attendance at the trial.

COST CONSEQUENCES

Plaintiff Denied Costs

Paragraph 2 of subrule 76.13 (2) is amended by striking out "$50,000" in the portion before subparagraph i and substituting "$100,000".

The new Rule reads:

Plaintiff Denied Costs

76.13 (2) Subrules (3) to (10) apply to a plaintiff who obtains a judgment that satisfies the following conditions:

1. The judgment awards exclusively one or more of the following:

    i. Money.

    ii. Real property.

    iii. Personal property.

2. The total of the following amounts is ~~$50,000~~ **$100,000**or less, exclusive of interest and costs:

Clause 76.13 (3) (b) of the Regulation is amended by striking out "or under Rule 77, as the case may be" wherever it appears.

Defendant Objecting to Simplified Procedure
Subrule 76.13 (7) is amended by striking out "$50,000" and substituting "$100,000".

The new Rule reads:
76.13 (7) In an action that includes a claim for real or personal property, if the defendant objected to proceeding under this Rule on the ground that the property's fair market value exceeded ~~$50,000~~ **$100,000** at the date the action was commenced and the court finds the value did not exceed that amount at that date, the defendant shall pay, on a substantial indemnity basis, the costs incurred by the plaintiff that would not have been incurred had the claim originally complied with subrule 76.02 (1), (2) or (2.1), unless the court orders otherwise.

Burden of Proof
Subrule 76.13 (8) is amended by striking out "$50,000" and substituting "$100,000".

The new Rule reads:
76.13 (8) The burden of proving that the fair market value of the real or personal property at the date of commencement of the action was ~~$50,000~~ **$100,000** or less is on the plaintiff.

Rule 76.13 of the Regulation is amended by adding the following subrule:

(11) In the case of an action that was commenced on or after January 1, 2002 and before January 1, 2010, subrules (2), (7) and (8) apply as if "$100,000" read "$50,000".

RULE 77 – CIVIL CASE MANAGEMENT

Rule 77 is revoked and the following substituted:

RULE 77 – CIVIL CASE MANAGEMENT

PURPOSE AND GENERAL PRINCIPLES

Purpose

77.01 (1) The purpose of this Rule is to establish a case management system that provides case management only of those proceedings for which a need for the court's intervention is demonstrated and only to the degree that is appropriate, as determined in reliance on the criteria set out in this Rule.

General Principles

(2) This Rule shall be construed in accordance with the following principles:

1. Despite the application of case management under this Rule to a proceeding, the greater share of the responsibility for managing the proceeding and moving it expeditiously to a trial, hearing or other resolution remains with the parties.
2. The nature and extent of the case management provided by a judge or case management master under this Rule in respect of a proceeding shall be informed by any relevant practices, traditions, customs or judicial resource issues that apply locally in the region in which the proceeding is commenced or to which it is transferred.

APPLICATION

Scope

77.02 (1) This Rule applies to actions and applications commenced in or transferred to one of the following counties on or after January 1, 2010 and assigned to case management by an order under these rules:

1. The City of Ottawa.
2. The City of Toronto.
3. The County of Essex.

Exceptions

(2) Despite subrule (1), this Rule does not apply to,

(a) actions or applications placed on the Commercial List established by practice direction in the Toronto Region;
(b) actions or applications under Rules 74 and 75 (Estates);
(c) applications for the removal or replacement of personal representatives under the *Trustee Act*;
(d) applications under Part V of the *Succession Law Reform Act*;
(e) applications for guardianship of property or persons under the *Substitute Decisions Act, 1992*;

(f) actions under Rule 64 (Mortgage Actions);
(g) actions under Rule 76 (Simplified Procedure);
(h) actions or applications under the *Construction Lien Act*, except trust claims; and
(i) actions or applications under the *Bankruptcy and Insolvency Act* (Canada).

Exceptions, Class Proceedings Act, 1992

(3) Despite subrule (1), this Rule,

(a) applies to an action or application commenced under the *Class Proceedings Act, 1992* only if certification as a class proceeding has been denied; and
(b) does not apply to actions or applications certified as class proceedings under the *Class Proceedings Act, 1992*.

Conflict with Other Rules

(4) In the event of a conflict between a provision in this Rule and a provision in any other Rule, the provision in this Rule prevails.

DEFINITIONS

77.03 In this Rule,

"defence" includes a notice of intent to defend, a statement of defence, a notice of appearance and a notice of motion in response to a proceeding; ("défense")

"defendant" includes a respondent; ("défendeur")
"plaintiff" includes an applicant. ("demandeur")

CASE MANAGEMENT POWERS

77.04 (1) A judge or case management master may,

(a) extend or abridge a time prescribed by an order or the rules;
(b) adjourn a case conference;
(c) set aside an order made by the registrar;
(d) establish or amend a timetable; and
(e) make orders, impose terms, give directions and award costs as necessary to carry out the purpose of this Rule.

(2) A judge or case management master may, on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any matter arising in connection with the case management of the proceeding, including a failure to comply with an order or the rules.

(3) For greater certainty, the powers set out in subrules (1) and (2) are in addition to any other powers set out in this Rule.

ASSIGNMENT FOR CASE MANAGEMENT

On Consent of Parties

77.05 (1) A regional senior judge or, subject to the direction of a regional senior judge, any judge or case management master may, with the consent of all parties, assign a proceeding to which this Rule may apply for case management under this Rule.

No Consent

(2) At any time on or after the filing of the first defence in a proceeding to which this Rule may apply, a regional senior judge or, subject to the direction of a regional senior judge, any judge or case management master may assign the proceeding for case management under this Rule,

(a) on his or her own initiative; or
(b) on the request of a party or on motion if the court requires it.

Multiple Proceedings

(3) Two or more proceedings may be assigned under subrule (1) or (2) for case management together.

Criteria

(4) In considering whether to assign a proceeding for case management, the regional senior judge, other judge or case management master shall have regard to all the relevant circumstances, including any or all of the following:

1. The purpose set out in subrule 77.01 (1).
2. The complexity of the issues of fact or law.
3. The importance to the public of the issues of fact or law.
4. The number and type of parties or prospective parties, and whether they are represented.

5. The number of proceedings involving the same or similar parties or causes of action.
6. The amount of intervention by the court that the proceeding is likely to require.
7. The time required for discovery, if applicable, and for preparation for trial or hearing.
8. In the case of an action, the number of expert witnesses and other witnesses.
9. The time required for the trial or hearing.
10. Whether there has been substantial delay in the conduct of the proceeding.

ASSIGNMENT TO INDIVIDUAL MANAGEMENT BY A JUDGE

Assignment to Particular Judge

77.06 (1) The Chief Justice or Associate Chief Justice of the Superior Court of Justice, a regional senior judge, or a judge designated by any of them may direct that all steps in a proceeding that is assigned for case management under this Rule be heard and conducted by a particular judge.

Limitation

(2) A judge who is directed under subrule (1) to hear all steps in a proceeding shall not preside at the trial of the action or the hearing of the application, except with the written consent of all parties.

MOTIONS

To Whom Made

77.07 (1) A motion may be made only to a judge or case management master.

Same, Particular Judge

(2) If a direction is made under subrule 77.06 (1) for all steps in a proceeding to be heard by a particular judge, then any motions in the proceeding shall be made to that judge.

Referral by Particular Judge

(3) A judge who is directed under subrule 77.06 (1) to hear all steps in a proceeding may refer to a case management master any motion within the jurisdiction

of a master under subrule 37.02 (2), unless the judge who made the direction directs otherwise.

Procedure

(4) Depending on the practical requirements of the situation, the motion may be made,

(a) with or without supporting material or a motion record; and
(b) by attendance, in writing, by fax or under rule 1.08 (telephone and video conferences).

Costs on Motion

(5) The judge or case management master shall address the issue of costs at the conclusion of each motion in accordance with rule 57.03, regardless of whether the motion is contested.

Formal Order Not Required

(6) The judge or case management master may provide that no formal order need be prepared, signed or entered if the order has been recorded in writing, unless an appeal of the disposition of the motion or a motion for leave to appeal is made to a judge or an appellate court.

CASE CONFERENCE

How Convened

77.08 (1) A judge or case management master may at any time convene a case conference, on his or her own initiative or at a party's request.

Attendance

(2) The judge or case management master may direct that the parties, or a representative of the parties responsible for making decisions regarding the proceeding and instructing the lawyer, attend the conference personally or be available by telephone.

Matters to be Dealt With

(3) At the conference, the judge or case management master may,

(a) identify the issues and note those that are contested and those that are not;
(b) explore methods to resolve the contested issues;
(c) if possible, secure the parties' agreement on a specific schedule of events in the proceeding;
(d) establish a timetable for the proceeding; and
(e) review and, if necessary, amend an existing timetable.

Lawyers

(4) The lawyers attending the conference shall have the authority to deal with the matters referred to in subrule (3) and shall be fully acquainted with the facts and legal issues in the proceeding.

Powers

(5) At the conference, the judge or case management master may, if notice has been given and it is appropriate to do so or on consent of the parties,

(a) make a procedural order;
(b) convene a pre-trial conference;
(c) give directions; and
(d) in the case of a judge,

(i) make an order for interlocutory relief, or
(ii) convene a hearing.

TRANSITION

Definition

77.09 (1) In this rule,

"former case management rules" means one or both of Rule 77 and Rule 78, as they read immediately before January 1, 2010.

Proceedings Under Former Case Management Rules

(2) Despite anything to the contrary in this Rule, every proceeding to which the former case management rules applied immediately before January 1, 2010 shall, on and after that day, continue under this Rule.

Power to Make Orders, Give Directions

(3) A judge or case management master may make orders or give directions that are necessary to address any procedural issues that arise in a proceeding as a result of the transition from the application of the former case management rules to the proceeding to the application of this Rule.

Existing Orders, Directions, Timetables

(4) All orders, directions and timetables in a proceeding described in subrule (2) that are in force immediately before January 1, 2010 shall remain in force on and after that day, unless a judge or case management master orders otherwise.

RULE 78 – TORONTO CIVIL CASE MANAGEMENT PILOT PROJECT

Rule 78.14 is amended by striking out "July 1, 2009" at the end and substituting "January 1, 2010".

The French version of the Regulation is amended by striking out "protonotaire responsable de la gestion de la cause" wherever it appears and substituting in each case "protonotaire chargé de la gestion des causes" in the following provisions:

1. Subrule 1.03 (1), clause (b) of the definition of "tribunal".
2. Rule 1.09, in the portion before clause (a).
3. Clause 75.1.05 (6) (b).
4. Clause 75.1.10 (1) (c).
5. Subrule 75.1.10 (2), in the portion before clause (a).

The Table of Forms to the Regulation is amended by striking out,