

# **Into the Future: The Agenda for Civil Justice Reform**

## **ACCESS TO JUSTICE**

### **Ontario's Overview of Two Approaches to Keeping Litigation Costs in Check**

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On behalf of the Ontario Superior Court of Justice  
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## **INTRODUCTION:**

- This is an overview and summary of the two approaches relied on in Ontario to control costs in civil claims under \$50,000.
- These include:
  - A. Civil claims under \$10,000 in the Small Claims Court<sup>1</sup>; and
  - B. Civil claims between \$10,000 and \$50,000 under the Simplified Procedure (**Rule 76**)<sup>2</sup>.
- Historically, the work of the Small Claims Court has always represented over 50% of all civil claims filed in the province of Ontario. The Simplified Procedure accounts for another 20% of all civil claims filed.
- In 2005, over 70,000 claims were filed in the Small Claims Court while approximately 13,000 claims were filed under the Simplified Procedure.
- Both approaches are designed to reduce costs and enhance access to justice for litigants by ensuring:
  - simplicity;
  - efficiency; and
  - effectiveness.

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<sup>1</sup> Small Claims Court in Ontario is governed by *Rules of the Small Claims Court*, O.Reg. 258/98, as amended under the *Courts of Justice Act* R.S.O. 1990, c. C. 43, as amended.

<sup>2</sup> The Ontario *Rules of Civil Procedure* are regulations under the province's *Courts of Justice Act*, *Ibid*, R.R.O. 1990, Regulation 194 amended to O. Reg. 77/06.

## **A. SMALL CLAIMS COURT**

### **Approach Under Ontario's Small Claims Court Rules (Claims up to \$10,000)**

- The monetary jurisdiction of the Small Claims Court was increased to \$10,000 on April 12, 2001.
- The development of the Small Claims Court Rules has been a collaborative effort between the Ontario Ministry of the Attorney General, the Superior Court judiciary and the Bar.
- Given the large number of civil proceedings managed by the Small Claims Court, there is an ongoing effort to streamline its Rules.
- The Small Claims Court Rules were recently amended so that, as of July 1, 2006, Settlement Conferences will be mandatory. Such early resolution supports systemic efficiency, effectiveness and affordability for all parties.
- A number of Pro Bono clinics provide legal assistance to parties in various centers across Ontario.
- Toronto, which handles 25% of all Small Claims Court claims in Ontario, also has a Mediation Clinic which assists parties involved in Small Claims Court matters to resolve their disputes.

### **Key Principles of the Small Claims Court Rules**<sup>3</sup>

- New Rules are to take effect July 1, 2006.
- The principles underlying the Small Claims Court Rules are articulated in Rule 1:

*The Rules shall be construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits.*

- Small Claims Court fees are lower than fees for civil proceedings under the standard *Rules of Civil Procedure*. For example:

	<b><u>Superior Court Standard</u></b>	<b><u>Superior Court Small Claims Court</u></b>
<b>Cost to file a claim</b>	<b>\$181</b>	<b>\$75</b>
<b>Cost to file a trial record/fix a date</b>	<b>\$339</b>	<b>\$100</b>

- In most cases, a party can proceed to judgment in the Small Claims Court by paying only the two fees listed above, whereas the standard *Rules of Civil Procedure* impose a broad range of additional fees.
- A party who cannot afford the fees because of limited assets or reduced income can apply to have all fees waived through a “fee waiver” procedure implemented by the Ontario government in January of 2005.

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<sup>3</sup> The amended Small Claims Court Rules are accessible on the Government of Ontario internet site at: [www.e-laws.gov.on.ca/DBLaws/Source/Regs/English/2006/R06078\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Source/Regs/English/2006/R06078_e.htm).

### **Key Features of the new Small Claims Court Rules**

- The Rules were re-written to reduce “legalese” and now employ “**plain**” language.
- **Court forms:**
  - have been simplified and standardized and are now prescribed by regulation;
  - are available on the Internet<sup>4</sup> and at all Court offices; and
  - are designed to be user-friendly.
- **Warnings** are now printed on the court forms so that the parties are on notice of the consequences for not complying with the Rules.
- The **onus** is now on the parties to move a case forward. Dismissal notices are generated automatically after specific periods, if no action has been taken on a file.
- **Settlement Conferences:**
  - effective July 2006, settlement conferences are *mandatory* as they promote early resolution;
  - settlement conferences are held at *no* cost to the parties;
  - within 90 days of a defence being filed, parties are required to attend the settlement conference;
  - any person having the authority to approve a settlement must be available for the settlement conference by “ready” telephone access;
  - parties must set the matter down for trial within 30 days after a settlement conference, failing which the action will be dismissed.

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<sup>4</sup> Assistance is also available to the litigants in the form of “Self-Help Guides” for both the Small Claims Court, as well as the Small Claims Court Rules. The Guides, Rules and Court forms are available at the Ontario Ministry of the Attorney General website located at: [www.attorneygeneral.gov.on.ca](http://www.attorneygeneral.gov.on.ca)

## **B. SIMPLIFIED PROCEDURE**

### **Approach Under the Simplified Procedure (Rule: 76)** **(Claims between \$10,000 - \$50,000)**

- In 1996, the Simplified Procedure under Rule 76 of the *Rules of Civil Procedure* was piloted in Ontario.
- The pilot was initially designed to simplify civil proceedings in matters where claims did not exceed \$25,000 to ensure that litigants with smaller claims would have easier access to justice by reducing the technical complexities of civil proceedings.
- Rule 76 shortened the time and decreased the number of events within a proceeding. This was accomplished by:
  - reducing the number of interlocutory procedures;
  - making summary judgment motions more readily available; and
  - employing a summary trial procedure.
- The Simplified Procedure pilot project appeared to reduce the costs of litigation and to enhance access to justice for smaller civil claims in Ontario. As a result:
  - Rule 76 became mandatory for the entire province of Ontario in 2001; and
  - in 2002, the monetary jurisdiction of Rule 76 in Ontario was increased from \$25,000 to \$50,000.

### **Key Features of the Simplified Procedure - Rule 76<sup>5</sup>**

- The Simplified Procedure under Rule 76 provided Ontario with a mandatory procedure to resolve relatively small monetary claims.
- This new approach to civil proceedings, includes:
  - elimination of examinations for discovery; and
  - a summary trial procedure.
- The mandatory nature of Rule 76.
  - Parties whose claims fall within its monetary jurisdiction, but who do not use the Rule, can be penalized by costs.
- The Simplified Procedure is affidavit-driven.
  - Parties are expected to disclose all elements of their action in affidavits filed 10 days after the close of pleadings.
- The mandatory settlement conference may be held in person or by phone.
  - At the conference, parties may agree to hold a regular trial or a summary trial. If the parties do not agree, the Court will determine the mode of trial.
- Mandatory pre-trial conferences.
  - At least 5 days prior to a pre-trial conference, parties must file affidavits of documents and copies of documents relied upon, expert reports, a trial management checklist and a two-page statement setting out the issues and position of the parties.
- The parties and lawyers are expected to attend a pre-trial conference in person unless the Court directs that it may be held by phone or by video conference.
- Summary Trials.
  - Parties only have 50 minutes to complete cross-examinations and 45 minutes to finish their oral arguments.
  - Orderly management of the proceedings prevent summary trials from becoming protracted because there are strict timelines and limits to all steps in the trial.

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<sup>5</sup> The Simplified Procedure rule can be obtained online at the Government of Ontario's website: [www.e-laws.gov.on.ca/DBLaws/Regs/English/900194a\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Regs/English/900194a_e.htm).

- A new threshold applies for a judge to render summary judgment under Rule 76.
  - Summary judgment motions under the standard Rules are only granted when there is no genuine issue for trial. However, under Rule 76, judgment will be granted unless the judge is unable to decide the issues without cross-examination or if it would be otherwise unjust to decide the issues on the motion.
  
- The key to ensuring the success of the Simplified Procedure lies in:
  - i) demanding strict adherence to the requisite steps contained within Rule 76; and
  
  - ii) imposing cost sanctions to enforce compliance with all aspects of the Simplified Procedure.

**SUMMARY**

- Ontario's Superior Court of Justice, through its Small Claims Court Rules and Simplified Procedure Rule 76, is committed to ensuring efficiency as well as effective and affordable justice for all litigants.
- We continue to strive to introduce new initiatives to streamline smaller claims under \$50,000 and to improve access to justice for all litigants in Ontario.