



The New British Columbia Supreme Court Civil Rules

I. Background

In 2002, the Law Society of British Columbia established the Justice Review Task Force that brought together senior lawyers, judges, government officials, and other experts to form the Civil Justice Reform Working Group (the “Working Group”). The Working Group made recommendations for changes to the *Rules of Court* (the “Old Rules”) issuing a report in November 2006 entitled “Effective and Affordable Civil Justice”. The report recommended that the Old Rules be modified to allocate judicial resources in a manner proportional to the value, complexity and importance of each case. Adopting this principle, the new rules will see judges and masters take a far more active role in the management of cases as they proceed towards trial.

The new rules, formally titled the *Supreme Court Civil Rules*, will come into force on July 1, 2010 (the “New Rules”).

II. Summary of Major Changes

(a) Commencing Proceedings (Rules 2-1 to 3-7)

The New Rules change the manner in which proceedings are initiated. The Writ and Statement of Claim are replaced by a single document: the Notice of Civil Claim. Where relief is uncontested or where relief can be sought summarily, proceedings may be commenced by Petition or Requisition. While earlier drafts of the New Rules required that the Notice of Civil Claim be personally signed by the Claimant or his or her representative, this requirement has now been dropped.

A Notice of Civil Claim must be served within 120 days of being filed, with the possibility of a 60-day extension. The defendant must file its Response within 21 days after

being served. A Third Party Notice must be filed within 42 days of being served with a Notice of Civil Claim.

(b) Case Planning Conferences (Rules 5-1 to 5-4)

Case planning conferences give judges wide discretion to make orders concerning the conduct of an action, whether or not the parties apply for such orders. For example, a judge may order some or all of the parties to attend mediation or may set a timetable for certain steps to be taken.

The original concept draft of the New Rules required that each party attend a case planning conference before taking any steps in the litigation process. During consultation, a concern was expressed that requiring a case planning conference at such an early stage would create unnecessary costs.

The New Rules do not require a case planning conference, but allow one party to compel all parties to attend. The requirement that clients be personally present at a case planning conference has also been dropped from the New Rules.

(c) Limits on Document Discovery (Rules 7-1 to 7-8)

One of the most significant conclusions reached by the Working Group was that excessive document production is responsible for much of the delay and expense in civil proceedings. The Working Group decided that the old *Peruvian Guano* model that allowed for discovery of indirectly relevant evidence was “no longer workable in the context of proliferating electronic information and the increase in complexity of modern litigation.”

As such, parties need only disclose those documents that could be used to prove or disprove a material fact at trial or other documents that a party intends to refer to at trial. Parties may seek an order to widen discovery

obligations if they see fit.

(d) Limits on Oral Examinations for Discovery (Rule 7-2)

The original draft of the New Rules limited oral discovery of all parties to three hours in the absence of consent or a court order. After consultations, the total number of hours was increased to seven. Parties may apply for an extension above the seven-hour limitation or obtain the consent of the party to be examined. Interrogatories are not allowed without consent of the party examined or leave of the Court.

(e) Experts (Rules 11-1 to 11-7)

The Court's treatment and power over expert witnesses has been significantly modified. The New Rules provide that an expert's duty is to assist the Court and not to advocate for any party. With this in mind, the New Rules permit "joint" experts hired by both parties. If both parties have their own experts, a judge or master can order experts to confer prior to trial at a case planning conference or at a trial management conference. Judges may also appoint their own experts at the expense of a party or parties.

Expert reports must be served at least 84 days before trial. A response to an expert's report must be served at least 42 days before trial. The information within an expert report has been significantly expanded and now requires the inclusion of such details as:

1. the instructions provided to the expert in relation to the proceeding;
2. a description of any research conducted by the expert that led him or her to form the opinion; and
3. a list of every document, if any, relied on by the expert in forming the opinion.

Parties are also entitled to pre-trial discovery of the expert's working papers and drafts when asked to do so at least 14 days before the scheduled trial date.

(f) Fast Track Litigation (Rule 15-1)

The new fast track rules combine the two expedited litigation rules that exist under the Old Rules (rr. 66 and 68). The result is a simplified procedure where the amount in controversy is less than \$100,000 and where

the trial can be completed in three days or less.

In a fast track action, the parties cannot file contested applications without first attending a case planning conference. Oral discoveries are limited to two hours, and costs in fast track actions are limited to \$8,000 for one-day trials, \$9,500 for two-day trials, and \$11,000 for trials lasting three days or more.

Where an action is not commenced under the fast track process, and a plaintiff recovers judgment of less than \$100,000 or the trial is completed in three days or less, these limited costs provisions will apply, providing an incentive to ensure that cases that belong on the fast track are placed there.

(g) Transitional Provisions (Rule 24-1)

Proceedings commenced prior to July 1, 2010 will proceed under the New Rules. Pleadings filed prior to July 1, 2010 will be "deemed" pleadings under the New Rules and can be amended to reflect their requirements.

III. Practical Implications

There is considerable debate as to whether the New Rules will have their intended effect to simplify and reduce the cost of litigating in British Columbia. Many of the procedures that lawyers currently rely on to manage the flow of cases and focus the issues in a lawsuit now require consent or a court order. Some lawyers believe that this will have the opposite of the intended cost-saving effect, as clients must now pay to have lawyers attend judge-run conferences and seek more court orders relating to case management issues in chambers. These changes may be particularly costly in complex litigation.

From the perspective of an insurer, although claims managers will no longer be required to attend judicial conferences, focused pleadings and discovery obligations will require all parties to be aware at a very early stage of the exact nature of the claim they intend to pursue.

For more information, please contact Tim Outerbridge, Director of Research, at touterbridge@ahbl.ca.