Amendments to the Rules of Civil Procedure

On January 1, 2010, the government will introduce two new Regulations which will radically alter the Civil Litigation landscape in the Province of Ontario. Regulation 438/08 provides for the most extensive amendments to the Rules of Civil Procedure since the current Rules were introduced in 1985. Also, Regulation 439/08 will raise the jurisdiction of Small Claims Court to $25,000.00 effective January 1, 2010.

Amendment Highlights

When I first agreed to present this paper, it was my expectation that I would be able to outline and discuss each and every amendment to the Rules. However, having now had an opportunity to review all the amendments, I realize that this is an impossible task in a twenty minute presentation. My goal is to highlight the amendments that I believe will be most applicable to lawyers practicing in the Region of Halton.

I have not touched on the amendments to Mandatory Mediation or Civil Case Management which really relate to our Toronto brethren. Also, the extensive amendments to the Summary Judgment Rule will be covered by Michael Emery later today.

Rule 1.03 (1)

A new definition for the word "timetable" has been added to the Rules.

> **"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.**

Rule 3.04

As was noted above while Rule 1.03 introduces the concept of a timetable, it is subject to further restrictions as are outlined in Rule 3.04.

> **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. O. Reg. 438/08, s. 6.**
>
> ***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. O. Reg. 438/08, s. 6.**
>
> ***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. O. Reg. 438/08, s. 6.**

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. O. Reg. 438/08, s. 6.

Rule 1.04

Rule 1.04 has been amended to provide for a new principle of interpretation with respect to the Rules. The so-called proportionality principle will play a significant role in the years to come, particularly relating to disclosure at the Discovery level.

(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. O. Reg. 438/08, s. 2.

Rule 4.05 (2)

While the general rule that Court documents must be filed in the Court Office where the proceeding was commenced continues, it is now subject to an exception. Under Rule 4.05(2), paragraph 4, any documents relating to a Motion to transfer a proceeding to another County shall be filed in the Court Office of the County to which the transfer is sought. It should also be noted that the Transfer Hearing is now permitted to be heard in the County to which the transfer is sought pursuant to an amendment to Rule 13.1.02(3.1).

Rule 4.1 - Duty of Expert

Having retained literally hundreds of experts over the past 18 years, I am sure that not a single one would say that they have done anything other than comply with new Rule 4.1. In any event, the new Rule states,

> **(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. O. Reg. 438/08, s. 8.**
>
> ***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. O. Reg. 438/08, s. 8.**

There has been a substantial change in the disclosure requirements for Expert Witnesses which is now found in Rule 53.03. The new Rule requires that Expert Witness Reports shall be served not less than 90 days **before** the Pre-Trial Conference. The responding party has an opportunity to serve a responding Report which must be served not less than 60 days before the Pre-Trial Conference.

There is also a new requirement that Expert reports must contain the following information:

> **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. O. Reg. 438/08, s. 48.**

In theory, this amendment is attractive because it ensures that all the Experts Reports will be available for the Pre-Trial. In reality, with most cases being resolved by way of Mediation, it remains to be seen how a lawyer could possibly have his case prepared so

far in advance of the Pre-Trial. Not only will this add enormous expense to a case, but it will also restrict Counsel's ability to obtain updated Medical Reports leading up to the actual date for Trial. In a personal injury matter this is going to be very problematic.

Rule 6.1 – Separate Hearings

The Civil Rules Committee has introduced a new Rule 6.1.01 which provides that on the consent of parties a Court may order a separate hearing on one or more issues in a proceeding including separate hearings on the issues of liability and damages. It should be noted that a bifurcated hearing is only permitted with the Consent of the parties.

Rule 29.1 – Discovery Plan

The Civil Rules Committee has introduced a new requirement that parties must agree to a Discovery Plan. This is a mandatory step for Discovery of documents, Examinations for Discovery, inspection of property, medical examinations and an Examination for Discovery by written questions. The Discovery Plan has to be agreed to before the earlier of sixty (60) days after the close of pleadings or attempting to obtain the evidence. It is also open to Counsel to agree to extend the timing for the exchange of the Discovery Plan. Rule 29.1.03(3) describes the actual contents of the Discovery Plan.

(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. O. Reg. 438/08, s. 25.

Rule 29.1.04 requires the parties to update the Discovery Plan as information is exchanged. Not only do we have an obligation to update the Discovery Plan, it is now open to a Court to refuse to grant any relief, or award costs, if a party brings a Motion without following the obligations under the Discovery Plan Rule.

As I am sure we are all aware, electronic Discovery is the new hot topic when it comes to seeking evidence at Discovery. As more and more information is exchanged electronically, it is likely that this will become even more important as we move forward. With that in mind, the Civil Rules Committee has adopted the Sedona Canada Principles Addressing Electronic Discovery in Rule 29.1.03. When I first read this new Rule, it had me running to the internet trying to find out what the Sedona Canada Principles were and why they were so important. To my surprise, I discovered that the Sedona Canada Principles are some 53 pages in length. What I would respectfully describe as

the abridged version of the Sedona Canada Principles is provided below:

1. Electronically stored information is discoverable.

2. In any proceeding, the parties should ensure that steps taken in the discovery process are proportionate, taking into account

> **(i) the nature and scope of the litigation, including the importance and complexity of the issues, interest and amounts at stake;**
>
> **(ii) the relevance of the available electronically stored information;**
>
> **(iii) its importance to the court's adjudication in a given case; and**
>
> **(iv) the costs, burden and delay that may be imposed on the parties to deal with electronically stored information.**

3. As soon as litigation is reasonably anticipated, parties must consider their obligation to take reasonable and good faith steps to preserve potentially relevant electronically stored information.

4. Counsel and parties should meet and confer as soon as practicable, and on an ongoing basis, regarding the identification, preservation, collection, review and production of electronically stored information.

5. The parties should be prepared to produce relevant electronically stored information that is reasonably accessible in terms of cost and burden.

6. A party should not be required, absent agreement or a court order based on demonstrated need and relevance, to search for or collect deleted or residual electronically stored information.

7. A party may satisfy its obligation to preserve, collect, review and produce electronically stored information in good faith by using electronic tools and processes such as data sampling, searching or by using selection criteria to collect potentially relevant electronically stored information.

8. Parties should agree as early as possible in the litigation process on the format in which electronically stored information will be produced. Parties should also agree on the format, content and organization of information to be exchanged in any required list of documents as part of the discovery process.

9. During the discovery process parties should agree to or, if necessary, seek judicial direction on measures to protect privileges, privacy, trade secrets and other confidential information relating to the production of electronic documents and data.

10. During the discovery process, parties should anticipate and respect the rules of the forum in which the litigation takes place, while appreciating the impact any decisions may have in related actions in other forums.

11. Sanctions should be considered by the court where a party will be materially prejudiced by another party's failure to meet any obligation to preserve, collect, review or produce electronically stored information. The party in default may avoid sanctions if it demonstrates the failure was not intentional or reckless.

12. The reasonable costs of preserving, collecting and reviewing electronically stored information will generally be borne by the party producing it. In limited circumstances, it may be appropriate for the parties to arrive at a different allocation of costs on an interim basis, by either agreement or court order.

Rule 29.2 – Proportionality in Discovery

The Civil Rules Committee has now introduced a new legal phrase called "Proportionality in Discovery". In effect, the Court will determine whether or not a person or party must answer a question or produce a document based on the new proportionality test. In Rule 29.2.03, the Rules Committee sets out the factors to be reviewed in determining whether or not a question must be answered or a document produced. The Rule states,

(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. O. Reg. 438/08, s. 25.

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. O. Reg. 438/08, s. 25.

See: O. Reg. 438/08, ss. 25, 68 (1).

Rule 30 and 31 – Relevance

Amendments to Rule 30 and 31 will significantly change the way Examinations for Discovery and disclosure of documents will take place. As of January 1st, 2010, the "semblance of relevance test" will be replaced with a new simpler relevance test. The Rules have now removed the phrase, "relating to any matter in issue in the action" and replaced them with "relevant to any matter in issue in the action". In effect, the so-called fishing expeditions which we all encountered in the past have now gone the way of the Do-Do Bird. Simply put, if the document or the verbal evidence is not relevant, you are no longer going to find out about it.

Rule 31 – Time Limits on Oral Discovery

Rule 31.05.1 now clearly defines that oral Examinations for Discovery cannot exceed a total of seven (7) hours regardless of the number of parties or persons to be examined, except with consent of the parties, or with leave of the Court.

In considering whether or not leave should be granted, the Court shall consider the following items:

> **(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. O. Reg. 438/08, s. 29.**

Rule 31.03(4) – Multiple Witnesses

The Rules have now been amended to allow for Examinations of more than one party on behalf of a corporation, partnership or sole proprietorship if, upon Motion, the Court is satisfied that the answers cannot be obtained from one person without undue expense and inconvenience and that the Examination of more than one person would expedite the action.

Rules 37 and 38 – Motions and Applications

The time to serve and file a Notice of Motion with the Court has now been extended to seven (7) days for both Motions and Applications. The responding party must file any responding documents four (4) days prior to the hearing.

The same time frame applies to Factums with the Applicant having a seven (7) day notice window while the responding Factum is required to be filed within four (4) days of the Hearing.

Traditionally, Motions had to be confirmed by 2:00 p.m. two (2) days prior to the Motion. The amendment to the Rules now makes confirmation a requirement three (3) days prior to the actual Hearing.

Rule 48 – Status Hearings

The new version of the Rules continue the Status Hearing requirement if an action has not been placed on the Trial List or terminated by any means within two years after the filing of a Statement of Defence. The new Rule continues the authority of the Registrar to dismiss the claim under the following circumstances:

Dismissal by Registrar

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

(a) the action has been set down for trial;

(a.1) in an action under Rule 78, documents have been filed in accordance with rule 78.08;

(b) the action has been terminated by any means; **or**

(c) a judge presiding at a status hearing has ordered otherwise. O. Reg. 396/91, s. 8; O. Reg. 198/05, s. 5 (1).

Rule 48.14 (8) allows any party to request that the Registrar arrange a Status Hearing before a local Judge. However, unless a Judge orders otherwise, the Status Hearing is required to be in writing and without the attendance of the parties if at least seven (7) days before the date of the Status Hearing the parties file a timetable signed by all parties and a draft Order establishing the timetable.

In accordance with subsection 11, the timetable must indicate,

(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. O. Reg. 438/08, s. 46.**

Rule 50 – Pre Trial Conferences

The former Rule 50 has been revoked in its entirety and the new Rule implemented. The new Rule will require the Registrar to give notice to the parties to appear before a Judge for a Pre-Trial Conference within 90 days of the action being set down for Trial. This 90 day requirement can be extended by way of a Court Order.

Five (5) days before the Pre-Trial Conference, each party files a Pre-Trial Conference Memo along with the names of the witnesses that the party is likely to call at Trial and the anticipated length of time the witness will be in the box. Under the new Rule, you are also required to advise the Judge of any steps that still need to be taken along with the estimated time to complete those matters.

Interestingly, the Pre-Trial Judge is entitled to establish a timetable and also, subject to the direction of the Regional Senior Judge, fix a date for the Trial. While the new Rule clearly uses the words "fix a date for the Trial", it remains to be seen whether that will actually happen. It seems unlikely that the ability to fix trial dates will be given to Pre-Trial Judges, particularly when most of them tend to be Judges visiting from other jurisdictions. My suspicion is that they will simply be given the authority to set Trials for weeks starting on a particular date and they will not be "fixed".

At the completion of the Pre-Trial, the presiding Judge is required to complete a Pre-Trial Conference Report. Rule 50.08 (1) indicates,

> **(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. O. Reg. 438/08, s. 47.**

Interestingly, each party or the party's lawyer is required to certify on the Pre-Trial Conference Report that he or she understands the contents of the Report and acknowledges the obligations to be ready to proceed on the date fixed for Trial.

Rule 76 – Simplified Procedure

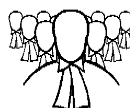
As I suspect most of you know, the Simplified Procedure Rule will apply to cases worth $100,000.00 or less as of January 1st, 2010. Surprisingly, the Civil Rules Committee has backtracked on an earlier provision which denied any Discovery rights under Simplified Procedures. Rule 76.04 now permits oral Examination for Discovery up to two hours regardless of the number of parties to be examined.

The Simplified Procedures also require that the matter is now to be set down within 180 days of the first Defence filed which is a doubling of the earlier 90 day requirement.

Conclusion

One would think that the Corporate/Commercial Bar will find the amendments to be a positive change to their practice. This may be reflective of the fact that most of the necessary documents exist at the time that the law suit is instituted. However, the same cannot be said for areas of litigation like Personal Injury which require many years for the case to crystallize to the point where it can be presented to a Judge and Jury.

Overall, the amendments to the Rules of Civil Procedure foist many new timelines on Counsel as well as significant expense to case preparation. While many of the mandatory timelines are designed to increase the speed with which a case will proceed through to Trial, it remains to be seen how effective they will be in reality.



TVA | The Legal Outsourcing Network®

Toll-free 1.877.262.7762
www.virtualassociates.ca

CIVIL JUSTICE REFORM AND AMENDMENTS TO THE ONTARIO *RULES OF CIVIL PROCEDURE*

Ontario Regulation 438/08 made under the *Courts of Justice Act* comes into force January 1, 2010, with limited exceptions.

There are no general transitional provisions, so that amendments will apply to existing proceedings except as noted.

This table is intended as a guideline only. The statutory provisions listed must be consulted.

Topic	Section	Former Rule	New Rule
Definitions	1.03(1)	Newly added	Definition of "timetable"
Interpretation	1.04(1.1)	Newly added	In applying the Rules, the Court shall make orders proportionate to importance, complexity, and amounts
Telephone & Video Conferences	1.08(1)	Para 8 allowed pre-trial conf, case conf, settlement conf, or trial management conf to be conducted by way of telephone or video	Para 8 allows only pre-trial conference and case conference to be conducted by way of telephone or video
	1.08(3)	Where no consent, motion required for telephone or video conference	Court may make order on a motion or on its own initiative
Time	3.01(1)(b)	Computation of time – where less than 7 days, holidays are not counted	Where 7 days or less, holidays are not counted
	3.02(4)	Extension/Abridgment of Time – time for serving, filing, delivering can be extended on consent (except in case management actions)	Extensions on consent allowed in case management actions
	3.04	Newly added	Rules regarding "Timetables" (1) and (2) may be amended by written agreement (3) parties may not agree to amend the date before which an action shall be set down for trial (4) failure to comply with timetable may lead to a stay, dismissal, striking of defence, or any other just order
Filing of Documents	4.05(2)	Newly added	Para 4 – documents re: motions to transfer an action shall be filed in the court to which the transfer is sought
Duty of Expert	4.1.01	Newly added	(1) to provide fair, objective, non-partisan opinion evidence related only to matters within area of expertise, and provide additional assistance as the court requires (2) this duty prevails over any other obligation
Separate Hearings	6.1.01	Newly added	On consent, the court may order separate hearings on separate issues, including issues of liability and damages
Commencement of Proceedings	13.1.02(3.1)	Newly added	A motion to transfer a proceeding may be brought in the county to which the transfer is sought
Summary Judgment	20.04(2.1) 20.04(2.2)	Newly added	Judge may exercise following powers on a SJ motion: weigh the evidence, evaluate credibility, draw reasonable inferences, order oral evidence to be presented
	20.05	Powers of the Court where summary judgment refused and matter ordered to be set down for trial – terms that court could impose limited to payment into court, security for costs, and limiting the nature and scope of discovery	Powers much more broad and designed to have appropriate cases tried expeditiously: setting time limits for delivery of documents, bringing of motions and filing of material facts not in dispute; establishment of a discovery plan; time limits on examinations; ordering evidence by affidavit; ordering experts to meet; delivery of opening statements; payment into court; security for costs
	20.06	Presumption that where moving party loses, the Court *shall* fix costs on a substantial indemnity basis	Presumption removed – the Court *may* fix costs on a substantial indemnity basis if a party acted unreasonably or acted in bad faith for the purpose of delay
Mandatory Mediation	24.1.04 24.1.04 24.1.04	Applies to Toronto, Ottawa, Essex County, and Rule 78, 77, and some Rule 76 actions Exceptions: actions under the *Substitute Decisions Act, 1992; Succession Law Reform Act,* and *Insurance Act*	(1) Applies to actions governed by the Rule prior to 1 Jan '10, and still applies to Toronto, Ottawa, and Essex County (2) and (2.1) Old exceptions still apply, plus: Toronto actions on the Commercial List, Rule 64 (Mortgage) Actions, actions under the *Construction Lien Act* and *Bankruptcy and Insolvency Act*, and class actions that have been certified
	24.1.09(1)	Mediation must take place within 90 days of defence being filed	Mediation must take place within 180 days of defence being filed

Topic	Section	Former Rule	New Rule
Mandatory Mediation	24.1.09(2.1)	Newly added	Transition – for actions governed by the rule immediately before 1 Jan '10, 180 days begins to run on 1 Jan '10
	24.1.09(5)	Within 30 days of defence filing, plaintiff must file Form 24.1A (Notice of Name of Mediator and date of Session)	Before setting action down one of the parties must file Form 24.1A or a mediator's report that matter has concluded
	24.109(6) 24.1.09(6.1)	Mediation co-ordinator to assign a mediator if not done by the parties 'within the times provided'	Mediation coordinator to assign mediator if not done by the parties within 180 days of first defence filing
	24.1.09(7.1)	Newly added	Mediation to be held 90 days after appointment of mediator
	24.1.11(1.1)	Representative of insurer also required to attend mediation with the party (i.e. the insured)	Representative of insurer shall attend, and insured party no longer required to attend
Third Party Claim	29.14	Newly added	Third and subsequent party claims are given the same file number as the main action, followed by a suffix letter
Discovery	29.1	Newly added – "Discovery Plan"	.03(1) Discovery Plans must be agreed to by the parties wherever a party intends to have a discovery by way of documents, oral or written examination, inspection of property, or medical examination .03(2) Plan shall be agreed to on the earlier of 60 days from the close of pleadings, and attempting to obtain evidence .03(3) Plan shall be in writing and include intended scope of documentary discovery (taking into account relevance, cost, and importance and complexity of the issues); dates for service of affidavits of documents; timing, costs, and manner of production of documents; names of persons to be produced for oral examination; timing and length of oral examinations .03(4) Parties shall have regard to *The Sedona Principles Addressing Electronic Discovery* .04 Plan must be updated when information changes; .05 On any motion regarding discovery, a court may refuse to grant relief if this rule has not been complied with.
	29.2	Newly added – "Proportionality in Discovery"	In determining whether a question must be answered or document produced, the court must consider whether: time required would be unreasonable; cost would be unjustified; undue prejudice would be caused; it would unduly interfere with the orderly progress of the file; the information is available elsewhere; and the order would result in an excessive volume of documents to be produced
	30.02(1), (2) 30.03(2) to (4)	Required to disclose every document "*relating to* any matter in issue"	Required to disclose every document "*relevant* to any matter in issue"
	30.03(1)	Service of Affidavit of Documents within 10 days after close of pleadings – documents *relating to*	Service of Affidavit of Documents – documents *relevant* to (no time prescribed, but see new Rule 29.1)
	31.03(4)	Newly added	In determining whether to allow more than one party to be examined on behalf of a corporation, partnership, or sole proprietorship, the court has to be satisfied that the answers cannot be obtained from one person without undue expense and inconvenience, and that examination of more than one person would expedite the conduct of the action
	31.05.1	Newly added	(1) Examinations cannot exceed 7 hours, regardless of the number of parties, except on consent or with leave (2) In considering granting of leave, court will consider the amount at issue; complexity of issues; reasonable time required; financial position of each party; the conduct of any party; and a party's denials or refusals which should have been answered
Motions & Applications	31.03(1) 38.03(1.1)	Motions/Apps heard in the county where proceeding commenced, or to which transferred	*Brought and* heard in the county where proceeding commenced, or to which transferred
	37.07(6)	Serve Notice of Motion at least 4 days in advance	7 days (note – see Rule 3.01(1)(b) re computation of time)
	37.08(1) 38.06(4)	File Notice of Motion at least 3 days in advance File Notice of App at least 4 days in advance	7 days (note – see Rule 3.01(1)(b) re computation of time)
	37.10(1) 38.09(1)(a)(b)	Serve & file Motion Record at least 3 days in advance / Serve App Record and Factum at least 4 days in advance, file App Record and Factum 2 days in advance	7 days (note – see Rule 3.01(1)(b) re computation of time)
	37.10(3) 38.09(3.1) & (3.2)	Serve & file Responding Motion Record/ Responding App Record at least 2 days in advance	4 days

Topic	Section	Former Rule	New Rule
Motions & Applications	37.10(7)	Serve Moving Factum at least 4 days in advance	7 days (note – see Rule 3.01(1)(b) re computation of time)
	37.10(8) 38.09(1)	Serve Responding Factum at least 2 days in advance	4 days
	37.10(10)(a)	Serve & file refusals & undertakings chart at least 3 days in advance	7 days (note – see Rule 3.01(1)(b) re computation of time)
	37.10(10)(b)	Serve and file response to refusals & undertakings chart at least 2 days in advance	4 days
	37.10.1(1)(b) 38.09.1(1)(b)	Confirm motion /App by 2 p.m. 2 days before motion	3 days
	37.15(1.2)	Newly added	A judge/master who is directed to hear all motions in complicated/series of proceedings may make procedural orders to promote expeditious and least expensive determination
	37.15(2)	Judge who hears all motions in a proceeding shall not hear the trial	Added – except with written consent of all parties
Listing for Trial	48.14	Entire rule re Status Notices revoked and replaced. Many subsections remain essentially the same	(2) Status notice can be issued if a matter that was struck from the trial list was not restored to the list w/in 180 days (10) presumption that status hearing is held in writing if a timetable and draft order are filed 7 days before hearing (11) contents of timetable: identify steps to be completed (and dates) and identify date on which matter will be set down or restored (must be within 12 months of status hearing)
	48.15	Newly added subsection "Action Abandoned"	Registrar may dismiss action as abandoned if: more than 180 days have passed since originating process was issued, no defence is filed, no final order or judgment has been made, action has not been set down for trial, and registrar has given 45 days notice
Pre-Trial Conference	50	Entire Rule revoked and replaced. Many subsections remain essentially the same	.01 purpose of the rule is to settle without a hearing and to obtain court orders and directions to assist in the most expeditious and least expensive disposition .02 registrar will give notice of pre-trial within 90 days after action set down for trial .04 serve and file pre trial conference brief at least 5 days in advance: nature of action, issues, party's position, names of witnesses, length of time required per witness, steps and timing of steps required before action ready for trial .05 lawyers must attend, parties participate either in person or under Rule 1.08 (telephone/video conference), party must be able to give instructions or obtain instructions .06 new matters to be considered –number of witnesses (incl. experts), and dates for service of experts' reports .07 if not settled, judge may establish a timetable, order a case conference (Rule 77 matters), make any other order .08(1) if date for trial is fixed, judge completes pre-trial conf report stating steps that need to be completed, time required for steps, length of trial, any other relevant matter .08(2) copy of report and timetable filed with trial record) .08(3) lawyer signs certificate acknowledging obligation to be ready to proceed on the date fixed for trial .08(4) lawyer advises party of contents of report, and obligation .10 pre-trial judge may conduct trial on consent of parties
Evidence at Trial (Expert Witnesses)	53.03(1) 53.03(2)	*Serve expert report 90 days before trial* Serve responding report 60 days before trial	*Serve expert report 90 days before pre-trial conference* Serve responding report 60 days before pre-trial conference
	53.03(2.1)	Newly added items that expert's report shall contain	- expert's area of expertise, employment, and education; - instructions provided to the expert; - nature of opinion sought and issues in the proceeding to which opinion relates; - opinion re each issue and, where there is a range of opinions given, a summary of and reasons for the range; - reasons for opinion including factual assumptions, research conducted, and a list of documents relied on - a signed Form 53 - acknowledgement of expert's duty (see new Rule 4.1.01)
	53.03(2.2)	Newly added	Within 60 days of action being set down for trial, parties shall agree to a schedule re: dates for service of experts reports to meet requirements of (1) and (2)

Topic	Section	Former Rule	New Rule
Appeals from Interlocutory Orders	62.01(5) 62.01(7)	File Notice of Appeal; serve and file Appeal Record and Factum 4 days before hearing	7 days (note – see Rule 3.01(1)(b) re computation of time)
	62.01(8) 62.01(8.1)	Serve and file Responding Factum 2 days before hearing	4 days
	62.02(6.1)	Moving party in motion for leave to appeal to serve Factum 4 days before hearing	7 days (note – see Rule 3.01(1)(b) re computation of time)
	62.02(6.2)	Respondent's Factum in motion for leave to appeal to be served 2 days before hearing	4 days
Simplified Procedure	76.02(1) 76.13(2) 76.13(7), (8)	Rule available for claims worth $50,000 or less	$100,000 or less
	76.03(1)(a) 76.08(a)	Affidavit of Documents – required to disclose every document "*relating to* any matter in issue"	Changed to *"relevant to"* any matter in issue
	76.04(1) 76.04(2)	All discovery, including oral, not permitted	Oral examinations for discovery limited to 2 hours, regardless of number of parties to be examined
	76.06 76.07	Rules regarding dismissal by Registrar and Summary Judgment	Revoked
	76.09(1)	Plaintiff to set matter down for trial within 90 days of first defence filed	180 days
	76.10(2) 76.10(3)	Rules regarding attendance at Pre Trial Conference and Authority to Settle	Revoked
	76.12(1)1.1 76.12(1)4.1	Newly added	Re: Summary Trials – parties may examine the deponent of any affidavit served by the other side for up to 10 minutes
	76.13(11)	Newly added -- transition	In actions commenced after 1 Jan '02 and before 1 Jan '10, subrules (2), (7), (8) apply as if "$100,000" read "$50,000"
Civil Case Management	77	Entire rule revoked and replaced. Many subsections remain essentially the same	.01 purpose of the rule – only for cases where a need for the court's intervention is demonstrated - responsibility for managing proceedings remains with the parties - nature of case management shall be informed by local practices or judicial resources .02 rule applies only to actions in Ottawa, Toronto, and Essex County assigned to case management by order (same exceptions apply) .05(2) action may be assigned to case management on court's own initiative, on the request of a party, or on motion .05(4) criteria re: whether to assign to case management essentially the same, except new purpose of the rule must be considered, as well as whether there has been substantial delay in the proceeding .06 all steps in a proceeding may be directed to be heard by the same judge (including motions - .07(2)), who cannot preside at the trial, except with the parties' written consent .07 not required to file a case management motion form, costs of motions shall be addressed at the end of each motion, regardless of whether the motion was contested .08 transition rules – if Rule 77 or 78 applied to an action before 1 Jan '10, it shall continue to apply; and all orders, directions, and timetables shall remain in force
Toronto Civil Case Management Pilot Project	78	Entire rule revoked as of 1 July '09	Entire rule revoked as of 1 Jan '10
Small Claims Court	O Reg. 439/08	Monetary jurisdiction $10,000 or less (O. Reg. 626/00)	Monetary jurisdiction $25,000 or less