

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

MOTIONS AND PRE-TRIALS

Scheduling of Motions

All of the time periods in Rule 37 and 38 dealing with Motions and Applications have been expanded. For example, service of the Notice of Motion and Factum as well as filing of the Motion Record must take place seven days before the hearing (not three). The responding party must serve a Factum four days before the hearing (not two) and confirmation of the Motion form must be filed three days before the hearing (not two).

Pre-Trial Conferences

Many changes to Rule 50 were made to reflect the dual nature of pre-trial conferences: to attempt to settle the case and where the matter does not settle, to assist the court in proceeding with and scheduling a trial. The pre-trial is mandatory and parties must schedule with the Registrar a date and time acceptable to all within 180 days after the matter is set down for trial: Rule 50.02. If not done, the Registrar will select a date and time for you.

The parties must prepare a Pre-trial Conference Brief and file it with proof of service five days before the pre-trial. The Brief must contain statements about the nature of the proceeding, the issues raised, and the party's position and two other important factors: (1) the names of each witness the party is likely to call and the length of time each witness will testify and (2) the steps needed to be completed before the action is ready for trial and how long it will take to complete those steps.

The lawyers and parties must appear and participate in the pre-trial but can do so in some circumstances by telephone or video conference. The insurer of a defendant must be present: Rule 50.05(2).

The pre-trial Judge has the power to establish a time table and, subject to directions from the Regional Senior Judge, fix a date for the trial. The pre-trial Judge can also make orders with respect to the conduct of the proceeding including any Order that can be made under Rule 20.05 such as ordering the experts to meet and prepare joint statements after working out issues of agreement and disagreement.

Impact on Practitioners and their Clients

The mandatory attendance of parties at pre-trials will obviously incur additional costs for the parties themselves. It is difficult to know if every Family Law Act claimant need take time off work to attend a pre-trial with their injured family member but clearly the inclusion of insurance company representatives and those with "authority to settle" signal an intention to try and resolve matters early and before trial.

The requirement to list witnesses and length of testimony should assist the court in appropriately scheduling the length of trials and therefore, trial dates. This may create an alteration of current practices in various regions. In those jurisdictions where this is not common place, the additional cost to counsel and clients will be minimal.

