



Changes to the **Rules of Civil Procedure** effective as of January 1st, 2010

The *Rules of Civil Procedure*, which govern the manner in which cases proceed through the court system, underwent significant changes on January 1st, 2010. The extent to which these changes alter the customary procedures remains to be seen, but regardless of the outcome, these changes will soon become the new operating norm.

Among other changes, the new *Rules* bring with them an overriding concept of proportionality. This idea seeks to establish a new trend whereby parties

engage in an analysis to determine how much is at stake in a given matter. This analysis will then in turn dictate the amount of resources to be expended, both in terms of time and money, on any one matter. Such a concept may lead to responsibilities once carried out by the lawyer being placed on the client, to achieve the most cost effective result.

The new *Rules* are not retroactive in effect, but apply as of January 1, 2010. For matters in which proceedings have already commenced, but that are currently in between events, a decision

will have to be made on a case by case basis, as to whether to seek to take steps to maintain the status quo, and remain under the purview of the old *Rules*, or to seek to change streams and fall under the application of the new *Rules*.

Included in this bulletin is a reference table outlining the major changes to the *Rules*, the potential consequences of these changes, and how these changes may affect you.

| RULE | RULE PRIOR TO CHANGE | RULE AFTER JANUARY 1st 2010 | CONSEQUENCES AND CONSIDERATIONS FLOWING FROM RULE CHANGE |
|-------------------------------------------------------------------------------------------------------|---------------------------------------------------|---------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Increase in Monetary Jurisdiction of the Small Claims Court (<i>Ontario Regulation 439/08</i>)</p> | <p>Claims with damages not exceeding \$10,000</p> | <p>Claim with damages not exceeding \$25,000</p> | <p>Advantages</p> <ul style="list-style-type: none"> • Small Claims Court provides a venue for simple, expeditious and inexpensive case resolution. • Court filing fees in the Small Claims court are less than in Civil Court. <p>Disadvantages</p> <ul style="list-style-type: none"> • Small claims court has a ceiling on cost awards. A successful party is limited to a maximum cost recovery of 15% of the claim, excluding disbursements and save exceptional circumstances. • Lawyers are not required in Small Claims Court. There is a higher probability of encountering unrepresented litigants in Small Claims Court. <p>Considerations</p> <ul style="list-style-type: none"> • Claims commenced in the Civil Court above \$10,000 but less than \$25,000 will not automatically transfer to Small Claims. Parties can opt to remain under simplified procedure or seek to transfer to Small Claims Court upon request or consent. • Actions commenced in Small Claims Court in which damages are greater than \$10,000, with the excess amount waived to remain within the jurisdiction can be amended to reflect the damages incurred. |
| <p>Increase in Monetary Jurisdiction of Proceedings under Simplified Rules (<i>Rule 76.02(1)</i>)</p> | <p>Claims not exceeding \$50,000</p> | <p>Claims not exceeding \$100,000</p> | <ul style="list-style-type: none"> • Simplified rules follow a streamlined and formalized procedure which seeks to expedite court actions and reduce costs. • The majority of cases will now proceed under this stream. • It is possible to proceed under simplified rules on consent if claim is above \$100,000. |
| <p>Addition of Discoveries under Simplified Rules (<i>Rule 76.04(2)</i>)</p> | | <p>2 Hours of Examination for Discoveries Permitted</p> | <ul style="list-style-type: none"> • Time line is allotted regardless of the number of parties or complexity of proceedings and cannot be exceeded. |

| RULE | RULE PRIOR TO CHANGE | RULE AFTER JANUARY 1st 2010 | CONSEQUENCES AND CONSIDERATIONS FLOWING FROM RULE CHANGE |
|-----------------------------------------------------------------------------------------|----------------------|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Maximum Time for Examination for Discovery in Civil Matters <i>(Rule 31.05.1(1))</i> | No time limit | 7 Hours of Examination for Discovery Permitted | <ul style="list-style-type: none"> • This time limit seeks to expedite the discovery process by forcing lawyers to focus questions on the main issues, dispensing with peripheral questioning. • This timeline is a maximum time limit by any one party, except on consent or with leave of the court. • The time limit is effective regardless of the number of witnesses to be examined. |
| Expert's Duty to the Court Formalized and Codified <i>(Rule 4.1.01(1))</i> | | | <ul style="list-style-type: none"> • This rule seeks to reduce expert bias by codifying an overall objective duty owed by the expert to the court to provide specialized background knowledge, rather than advocating for one side subjectively. • The zone of confidentiality and privacy between parties and their experts is now reduced. Documents, draft reports, and conversations once protected by litigation privilege may not be subject to the same protection. • Information exchange prior to trial may now be producible and subject to cross examination. |
| Expert Report Requirements <i>(Rule 53.03)</i> | | | <ul style="list-style-type: none"> • Expert reports must now include the following: <ul style="list-style-type: none"> - A list of instruction provided to the expert in relation to the proceedings; - The nature of the opinion being sought from the expert; - The issues to which the expert opinion relates; - The reasons for the expert's opinion; - A list of any factual assumptions upon which the expert relied in formulating their opinion; - A description of any research conducted by the expert to arrive at their opinion; and - A list of the resources and documents relied on by the expert in arriving at their opinion • Expert reports are now due 90 days before pre-trial. Previously they were due 90 days before trial. |

**A Reminder:
We've Moved!**

On November 23, 2009, Kelly Santini LLP's downtown office moved to
160 Elgin St., Suite 2401, Ottawa, Ontario, K2P 2P7
Our telephone number remains 613-238-6321
Visit us online at www.kellysantini.com