

NOTICE

COURT OF QUEEN'S BENCH OF MANITOBA

RE: AMENDMENT TO COURT OF QUEEN'S BENCH RULES

The following amendment will come into force on April 1, 2012:

Rule 20A – Expedited Actions

Rule 20A has been replaced with a new Rule 20A, which is intended to provide a simplified procedure for expedited actions.

The new Rule can be located on the Manitoba Courts website at www.manitobacourts.mb.ca/pdf/rule20a_dec2011.pdf

The new Rule applies to existing Rule 20A actions and actions commenced on or after April 1, 2012 where the relief claimed is a liquidated or unliquidated amount not exceeding \$100,000, exclusive of interest and costs. In other types of actions, a party may move to obtain an order that the new Rule applies.

The new Rule substantially changes the former Rule 20A. Some of the key changes are:

(a) Proportionality

Subrule (5), as follows, provides that the foundational principle is proportionality:

“Consistent with the principle of securing the just, most expeditious and least expensive determination of a proceeding, a judge is to make orders and give directions with respect to an expedited action that are proportionate to

(a) the nature of the action;

(b) the amount that is probably at issue in the action;

(c) the complexity of the issues involved in the action; and

(d) the likely expense of the action to the parties.”

(b) Powers of Case Conference Judge

Subrule (23) gives expanded powers to the case conference judge. A case conference judge may, on motion by any party or on his or her own motion, without materials being filed, make any interlocutory order or give any direction that he or she considers appropriate having regard to the principle of proportionality.

Subrule (24) provides that, without limiting the power under subrule (23), a case conference judge may, with respect to any motion, order that material be filed or that oral submissions be recorded.

Under subrule (26), if a case conference judge has made an order on the basis of unrecorded oral submissions, the case conference memorandum must include the order made and any explanation for the order.

Under subrule (28), an order made at a case conference need not be filed and is pronounced on the date of the memorandum.

Where an order is made by a case conference judge on the basis of recorded oral submissions, the form of order is to be prepared and submitted as provided for by Rules 59.03 and 59.04.

(c) Documentary Disclosure

Subrule (29) defines "relevant document" for the purpose of documentary disclosure in expedited actions as being:

“(a) a document referred to in the party’s pleading;

(b) a document to which a party intends to refer at the trial; or

(c) a document in a party’s control or possession or that once was in a party’s control or possession that could be used by any party at trial to prove or disprove a material fact, including a document that may show that a party is advancing a position that is not credible.”

(d) Examinations for Discovery and Interrogatories

Subrules (39), (40) and (41) place limits on examinations for discovery and interrogatories.

Under subrule (40), where the relief claimed is less than \$50,000:

- (i) no party may conduct an examination for discovery without leave of the case conference judge;
- (ii) leave will not be granted unless the party seeking to conduct the examination can demonstrate that there are exceptional circumstances that make it just, less expensive and more expeditious to conduct an examination for discovery;
- (iii) if leave is granted, the examination must not take longer than three hours; the case conference judge may extend the time if the party being examined unduly frustrated or obstructed the examination for discovery; and
- (iv) no interrogatories may be delivered without leave of the case conference judge.

Under subrule (41), where the relief claimed is \$50,000 or more:

- (i) each party has the right to an examination for discovery that does not exceed three hours in duration, unless extended by the case conference judge;
- (ii) the case conference judge may extend the time if the party being examined has unduly frustrated or obstructed the examination for discovery, or there are exceptional circumstances that make it just, less expensive and more expeditious to conduct an extended examination for discovery; and
- (iii) no interrogatories may be delivered without leave of the case conference judge.

Subrule (42) provides that there is no obligation to undertake to provide information at an examination for discovery unless production of the information sought is consistent with the principle of proportionality.

(e) Disclosure of Witnesses

Subrules (43) and (45) oblige parties to file with the court and serve on the other parties within 60 days after the close of pleadings or the completion of examinations for discovery (whichever is later) a list of the names of witnesses and their addresses, and a summary of the material evidence of the party and each proposed witness (other than an expert witness). As well, the party is to provide to the court and all other parties the names and addresses of all other persons who the party reasonably believes to have relevant knowledge of the matters at issue but who the party does not intend to call as witnesses.

Under subrule (44), the summary of a party's material evidence may be used in the same manner as an examination for discovery is used at trial.

Under subrule (46), a party is precluded from calling as a witness at trial a person whose name and evidence have not been provided as required under subrules (43) and (45) or as soon as practicable after the witness has been identified. Subrule (47) provides that instead of not allowing a witness to be called, the judge may order that the witness's testimony be limited.

(f) Sanctions

Subrules (52) and (53) provide that a case conference judge must make an order for costs or strike out a claim or defence when a party, without reasonable excuse, fails to obtain a case conference date from the trial coordinator, comply with a time limit imposed by the rule or abide by an order or direction of the case conference judge. Under subrule (53), such costs are to be fixed by the case conference judge and are payable immediately.

ISSUED BY:

Original signed by

**The Honourable Justice Karen I. Simonsen
Chair, Queen's Bench Statutory Rules Committee
(Manitoba)**

DATE: December 22, 2011