

New Rules Of Civil Procedure: New Way To Litigate

By: Rachel Moses

On January 1, 2010, significant changes to the Rules of Civil Procedure will take effect. This article provides a summary of the most significant amendments that will change the way claims are litigated. These are:

- I. Summary Judgment
- II. Mandatory Mediation
- III. Discovery Reform
- IV. Expert Evidence

I. Summary Judgment - Rule 20

The most significant of all the new changes is to summary judgment. The changes are sweeping and fall into three categories: (a) the court's powers on a motion for summary judgment will allow a judge to direct a "mini-trial" as a judge is now directed to weigh the evidence, evaluate the credibility of a deponent, and draw any reasonable inference from the evidence; (b) the court's powers where trial is necessary will now permit the court to give directions and impose terms, such as timelines and security for costs; and (c) the court's powers on costs will now allow the court to impose substantial indemnity costs where it is of the opinion that any party has acted reasonably in bringing or responding to a summary judgment motion, or where a party has acted in bad faith or for the purpose of delay.

II. Mandatory Mediation - Rule 24.1

The major changes to the mandatory mediation rule relate to: (a) application – mediation will now apply to all Toronto actions; and (b) timing – mediation will take place 180 days after the first defence has been filed.

III. Discovery - Rules 29.1, 29.2, 30 and 31

There are four main changes to the discovery rules: (a) redefinition of the concept of relevance - the phrase "relating to any matter in issue in the action" is replaced with "relevant to any matter in issue in the action" in all rules relating to discovery; (b) time limits on examination for discovery - there will now be a "one day" rule limiting the length of examinations; (c) discovery plan – an entirely new rule, requiring parties to agree on the scope, how documents will be produced and when examinations for discovery will take place; and (d) proportionality in discovery – an entirely new rule, requiring time and expense to reflect what is at stake in the proceeding.

IV. Expert Evidence - Rule 53

To reinforce that expert witnesses are intended to assist the court with a neutral evaluation of the issues, they will now be required to certify in writing their duty to the court to be fair, objective and non-partisan. Other changes to reduce delay require expert reports to be served earlier and to contain certain specific details such as the instructions provided to the expert in relation to the proceeding, and a description of the research conducted by the expert.