

Key Highlights of Changes to the Simplified Procedure

**Ankita Abraham, Student-at-Law
December 2019**

Effective January 1, 2020, there will be a number of significant changes regarding matters brought under rule 76 of the *Rules of Civil Procedure* (“Simplified Procedure”), including the following:

Increase in the Monetary Jurisdiction from \$100,000 to \$200,000

Currently, claims of up to \$100,000 can be started in the Superior Court of Justice using the Simplified Procedure process. Starting January 1, 2020, the government has increased the monetary jurisdiction to \$200,000, thus allowing considerable more cases to proceed by way of Simplified Procedure.

Time Limit for Oral Discoveries

To reflect the increase in the monetary jurisdiction, the time limit for oral examinations for discovery will increase from two (2) hours to three (3) hours.

Procedural Changes to Pre-Trial Conference, including the Trial Management Plan

Previously, the registrar served the notice of pre-trial conference at least 45 days before the scheduled date.

Starting January 1, 2020, parties are responsible for scheduling the pre-trial conference under rule 50.02. Within 180 days after the action is set down for trial, the parties can schedule a date and time with the registrar for the pre-trial conference.

In addition, at least 30 days before the scheduled pre-trial conference, the parties are to agree on a proposed trial management plan. The proposed trial management plan must include a list of every witness, including expert witnesses each party anticipates to call at trial, and a division of time

¹between the parties which set out allotted times for the following items:

- opening statement;
- the presenting of evidence in chief by affidavit and under rule 31.11;
- cross-examination of deponents;
- re-examination of any deponents; and
- oral argument.

At least five (5) days before the pre-trial conference, each party must file the following documents:

- a copy of the above-mentioned proposed trial management plan;
- the party's affidavit of documents and copies of the documents relied on for the party's claim or defence;
- an expert affidavit, which includes the expert report appended to the affidavit; and
- a three-page statement setting out the issues and the party's position on each issue.

No Jury Trials

Jury trials will no longer be permitted in rule 76 actions. However, a party may deliver a jury notice in claims arising from slander, libel, malicious arrest, malicious prosecution, and false imprisonment. If a jury notice is delivered, these claims will continue as an ordinary action. If the jury notice is subsequently struck out, then the action is to be continued under Simplified Procedure.

It is important to note that the transition rules indicate that this change does not apply to an action where the jury notice has already been delivered before January 1, 2020.

Maximum Trial Length

Trials under the Simplified Procedure cannot exceed five (5) days. The trial judge has no discretion to extend the duration of the trial.

Summary Trials Only

In an effort to streamline the process, trials will proceed by way of a "summary trial." Specifically, trials will go forward by way of the agreed trial management plan.

Previously, parties could agree to elect whether the trial shall be conducted as a summary trial or as an ordinary trial, which included testimony from witnesses at the trial hearing. This is no longer available with matters proceeding by way of the Simplified Procedure.

Trials will proceed as follows:

1. Before the presentation of evidence, each party may make an opening statement.
2. The plaintiff may adduce evidence, including any expert evidence, by affidavit and under rule 31.11 (reading in discovery evidence).
3. A party who is adverse in interest may cross-examine the deponent of any affidavit served by the plaintiff.
4. The plaintiff may conduct a re-examination of any deponent who is cross-examined.
5. When any cross-examinations and re-examinations of the plaintiff's deponents are concluded, the defendant may adduce evidence, including any expert evidence, by affidavit and under rule 31.11.
6. A party who is adverse in interest may cross-examine the deponent of any affidavit served by a defendant.
7. A defendant may conduct a re-examination of any deponent who is cross-examined.
8. When any cross-examinations and re-examinations of the defendant's deponents are concluded, the plaintiff may, with leave of the trial judge, adduce any proper reply evidence.
9. After the presentation of evidence, each party may make oral argument.

Restrictions on Costs and Disbursements

A party to an action under the Simplified Procedure will be limited to recover costs up to \$50,000, and disbursements up to \$25,000, exclusive of HST.²

This change only applies to cases commenced after January 1, 2020.

Commentary

In 1996, the Ontario government introduced the Simplified Procedure in an effort to lower legal costs and reduce delays within the court system.

The Simplified Procedure, in theory, is a streamlined and less costly process for resolving certain civil actions in the Superior Court of Justice. This process is beneficial, especially for straightforward matters, as it is a less complicated process.

The recent changes introduced by the Ontario government are clearly intended to expand the goals of the Simplified Procedure. With the increase in the monetary jurisdiction and the elimination of juries, it will allow many potential claimants an opportunity to pursue their claim in a simpler, less expensive and more expeditious process.

However, it remains to be seen whether there will be significant change within all areas of law, such as personal injury claims, due to the complexity of certain issues and the introduction of the new limit in costs and disbursements.

For example, parties will have to strategically contemplate and consider the use of multiple experts, given the cap on disbursements. As such, it may establish a greater incentive for plaintiffs to claim for a higher amount in the ordinary procedure and risk a jury trial. Nevertheless, it will be interesting to see how many new and existing claims will proceed under the new Simplified Procedure process.

Conclusion

Parties should consider and be aware of the changes mentioned above to the Simplified Procedure, as the Ontario government has introduced substantial changes to the process. These amendments will raise a myriad of strategic considerations for both plaintiffs and defendants.

¹ The division of time between the parties cannot exceed five days.

² Subject to provisions of any other Act or the existing adverse consequences under rule 76.13.