

October 1, 2008

The Civil Rules Committee has been engaged for the past number of months in reviewing the recommendations from the Civil Justice Reform Project, in considering their implementation and in settling on the amendments to the Rules of Civil Procedure that are necessary following on those recommendations.

The Civil Rules Committee, at its meeting on September 25, identified two of the proposed Rule amendments as being ones that should be circulated to various Bar organizations for comment. These specific Rule amendments were so identified because they were not expressly considered, at least not in their current form, as part of the formal recommendations of the Civil Justice Reform Project.

One proposal is for a new case management rule (Rule 77) that carries with it certain consequential amendments to the rule respecting mandatory mediation (Rule 24.1). The intention of the new case management rule is to combine the existing three Rules that involve different forms of case management (rule 37.15, Rule 77 & Rule 78) into one Rule. The new Rule is designed to be flexible enough to permit different Regions of the Province to adapt the case management process to fit the individual needs of each Region. In that regard, the new Rule does not propose or envisage any substantive change to the manner in which case management currently operates in Ottawa, Toronto or Windsor. The new Rule also allows for different levels of case management for different cases. The mandatory mediation rule is to be altered to make it a separately operating rule such that mandatory mediation can be required in cases without also requiring those cases to be subject to case management and vice versa. There is also more flexibility as to the timeframe within which mandatory mediation must occur under the amended Rule.

The other change is regarding oral examinations for discovery. It is proposed that rule 34.12 be changed so that a party that objects to a question asked at an examination for discovery will be required to answer the question notwithstanding the objection. Two exceptions to that requirement are made. One is for matters of privilege and the other is where the question asked is manifestly irrelevant. The purpose of this change is twofold. One purpose is to significantly reduce the number of motions on refusals arising from examinations for discovery. The other purpose is to facilitate the operation of the new rules that will presumptively limit each party to one day (seven hours) of discovery in regular cases and two hours of discovery in simplified procedure cases.

The Civil Rules Committee welcomes any comments on these proposals. If you have any such comments, you should forward them to one of the Bar organizations to which these proposals have been sent. A list of those Bar organizations is set out below. The deadline for these organizations to forward their comments is Friday, November 14, 2008.

[Law Society of Upper Canada](#)

[Ontario Bar Association](#)

[Advocates' Society](#)

[County & District Law Presidents' Association](#)

[Carleton Law Association](#)

[Essex Law Association](#)

[Toronto Lawyers Association](#)

[Ontario Trial Lawyers Association](#)