

## New BC Supreme Court Civil Rules - Some Initial Thoughts

*July 8th, 2009*

As I posted yesterday, the BC Government has announced a full overhaul of the current BC Supreme Court Rules to take effect on July 1, 2010. You can click here to read a full copy of the new Rules. These new rules will apply to all BC Personal Injury and ICBC Claims prosecuted in the Supreme Court after they come into force.

I've now had a chance to review these new Rules in their entirety. The first thing I noticed is that most of the new Rules are similar if not identical to the current ones in their wording. This is very important as the countless precedents built up over the years interpreting the current rules should still be of significant assistance when applied to the new rules.

More than anything else, the new Rules are organized in a far better fashion than the current BC Supreme Court Rules. This improvement is more coherent and logical and should make them easier to get through for people unfamiliar with Supreme Court Procedure.

In addition to improved organization, there are some significant changes made to the substance of these Rules. None of these changes jumped out at me as particularly concerning for personal injury litigation and surprisingly the overall changes seem to be for the better.

For today's post I'll illustrate one example. The current BC Supreme Court Rules have 2 competing 'fast track litigation' rules. Rule 66 and Rule 68. These rules both have some significant advantages and significant shortcomings for litigants. These rules overlap and litigants wishing to take advantage of fast track litigation procedures are forced to choose between the 2 rules relative strengths and weaknesses.

Under the New Civil Rules these have been replaced with one "fast track litigation" rule. This can be found in Part 15 of the new rules.

Rule 15, in my opinion, takes the best aspects of Rule 66 and 68 and leaves out most of their shortcomings. Rule 15, like Rule 68, applies to cases below \$100,000. It also applies to cases that can be completed in 3 days or less and this appears to be independent of the claims value. This rule does away with the cumbersome 'will say' requirement of Rule 68 and allows 2 hour examinations for discovery. This rule also increases the minimal costs allowable under Rule 66 and permits costs awards more reflective of conventional litigation in the BC Supreme Court. The Rule also does away with the 'one expert' limit of Rule 68 which to date has kept most BC personal injury lawyers from using the rule.

Below I reproduce the new Rule 15 in full. I'd be interested in the thoughts of other BC Injury Lawyers about the apparent improvements in this rule over our current fast track rules 66 and 68.

### **RULE 15-1 – FAST TRACK LITIGATION**

#### **When rule applies**

(1) Subject to subrule (4) and unless the court otherwise orders, this rule applies to an action if

(a) the only claims in the action are for one or more of money, real property, a builder's lien and personal property and the total of the following amounts is \$100,000 or less, exclusive of interest and costs:

(i) the amount of any money claimed in the action by the plaintiff for pecuniary loss;

(ii) the amount of any money to be claimed in the action by the plaintiff for non-pecuniary loss;

(iii) the fair market value, as at the date the action is commenced, of

(A) all real property and all interests in real property, and

(B) all personal property and all interests in personal property claimed in the action by the plaintiff,

(b) the trial of the action can be completed within 3 days,

(c) the parties to the action consent, or

(d) the court, on its own motion or on the application of any party, so orders.

#### **Subsequent filings**

(2) If this rule applies to an action,

(a) any party may file a notice of fast track action in Form 61, and

(b) the words "Subject to Rule 15-1" must be added to the style of proceeding, immediately below the listed parties, for all documents filed after the notice of fast track action is filed under paragraph (a) or the court order is made under subrule (1) (d), as the case may be.

#### **Damages not limited**

(3) Nothing in this rule prevents a court from awarding damages to a plaintiff in a fast track action for an amount in excess of \$100,000.

#### **Rule does not apply to class proceedings**

(4) This rule does not apply to a class proceeding within the meaning of the Class Proceedings Act.

#### **Conflict**

(5) These Supreme Court Civil Rules apply to a fast track action but in the event of a conflict between this rule and another rule, this rule applies.

#### **When rule ceases to apply**

(6) This rule ceases to apply to a fast track action if the court, on its own motion or on the application of any party, so orders.

### **Case planning conference required**

(7) Subject to subrule (8), a party to a fast track action must not serve on another party a notice of application or an affidavit in support of an application unless a case planning conference or a trial management conference has been conducted in relation to the action.

### **Exception**

(8) Subrule (7) does not apply to an application made

(a) for an order under subrule (6) that this rule cease to apply to the action,

(b) to obtain leave to bring an application referred to in subrule (9),

(c) under Rule 9-5, 9-6 or 9-7,

(d) to add, remove or substitute a party, or

(e) by consent.

### **Court may relieve**

(9) On application by a party, a judge or master may relieve a party from the requirements of subrule (7) if

(a) it is impracticable or unfair to require the party to comply with the requirements of subrule (7), or

(b) the application referred to in subrule (7) is urgent.

### **Trial to be without jury**

(10) A trial of a fast track action must be heard by the court without a jury.

### **Oral discovery**

(11) Unless the court otherwise orders, in a fast track action the examinations for discovery of a party of record, including any person referred to in Rule 7-2 (1) (b) who is examined in relation to that party of record, by all parties of record who are adverse in interest must not, in total, exceed in duration

(a) 2 hours, or

(b) any greater period to which the person to be examined consents.

### **When discoveries must be completed**

(12) Unless the court otherwise orders or the parties to the examination consent, all examinations for discovery in a fast track action must be completed at least 14 days before the scheduled trial date.

### **Setting of trial date**

(13) If a party to a fast track action applies for a trial date within 4 months after the date on which this rule becomes applicable to the action, the registrar must set a date for the trial that is not later than 4 months after the application for the trial date.

### **If trial will require more than 3 days**

(14) If, as a result of the trial management conference in a fast track action, the trial management conference judge considers that the trial will likely require more than 3 days, the trial management conference judge

(a) may adjourn the trial to a date to be fixed as if the action were not subject to this rule, and

(b) is not seized of the action.

### **Costs**

(15) Unless the court otherwise orders or the parties consent, and subject to Rule 14-1 (10), the amount of costs, exclusive of disbursements, to which a party to a fast track action is entitled is as follows:

(a) if the time spent on the hearing of the trial is one day or less, \$8,000;

(b) if the time spent on the hearing of the trial is 2 days or less but more than one day, \$9,500;

(c) if the time spent on the hearing of the trial is more than 2 days, \$11,000.

### **Settlement offers**

(16) In exercising its discretion under subrule (15), the court may consider an offer to settle as defined in Rule 9-1.

### **Taxes to be added to costs**

(17) If tax is payable by a party to a fast track action in respect of legal services, an additional amount to compensate for that tax must be added to the costs to which the party is entitled under subrule (15), which additional amount must be determined by multiplying the amount of costs to which the party is entitled under subrule (15) by the percentage rate of the tax.