

REFORMING CIVIL JUSTICE FOR ONTARIANS

December 11, 2008

Ontario is reforming the civil justice system as the third initiative in a series to reform justice for Ontarians. The changes will increase access to civil justice for Ontarians by simplifying, speeding up and lowering the costs of resolving disputes.

The reforms are based on recommendations from the Civil Justice Reform Project, led by former Associate Chief Justice Coulter Osborne, and follow the advice received by Attorney General Chris Bentley from Ontarians on a civil justice tour covering all regions of Ontario.

A regulation was filed on Wednesday, December 10, 2008, that amends 25 civil court rules. The Civil Rules Committee can change rules of civil procedure under the *Courts of Justice Act*, subject to the approval of the Attorney General. A separate change to the Small Claims Court monetary jurisdiction was also filed in a regulation under the *Courts of Justice Act*. All substantive changes to the civil court rules will come into effect on January 1, 2010, with some transitional provisions effective immediately.

Small Claims Court

The Small Claims Court is a branch of the Superior Court of Justice. The Small Claims Court hears disputes on a wide range of matters, including contracts for goods and services, debt collection, real and personal property, trespass, negligence, rent arrears, motor vehicle claims, tort actions (wrongful acts that result in damages or injury) and consumer issues.

Small Claims Court will be a faster and more affordable option for Ontarians and businesses with the monetary limit increasing from \$10,000 to \$25,000, effective January 1, 2010. The limit had not changed since 2001, when it increased from \$6,000 to \$10,000.

Proportionality and the Costs of Litigation

The civil court rules will now contain a general principle of proportionality to guide their interpretation. 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.

Simplified Procedure

Simplified Procedure reduces the number of pre-trial procedures and streamlines the trial process in cases of relatively low value.

In addition to raising the monetary limit of Simplified Procedure from \$50,000 to \$100,000, parties will now have an opportunity to obtain more information about the opposing case before trial. This will help to encourage earlier and more meaningful settlement discussions. Parties will now be allowed up to two hours of pre-trial Examination for Discovery (or "oral discovery") in advance of trial.

Summary Judgment

A plaintiff or defendant can bring a summary judgment motion forward if they want to argue that there is no issue for trial.

In the past, if the party who brought the summary judgment motion lost the motion, they were required to pay the other party their costs for responding to the motion, which resulted in a disincentive to bring any summary judgment motions. The summary judgment rule has now been changed to give the judge hearing the motion the discretion to determine if the motion was brought improperly, and if so, to impose costs where appropriate.

A judge will now be able to order oral evidence to be presented by one or more parties (a “mini-trial”), which will in some cases save them the time and expense of proceeding to a full trial.

If matters proceed to trial, the court will now have the authority to make directions on additional matters including timelines, examinations, and a discovery plan. This will ensure that the matter proceeds to trial in a timely and efficient manner.

Discovery

Discovery is the pre-trial disclosure of important facts or documents to the opposing party in civil litigation. Several reforms have the goal of reducing costs and delays that are often associated with discovery.

Parties will be now required, early in the litigation process, to agree on a discovery plan that sets out the scope, how documents will be produced and when pre-trial Examination for Discovery will take place. The objective is to reduce or eliminate problems by encouraging parties to reach an understanding, early in the litigation so the discovery process can be completed quickly in a manner that is proportionate to the needs of the action.

Each party will be limited to a total of seven hours of pre-trial Examination for Discovery unless the parties consent or the court orders otherwise. Currently there are no restrictions on the amount of time for oral discovery.

Expert Evidence

To reinforce that expert witnesses are intended to assist the court with a neutral evaluation of the issues, they will now be required to certify in writing their duty to the court to be fair, objective and non-partisan. Other reforms to reduce delay require expert reports to be served earlier and to contain certain specific details.

Litigation Management

Under case management, the court imposes time limits for key steps in the litigation process. Case management will no longer be automatic. Parties will now have greater responsibility for managing actions and moving them quickly to trial or other resolution. Case management rules will continue to apply in Toronto, Ottawa and Windsor.

Mandatory Mediation

The timelines for mandatory mediation sessions, where a neutral mediator helps parties settle or narrow their areas of dispute in a litigation matter, will be extended. This will allow parties more time to prepare for a productive and meaningful mediation. Mandatory mediation will continue to only apply in Toronto, Ottawa and Windsor.

Pre-Trials and Trial Management

Pre-trial conferences will now be mandatory for all actions to encourage settlement and help identify or narrow the actual issues for trial. Other pre-trial conference reforms will make the conferences more meaningful, and better organize the proceeding in the event that it does go to

trial. Parties will now be required to file a detailed conference brief, both the parties and their lawyers must appear at the conference, and the court will have a new power to order a timetable setting out next steps when a proceeding is not settled at the conference.

Motion and Trial Scheduling

There will be earlier deadlines for serving and filing motion and application materials in order to allow parties more time to prepare, and to assist with trial scheduling.

Sheamus Murphy, Ministry of the Attorney General,
Minister's Office, 416-326-1785
Brendan Crawley, Ministry of the Attorney General,
Communications Branch, 416-326-2210

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