

ONTARIO MAKES CHANGES TO COURT PROCEDURES

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On October 23, 2019, the Ministry of the Attorney General for Ontario announced notable amendments to Ontario's court procedures in an effort to make civil litigation more accessible and affordable. The changes will be in effect starting on January 1, 2020.

There will be a number of changes to the simplified procedure under Rule 76 of the *Ontario Rules of Civil Procedure*. A significant change is that the monetary limit has been raised from \$100,000 to \$200,000.^[1] Similarly, the monetary jurisdiction for Small Claims Court will increase from \$25,000 to \$35,000.^[2]

Simplified Procedure

Background

Rule 76 of the *Rules of Civil Procedure* ("Rule 76") imposes a mandatory streamlined procedure for claims of modest amounts. Since its enactment in 1996, the policy behind Rule 76 has been to simplify court processes and reduce costs and delays. This is achieved by shortening pre-trial procedures, limiting the scope and conduct of discovery, and imposing stricter timelines for the proceeding. A key consideration encouraging the use of the simplified procedure is the adverse cost consequences for failing to use the procedure for claims that fall within the monetary jurisdiction.

Following a number of consultations to improve civil legislation, regulations and processes, the Ontario government introduced a number of changes to further streamline Rule 76, which will come into effect on January 1, 2020.

The Amendments

1. Increase monetary jurisdiction

The monetary threshold for simplified procedure has now been raised to \$200,000. This new limit will result in a greater number of claims proceeding under Rule 76, which would normally proceed under the ordinary procedure. Plaintiffs will also have an opportunity to "opt-in" to simplified procedure for existing actions claiming between \$100,001 to \$200,000 in damages.

2. Remove civil jury trials

A notable change to Rule 76 is the elimination of jury trials in actions proceeding under simplified procedure. The new provision will continue to permit jury trials for actions, below \$200,000, that claim slander, libel, malicious arrest, malicious prosecution and false imprisonment, but these actions must proceed or continue under the ordinary procedure. Additionally, the change will not apply to actions if a jury notice is delivered prior to January 1, 2020.

3. Modify pre-trial procedure

The amended rule will require parties to schedule a pre-trial conference within 180 days of the action being set down for trial.

At least 30 days before the pre-trial conference, parties will be required to agree to a trial management plan. Each party will have to file the trial management plan at least five days before the pre-trial. The management plan must include (i) a list of every witness whose evidence a party intends to adduce at trial and (ii) a division of time between the parties, setting out the intended procedure for the trial.

At the pre-trial conference, the judge or master will fix the trial date and the number of witnesses and a schedule for the delivery of affidavits to be used at trial.

4. Remove ordinary trial option

The changes to the rule eliminate the availability to proceed by way of an ordinary trial. All actions proceeding under simplified procedure will be limited to a five-day summary trial.

The trial procedure will be amended to, among other things, provide parties with an opportunity to make an opening statement and closing arguments. Reading-in examination for discovery evidence is now expressly allowed. Before the amendments, parties could conduct 10 minutes of direct examination. There is no longer any direct examination. There were also time limits for re-examination and oral closing arguments before the amendments. These time restrictions will be eliminated and there will be no time limit under the Rule.

However, the total trial time must be limited to five days.

5. Limit costs and disbursements

A novel change to simplified procedure is the limitation on costs and disbursement awards. Subject to the provisions of any other act or the adverse cost awards for failing to use the simplified procedure, costs will be capped at \$50,000 and reimbursements will be limited to \$25,000 exclusive of HST. The limitations on cost recovery will not apply to actions commenced before January 1, 2020. This change will encourage parties and lawyers to efficiently utilize resources, such as carefully considering the necessity of expert evidence.

6. Increase time limits on examinations for discovery

The time limit for examinations for discovery by each party will increase from two hours to three.

Small Claims Court

In line with the changes to Rule 76, Ontario has also increased the monetary limit for Small Claim proceedings from \$25,000 to \$35,000. Additionally, there will be no right to appeal a final order of Small Claims Court under \$3,500. Final orders over \$3,500 can be appealed to the Divisional Court. Previously the threshold was \$2,500.

The Ontario government announced that it expects these changes will reduce the number of actions that are started in the Superior Court of Justice, as well as the time and cost spent by parties in litigation.

However, bringing a claim in Small Claim Court involves important procedural differences that parties should consider, including a lack of examinations for discovery, a mandatory settlement conference and a 15% monetary cap for legal fees of the amount claimed.

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[1] O. Reg. 344/19.[ps2id id='1' target='']

[2] O. Reg. 343/19.[ps2id id='2' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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