

NOTICE

COURT OF QUEEN'S BENCH OF MANITOBA

RE: AMENDMENTS TO COURT OF QUEEN'S BENCH RULES

Comprehensive rule amendments will come into force on January 1, 2018.

The key objectives of these amendments are proportionality and the timely and affordable access to justice.

The full text of the amendments, Manitoba Regulation No. 130/2017 can be located at: <http://web2.gov.mb.ca/laws/regs/annual/2017/130.pdf>

Coming into force in conjunction with the rule amendments is "Practice Direction – Comprehensive Amendments to Court of Queen's Bench Rules (Civil) Effective January 1, 2018", which explains some of the amendments and outlines practice directions with respect to pre-trial management and setting trial dates, transitional issues, case management and a form of alternative dispute resolution known as Neutral Evaluation.

This Practice Direction can be located on the Court's website at:

<http://www.manitobacourts.mb.ca/court-of-queens-bench/procedure-rules-and-forms/notices-and-practice-directions/>

Amendments have been made throughout the rules. Some of the key areas of change are as follows. Descriptions highlight important changes, but are not exhaustive of the amendments made to a particular rule.

Rule 1.04(1) – Proportionality

Applies to the Rules as a whole.

Rule 2.04 - Modification or Waiver of Rules

Judge may modify or waive rules.

Rule 4.09(1) – “B” file

More comprehensive description of documents in the “B” file.

Rule 7 - Parties Under Disability

Rule has been rewritten.

Rule 15.01.1 - Limited Retainer

Sets out procedure for where a lawyer is retained for a “limited purpose”.

Rule 20 - Summary Judgment

Many changes have been made in this area, consistent with the Supreme Court of Canada decision in *Hryniak v. Mauldin*, 2014 SCC 7.

Rule 20A - Expedited Actions

There will no longer be Rule 20A case conferences; rather, new Rule 50 (pre-trial management) will also apply to expedited actions.

Rule 24 - Dismissal of Action for Delay

New Rules including:

- An action or part of an action may be dismissed for delay if the delay results in significant prejudice.
- There is a rebuttable presumption of significant prejudice if the delay is inordinate and inexcusable.
- A delay is inordinate and inexcusable if it is unreasonable given the nature and circumstances of the case.
- Except in certain specified circumstances, an action may be dismissed for delay if there has not been a significant advance in the action for 3 years. Any period of time when a person is under disability is not included in calculating the 3 years. [A

motion for dismissal on the basis of 3 years' delay may only be brought after January 1, 2019.]

Rule 30.10(5) – Costs of Producing Document

Party must pay costs of a non-party for producing a document.

Rule 33.04(2) – Exception to Providing Medical Information for Physical or Mental Examination of a Party

Rule 34 - Examination out of Court

Amongst other amendments, new forms 34A and 34B are prescribed.

Rule 37 - Motions

New Rules for contested motions, including:

- Scheduling: parties file scheduling agreement within 7 days of service of moving party's brief OR moving party makes motion to establish schedule.
- Ultimate filing deadline: 7 days before hearing.
- Sanctions for non-compliance with schedule.

- Rule 50.04(2)(b): pre-trial conference judge seized of all motions except summary judgment motions; if a pre-trial conference has not yet been conducted, all motions within the jurisdiction of the master will be heard by the master.

Rule 38 - Applications

New Rules for contested applications, including:

- Time for service: 14 days before initial hearing date.
- Scheduling: default scheduling timelines OR parties may establish own schedule.
- Ultimate filing deadline: 7 days before hearing.
- Sanctions for non-compliance with schedule.

Rule 39 – Undertakings

Court may order a person being cross-examined on affidavit/examined as a non-party to provide information or documents, if an undertaking is refused or given.

Rule 48 - Setting Down for Trial

This Rule has been repealed. A new pre-trial management process provides for the setting of trial dates at the first pre-trial conference. However, the judge has a screening function to determine whether the pre-trial will proceed/take place; if it does not, trial dates will not be set.

As well, the setting of trial dates is governed by the Practice Direction.

Rule 49 - Offer to Settle

Clarification – a plaintiff who delays in accepting offer to settle is not entitled to costs incurred for continuing to proceed until the later acceptance of the offer.

Rule 50 - Pre-trial Management

Extensive changes have been made in this area. Again, details are outlined in the Practice Direction.

Rule 50.1 - Case Management

The Chief Justice or his designate may order that the parties attend a case management conference; the criteria for approval are set out in the rules. Case management applies to applications as well as actions.

Rule 53 - Evidence at Trial

New rules for evidence of expert witnesses.

Rule 57 - Award and Fixing of Costs

New factors for consideration of costs (reinforcing the principle of proportionality).

Rule 70 - Family Proceedings

Rule 70.17(2) reflects current practice whereby a family evaluator report must be placed on the “B” file.

Rule 70.18.1 provides that parts of Rule 20 (Summary Judgment), specifically the rules regarding scheduling, summary judgment conference and summary judgment motion judge to be the pre-trial and trial judge (Rules 20.02, 20.03, 20.04, 20.06, 20.09 and 20.10), do not apply in a family proceeding.

Additional rule changes are expected shortly to add rules in the area of judicial review, and to amend various rules to specifically provide that there should not be any production of documents not producible at law.

ISSUED BY:

“Original signed by”

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

DATE: October 16, 2017