

CIVIL JUSTICE REVIEW PROJECT FALL OUT: CHANGES IN LEGISLATION, THE RULES AND THE IMPACT ON PRACTITIONERS AND THEIR CLIENTS IN ONTARIO

SMALL CLAIMS COURT

Increased Jurisdiction

Regulation 626/00 changes the jurisdiction of the Small Claims Court in Ontario to \$25,000 as of January 1, 2010

There many good reasons for you and your clients to consider using the SCC:

1. Filing fees are cheaper: It is \$75 to file a claim and \$100 to set it down for trial. We are unaware of any anticipated increase to the fees.
2. Mandatory Settlement Conferences: Settlement Conferences (pre-trials) are held in every matter and are geared to encourage settlement. If the matter cannot be settled the judge should put the matter on track for trial by organizing witnesses, discussing evidentiary and procedural matters and ensuring that documents are exchanged. See Rule 13.
3. Costs: Costs are set out under Rule 19, and also under s. 29 of the Courts of Justice Act. Costs can be as much as 15% of the claim, or \$3750, which is not insignificant.
4. Deputy Judges: The judges of the Small Claims Court are practicing lawyers with at least 10 years experience at the bar. Many of the judges have been on the bench for a great number of years and have a very focused and practical approach to justice.

5. Rule 1.03(1): “These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits in accordance with section 25 of the Courts of Justice Act”. Section 25 reiterates that matters shall be determined summarily and “agreeable to good conscience”. In other words, Small Claims Court matters tend to be decided well and decided quickly.
6. Telephone Conferences: Rule 1.07(1) allows for telephone attendances at settlement conferences and motions, where properly requested and allowed by the judge. This is particularly helpful in more remote areas and for out of county matters.
7. Service of Documents: Rule 8 allows for service of claims, and most other documents, by regular mail. It is obviously more cost efficient.
8. Defendant’s Claims: It is often the case that the defendant has claims against the plaintiff or factors to consider for “set off”. Rule 10 allows for Defendant’s Claims to move easily with the main action.
9. Trials: Rules 17 and 18 allow for speedy and relatively informal trials. Note Rule 18.02(1) which allows a judge to exclude any documents the other side has not served at least 30 days before trial.
10. Enforcement: Rule 20 has all the same enforcement remedies as the Superior Court, such as writs, seizures, and garnishments. There are also contempt procedures available.

Impact on Practitioners and their Clients

The number of claims filed in SCC has decreased. In 2000 the number was 85,000 claims filed, in 2005 the number was 75,000 and in 2006-7 only 69,000 claims were filed. Certainly, one would expect a jump in those numbers given the vast increase in the size of the jurisdiction.

Historically, when the jurisdiction limit rose the length of the trial increased. The CJRP project noted that more time will be required from Deputy Judges and as an access to justice issue, consecutive trial days would be preferred. But, it may be difficult to get Deputy Judges willing to commit to additional consecutive days. This may be a matter to watch in the future.

