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Sweeping Changes to Civil Procedure Rules

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The Ontario Government has introduced a sweeping new set of Civil Court Rules that will significantly change the way many personal injury and property damage claims are handled. These new Rules come into effect on January 1, 2010.

The most significant change is to the monetary jurisdiction for cases handled in the Small Claims Court or under the Simplified Procedure Rules. The Small Claims Court monetary jurisdiction will rise from \$10,000.00 to \$25,000.00. The last increase in the Small Claims Court monetary jurisdiction was in 2001, when it rose from \$6,000.00 to \$10,000.00. The other key change is an increase in the monetary limit for Simplified Procedure actions from \$50,000.00 to \$100,000.00.

Other noteworthy changes coming into effect at the end of this year include the following:

- Parties will be allowed up to 2 hours of oral discovery for Simplified Procedure actions;
- Each party will be limited to a total of 7 hours for examinations for discovery (in non-Simplified Procedure cases) unless the parties consent or a Court orders otherwise;
- New Rules for summary judgment motions will make it less likely for costs to be awarded against a party that loses a motion (traditionally cost awards acted as a deterrent for litigants to bring summary judgment motions);
- A judge can now order a “mini trial” to hear oral evidence on a summary judgment motion;
- Deadlines for the serving and filing of motion and application materials will be moved up to give both sides more time to prepare; and
- Expert witnesses will have to provide a written acknowledgement that they will give evidence and opinions which are “fair, objective and non-partisan”.

It is anticipated that these changes will result in many more personal injury claims being brought in either the Small Claims court or under the Simplified Procedure Rules. Lawyers acting for injured claimants will have to consider carefully the forum in which to commence an

action. The cost penalties of bringing an action in the wrong forum remain unchanged, meaning that a Plaintiff who succeeds in an action, but recovers damages of less than \$100,000.00 (and who did not elect to proceed under the Simplified Procedure Rules), could have costs awarded *against* him or her at trial.

We will also undoubtedly see many more claims, especially for minor slip and falls, being brought in the Small Claims Court. The Small Claims Court forum is a body unto itself, having its own distinct rules for documentary discovery, case conferences and trials. There is no oral discovery of parties in a Small Claims court action, and documentary discovery is much more limited.

The ability for defence counsel to examine for discovery litigants proceeding under the Simplified Procedure Rules is new and may prove to be the most significant change for the personal injury defence bar. Although the discovery will be limited to 2 hours, the previous Rules did not permit *any* discovery of a claimant proceeding under the Simplified Procedure regime. Given the importance of a discovery in a personal injury case in assessing credibility and obtaining undertakings, the opportunity to conduct a discovery on a claimant who has brought an action under the Simplified Rules should not be understated.

The initial reaction to these reforms appears to be positive, from both the plaintiff and defence bars. The end result of these changes will likely see claims move faster through the system and settlement discussions take place earlier on.

While it remains to be seen how these new Rules will affect the litigation landscape for lawyers practicing in Ontario, there can be little doubt that the personal injury defence bar will see profound changes in the way claims are moved through the system.

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