



# MILLER THOMSON LEGAL

## 2010: A Rules Odyssey

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There are big changes coming to the Rules of Civil Procedure starting January 1, 2010. The Rules govern the process of litigation before the Ontario Superior Court of Justice. Sorting out what the changes will mean in practice, and how the new regulations will be interpreted and applied, will be an adventure. Some of the more significant changes include:

### **Proportionality**

-Proportionality is formally introduced as a principle with the changes. For example, Courts are specifically directed to make orders and give directions that are proportionate to the importance and complexity of the issues and to the amount involved in the proceeding.

### **Discovery Process**

- Each party may only conduct 7 hours of examinations, absent consent or a Court Order otherwise;
- Proportionality and the cost of responding to demands is a formally recognized factor;
- The scope of discovery will be narrowed to relevance (from "semblance of relevance");
- Parties must agree on a Discovery Plan at the outset of a case and keep it up to date; and,
- E-Discovery must be formally considered as part of the Discovery Plan.

### **Simplified Procedure**

- All cases up to \$100,000 will be required to follow this procedure (rather than \$50,000);
- Examinations for Discovery are being introduced but will be capped at 2 hours; and,
- Cross-examination on Affidavits will be limited to 10 minutes.

### **Summary Judgment**

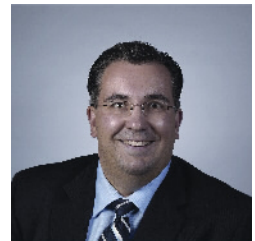
- Judges will assess credibility and weigh evidence (neither are a part of present process);
- Judges may require a "mini-trial" involving oral evidence (with or without time limits);

- Costs consequences for the unsuccessful will be less harsh, normally only partial indemnity costs will be awarded rather than substantial indemnity costs; and,
- Where summary judgment is refused, a Court may make wide ranging procedural directions, for example, from requiring meetings of expert witnesses to produce joint statements summarizing their agreements and disagreements, to setting time limits for particular witnesses at trial.

### **Timelines and Other Changes**

- Expert's reports and responding reports will be due 90 and 60 days prior to the Pre-Trial Conference and must contain certain specific information set out in a new Rule;
- Motions must be brought on a minimum of 7 days notice (instead of the current 4 days);
- Separate hearings for different issues may take place in one action, including liability and damages;
- Status Notices and Status Hearing Notices must be provided by lawyers to their clients; and,
- Parties themselves (or representatives with full authority) must attend all Pre-Trial Conferences with their lawyers, unless the presiding judge orders otherwise.

There will be strategic opportunities and risks to be balanced as these changes come into force and begin to be interpreted by our Courts. The job of outstanding counsel, as always, will be to make the Rules work for their client.



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