

CLIENT ALERT

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CHANGES TO THE RULES OF CIVIL PROCEDURE: EMBRACING CHANGES FROM COVID-19 TO BEGIN MODERNIZING LITIGATION IN ONTARIO

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COVID-19 required Ontario Courts to adopt temporary measures to quickly modernize the court system. This included implementing virtual hearings, piloting the new CaseLines online platform, and permitting service by email.

On November 30, 2020, the Attorney General of Ontario announced changes to *the Rules of Civil Procedure (the "Rules")* effective January 1, 2021. These long-overdue changes implemented many of the temporary measures which the Court put in place for COVID-19. The new *Rules* are a strong step toward modernizing courts in Ontario and making the justice system more accessible by providing electronic options for various aspects of court proceedings.

The changes will permanently allow parties to attend court, commission affidavits, and serve and file documents virtually. These changes are a strong step forward in getting the Superior Court system caught up to the technological and practical realities with which we have been living for quite some time.

For clients reading this, there is one important takeaway: **These changes will reduce legal fees and related costs.**

Here are some highlights of the latest amendments to the *Rules*:

- Videconference Hearings are the New Normal – Due to COVID-19, hearings have been successfully conducted by video conference for months. With these changes to the *Rules*, videconference hearings should become the predominant way to conduct hearings, pre-trials, case conferences, and any other step for which there is no good case for an in-person hearing. The *Rules* will now impose cost consequences for any party who objects to a virtual hearing without good reason. Perhaps the most significant benefit of going virtual is that hearings will become less expensive for clients. That is, virtual hearings will result in fewer travel fees passed on to clients, including long-distance travel to regional courthouses and travel fees from the office to the courthouse. Additionally, a client whose matter is, for instance, number nine on the docket will no longer have to pay to have counsel sit through the first eight matters waiting for the client's matter to be called.
- In 2021, Email Finally Becomes the Gold Standard – The changes to the *Rules* allow for service of documents (other than originating documents) by email and allows court staff to communicate and send certified court documents by email.
 - » This change could mean the end of printing and binding multiple copies of the same document, with specific front and back coloured pages, leaving them at reception or the mailroom for a process server to pick up and physically delivering them to another law firm down the street.
 - » Orders and Judgments can now be issued and entered electronically, which means counsel does not have to wait for a physical copy to be retrieved by a process server at the counter.

- The Fax Machine Industry Suffered a Devastating Blow – The option in the *Rules* to serve documents by fax was one of the last places of refuge for the ancient technology. The new *Rules* delete all references to faxing documents and its removal may save law firms tens, if not hundreds of dollars, for maintaining fax numbers and subscriptions to digital fax services.
- Virtual Commissioning Is Here to Stay - In-person commissioning of affidavits is no longer required. The *Rules* now recognize that this authentication process can be achieved without the commissioner and deponent being in the physical presence of each other, in accordance with the *Commissioners for Taking Affidavits Act*. Remote commissioning offers the same level of authenticity without the need to travel to meet the deponent or arrange a meeting at the lawyer's office.

There is still some way to go before the Superior Court system is fully modernized. These changes are a good start and show a willingness to adapt rather than continue doing things one way because that's how they have always been done.

Below is a complete list of the upcoming changes. The text of the amendments to the *Rules* can be found at [O. Reg. 689/20: Rules of Civil Procedure](#).

Rules 1.08 and 1.08.1 are revoked:

- The new rule 1.08 allows a party seeking a hearing or other step in a proceeding to specify the method of the hearing or step. The method can be in person, by telephone conference, or by video conference. Case conferences will be held by phone unless the court specifies otherwise. Rule 1.08 does not apply to proceedings in the Court of Appeal.
- Objections to the proposed method must be delivered within a specified timeframe. These objections are dealt with through a case conference. If no objection is filed, parties are deemed to have agreed to the proposed method, unless the court directs otherwise.
- At the case conference dealing with the objection, the court decides the mode of the hearing or step by taking into consideration factors such as availability of telephone or video conference facilities, the ability to make findings about a witness' credibility, and the balance of convenience between the parties.
- The new subrule 57.01 (1) provides that cost consequences may be incurred if a party unreasonably objects to a proceeding by telephone or video conference.
- Rule 1.08 applies with modifications to mediations and oral examinations for discovery.

Rule 4.01 is revoked:

- The new rule 4.01 indicates that the text and character standards for paper documents apply to electronic documents.
- The new rule 4.01.1 permits electronic signatures on documents to be signed by the court, a registrar, a judge, or an officer.

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Clauses 4.02 (3) (f)-(h) are amended:

- The new clauses remove any reference to fax numbers.

Rule 4.03 is revoked:

- The new subrule 4.03 (2) allows the registrar to provide a certified copy of court documents in electronic format. The printed version of the electronic certified copy satisfies the requirement to provide the document to another person in paper format.

Subrule 4.05 (1.1) is revoked:

- The new subrule permits any document to be issued electronically. The date of electronic issuance is the date indicated on the document by the registrar or authorized software.

Rule 4.05.3 is amended:

- The new rule adds specifications about submitting documents to the court through CaseLines, the authorized case management software. Submitting documents to CaseLines does not amount to filing or service under the rules.

Clause 4.06 (1) (e) is amended:

- The clause now allows for the electronic commissioning of affidavits.

Rule 4.09 is amended:

- The rule adds that transcripts are to be provided in electronic format unless the court orders otherwise. This does not apply to proceedings in the Court of Appeal.

Rule 4.12 is added:

- The rule allows the court or registrar to provide documents and to communicate by email.

Subclauses 16.01 (4) (b) (iv) and 16.05 (1) (f) are amended:

- The service of documents, other than originating processes, can now be served by email without the need for the parties' consent or a court order.
- Subrule 16.09 (6) is revoked and no longer requires parties to prove service by email with a certificate of service.

Rule 16.06.2 is added:

- The rule provides details on when service of a document by courier becomes effective.

Subrule 37.12.1 (4) is amended:

- The subrule allows a moving party to propose that a motion be heard in writing without the attendance of parties, even if the issues of fact and law are complex.

Clause 51.01 (c) is amended:

- The clause no longer defines the authenticity of a document by reference to a copy of a telegram. The clause adds that a copy of an email is an authentic document.

Rule 59.02 is revoked:

- Subrule (2) indicates that if an endorsement of an order is made on a separate document, that document may be in electronic format.

Subrules 59.03 (1) and (3) are revoked:

- The new subrules make changes to the preparation and form of an order.

Rule 59.04 is revoked:

- The new rule allows for the electronic issuance of orders. An issued order can be provided by email, through CaseLines, or by pickup.

Rule 59.05 is revoked:

- The new rule makes changes to how orders are entered and filed. The register must enter the issued order by saving a copy of it in electronic format.

Rule 61.03 is amended:

- The new subrules (2.1) and (3.1) require that if filing is done electronically, only one copy of a motion record, factum, or transcript needs to be filed.

General changes:

- Several subrules in rules 16, 37, and 38, which deal with service and delivery by fax, are amended or revoked. See: 16.05 (1) (d), 16.05 (3), 16.05 (3.2), 16.06.1 (1) (a), 37.10.1 (1) (b), 37.10.1 (2) (b), 37.10.1 (3) (b), 38.09.1 (1) (c), 38.09.1 (3) (b).
- Several subrules are amended to remove reference to the "place" of hearing of motions, removing the assumption that hearings will occur in certain locations. See: 37.15 (1), 38.11 (2) (b), 60.17 (b), 62.01 (6).
- Several rules no longer assume that participation in person is required. See: 37.03, 38.03 (1.1), 50.05 (1), 50.13 (2), 54.05 (2), 76.05 (2).

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