



Simplified Procedure: Rule 76

Background

Rule 76 was introduced to the *Rules of Civil Procedure* in March 1996 as a pilot project. It was designed to deal with cost and delay issues by reducing the number of pretrial procedures in cases involving relatively small amounts.

The simplified procedure rule was implemented after extensive research and consultation. In 1993, a Simplified Procedure Subcommittee of the Civil Rules Committee reviewed the cost of litigation. It concluded that there should be some proportionality between the procedures available to pursue or defend a claim and the value of the claim. In 1995, Ontario's *Civil Justice Review* recommended the creation of an approach to litigation that, by removing many interlocutory procedures, would make litigation less expensive.

Rule 76 created a simplified procedure for actions under \$25,000. An independent evaluation concluded that Rule 76 resulted in more cost-efficient litigation, promoted the faster resolution of disputes, and resulted in the more economical use of judicial time in cases involving smaller monetary claims.

Based on this positive evaluation, Rule 76 became permanent in January 2001, and the monetary limit of the rule was increased to \$50,000 as of January 1, 2002. All civil cases in Ontario between \$10,000 (the upper range of Small Claims Court cases) and \$50,000 are subject to the simplified procedure under Rule 76.

Several changes have been made effective January 1, 2002 to further streamline Rule 76, thereby reducing the cost of litigation and the time to get to trial.

Key Features of Rule 76

- ✓ ***Mandatory for civil actions up to \$50,000***
- ✓ ***Cost consequences for failure to proceed under Rule 76***
- ✓ ***No discovery or cross-examination***
- ✓ ***Automatic dismissal for delay***
- ✓ ***Simplified procedure motion form (Form 76B)***
- ✓ ***Registrar shall dispose of certain motions on consent or where no responding material is filed***
- ✓ ***Lower threshold for summary judgment than Rule 20***
- ✓ ***Parties must attend pre-trial conference***
- ✓ ***Trial Management Checklist (Form 76D)***
- ✓ ***Summary trial procedure***

Summary of Rule 76

Application of Rule 76 (R. 76.01, 76.02)

Rule 76 is mandatory for all civil cases where the plaintiff's claim is for money, or real or personal property valued at \$50,000 or less, exclusive of interest and costs. The plaintiff must indicate in the statement of claim or notice of action that the action is being brought under this Rule.

The plaintiff may also elect to have Rule 76 apply to cases involving amounts in excess of \$50,000, unless the defendant objects in the statement of defence. Cases excluded from the rule are those under the *Class Proceedings Act*, the *Construction Lien Act*, and Rules 69 (divorce actions), 70 (family law proceedings), and 77 (case managed cases).

Cost Consequences (R. 76.13)

A key feature of Rule 76 is the cost consequence for failing to proceed, or refusing to agree to proceed under the rule. Where an action was not commenced under Rule 76 but should have been, the plaintiff shall not recover any costs, and the plaintiff may be required to pay all or part of the defendant's costs. Where the defendant objects to the simplified procedure on the ground that the claim exceeds \$50,000, and the court awards damages within the jurisdiction of Rule 76, the defendant may be ordered to pay the plaintiff's costs that would not have been incurred had the action proceeded under Rule 76.

No Discovery, or Cross-Examination on an Affidavit or Examination of a Witness (R. 76.04)

In all actions under Rule 76, no party may conduct an examination for discovery (whether oral or written) or cross-examine a deponent of an affidavit or examine a witness on a motion. As a result, litigants are spared the cost and time involved in discovery related procedures.

Automatic Dismissal by Registrar for Delay (R. 76.06)

As of January 1, 2002, the automatic dismissal provisions in Rule 76 apply province-wide.

The registrar is authorized to automatically dismiss an action where:

- No statement of defence has been filed, and:
 - more than 180 days have passed since the action was filed;
 - the action has not been disposed of by final order or set down for trial; and
 - the registrar has given 45 days notice of the dismissal.
- The action is defended, and:
 - more than 150 days have passed since the filing of the first statement of defence or notice of intent to defend;
 - the action has not been disposed of by final order or set down for trial; and
 - the registrar has given 45 days notice of the dismissal.

Summary Judgment (R. 76.07(1))

The threshold for granting summary judgment is lower than that under Rule 20 (summary judgment). The judge shall grant summary judgment unless he or she is unable to decide the issues without cross-examination or it would be otherwise unjust to decide the issues on the motion.

Affidavit of Documents (R. 76.03)

In addition to the requirements for delivery of an affidavit of documents set out in Rule 30 (discovery of documents), a party's affidavit of documents must include a list of the names and addresses of persons who might be expected to have knowledge of matters at issue in the action. A party will not be permitted to call a witness who is not listed in the affidavit of documents.

Motions (R. 76.05)

Effective January 1, 2002, Form 76B, the simplified procedure motions form, must be served and submitted to the court before a motion is heard. A motion can be made without supporting material or a motion record, unless otherwise required by the rules. A motion can be

made by attendance, in writing, by fax or under R. 1.08 (by telephone and video conferences).

The registrar shall make certain orders where:

- The motion is on consent, the consent of all parties is filed, and the consent states that no person affected by the order is under disability; or
- No responding material is filed and the moving party's material indicates that no party affected by the order is under disability.

Where the above conditions are met, the registrar shall make the following orders:

- Amendment of a pleading or notice of motion;
- Addition, deletion or substitution of a party whose consent is filed;
- Removal of a solicitor as solicitor of record;
- Setting aside the noting of a party in default;
- Setting aside a default judgment;
- Discharge of a certificate of pending litigation;
- Security for costs in a specified amount; and
- Dismissal of a proceeding with or without costs.

The disposition of the motion will be recorded on Form 76B, and in most instances, no formal order will be required.

Settlement Discussion and Documentary Disclosure (R. 76.08)

Within 60 days after the first defence is filed, the parties shall consider, in a meeting or telephone call, whether all documents relevant to the case have been disclosed and canvas settlement of the issues.

Pre-Trial Conference & Setting Action Down for Trial (R. 76.09, 76.10)

An action is set down for trial by serving and filing a Notice of Readiness for Pre-Trial Conference (Form 76C). The party setting the action down for trial must certify that there was a settlement discussion.

The Notice of Readiness for Pre-Trial Conference must be served and filed by the plaintiff within 90 days after the first defence is filed, causing a pre-trial to be scheduled.

Before the pre-trial, each party must deliver a two-page statement setting out the issues and the parties' position, along with the Trial Management Checklist (Form 76D). Form 76D requires the parties to list all outstanding issues, identify the witnesses and address other pre-trial issues. This will assist in narrowing the issues for trial.

Pre-trial conferences are mandatory. The pre-trial rule has been amended effective January 1, 2002 to require a party and his or her lawyer to participate in the pre-trial conference in person, or by telephone or by video conference if personal attendance requires undue travel or expense.

At the pre-trial conference, the parties may agree to proceed by way of ordinary trial or summary trial. Where the parties do not agree, the pre-trial judge or master shall determine how the trial will proceed.

At the conclusion of the pre-trial, and if the matter does not settle, a date is fixed for the trial.

Summary Trial (R. 76.12)

A summary trial procedure exists for Rule 76 actions, which limits the duration of the trial. In a summary trial, the parties may only introduce evidence of a witness by way of affidavit, and each party must complete all of its cross-examinations within 50 minutes. Also, oral arguments are limited to 45 minutes for each party.

Information about other civil justice initiatives is available on the Ministry of the Attorney General web site at:
www.attorneygeneral.jus.gov.on.ca/html/SERV/serccm.htm
The text of the Rules of Civil Procedure may be obtained at:
www.e-laws.gov.on.ca or
www.ontariocourts.on.ca

STEPS IN A RULE 76 ACTION

