

## **RULE 75.1**

### **SIMPLIFIED PROCEDURE**

#### **APPLICATION OF RULE**

- 75.1.01(1)** The simplified procedure set out in this Rule does not apply to:
- (a) actions under the *Mechanics Lien Act*;
  - (b) actions under the *Family Law Act*;
  - (c) actions under the *Divorce Act*;
  - (d) actions under the jurisdiction of the Small Claims Section of the Supreme Court as provided for in s-s.15(1) of the *Judicature Act*;
  - (e) actions arising out of a personal injury or contract of insurance related thereto.

#### **Application of Other Rules**

- (2) The rules that apply to an action apply to an action that is proceeding under this Rule, unless this Rule provides otherwise.

#### **AVAILABILITY OF SIMPLIFIED PROCEDURE**

##### **When Mandatory**

- 75.1.02(1)** The procedure set out in this Rule shall be used in an action if the following conditions are satisfied:
- (a) The plaintiff's claim is exclusively for one or more of the following:
    - (i) Money.
    - (ii) Real Property.
    - (iii) Personal Property.
  - (b) The total of the following amounts is \$25,000 or less, exclusive of interests and costs:
    - (i) The amount of money claimed, if any,
    - (ii) The fair market value of any real property and of any personal property, as at the date the action is commenced.
- (2) If there are two or more plaintiffs, the procedure set out in this Rule shall be used if each plaintiff's claim, considered separately, meets the requirements of subrule (1).

##### **When Optional**

- (3) Subject to Rule 75.1.01(1), the procedure set out in this Rule may be used in any other action at the option of the plaintiff, subject to subrules (4) to (10).

##### **Originating Process**

- (4) The statement of claim (Form 14A, 14B or 14D) or notice of action

(Form 14C) shall indicate that the action is being brought under this Rule.

**Action Continues to Proceed Under Rule**

- (5) An action commenced under this Rule continues to proceed under this Rule unless,
- (a) the defendant objects in the statement of defence to the action proceeding under this Rule because the plaintiff's claim does not comply with subrule (1), and the plaintiff does not abandon in the reply the claims or parts of claims that do not comply; or
  - (b) a defendant by counterclaim, crossclaim or third party claim objects in the statement of defence to the counterclaim, crossclaim or third party claim proceeding under this Rule because the counterclaim, crossclaim or third party claim does not comply with subrule (1), and the defendant does not abandon in the reply to the counterclaim, crossclaim or third party claim the claims or parts of claims that do not comply.

**Continuance Under Ordinary Procedure – Where Notice Required**

- (6) If an action commenced under this Rule may no longer proceed under this Rule because of an amendment to the pleadings or as a result of the operation of subrule (5),
- (a) the action is continued under the ordinary procedure; and
  - (b) the plaintiff shall deliver, after all the pleadings have been delivered or at the time of amending the pleadings, as the case may be, a notice (Form 75.1A) stating that the action and any related proceedings are continued as an ordinary action.

**Continuance Under Simplified Procedure – Where Notice Required**

- (7) An action that was not commenced under this Rule is continued under this Rule if,
- (a) the consent of all the parties is filed; or
  - (b) no consent is filed but,
    - (i) the plaintiff's pleading is amended to comply with subrule (1), and
    - (ii) all other claims, counterclaims, crossclaims and third party claims comply with this Rule.
- (8) The plaintiff shall deliver a notice (Form 75.1A) stating that the action and any related proceedings are continued under this Rule.

**Effect of Abandonment**

- (9) A party who abandons a claim or part of a claim or amends a pleading so that the claim, counterclaim, crossclaim or third party claim complies with subrule (1) may not bring the claim or part in any other proceeding.

### **Motion for Transfer of Proceeding**

- (10)(a) Any party to a proceeding under this Rule, may make a motion in accordance with Rule 37.07 for an order that the proceeding be heard and determined in accordance with the general Rules of Court, instead of in accordance with Rule 75.1.
- (b) On a motion under subrule (1)(a), the court may consider the following factors:
- (i) the nature of the claim being made;
  - (ii) the complexity of the proceeding;
  - (iii) the nature of evidence usually required or presented in such a proceeding;
  - (iv) the extent to which the fairness or efficiency of the trial may be affected by:
    - a. the unavailability of pre-trial discovery as prescribed by Rule 75.1.04;
    - b. the limitations placed on the presentation and cross-examination of witnesses prescribed by Rule 75.1.11;
    - c. whether the issues to be tried may be those with respect to which expert evidence is ordinarily called or may be of assistance to the court;
    - d. the likelihood and nature of the consequences to the parties beyond the relief claimed in the action;
    - e. the extent to which the determination of issues in the action may involve the assessment of the credibility of witnesses;
    - f. the costs consequences of removing the proceeding from the application of Rule 75.1;
    - g. any other relevant matter.
- (c) Subrule 10(1) applies, with necessary modifications, to a counterclaim, cross-claim or third party claim.

### **AFFIDAVIT OF DOCUMENTS**

#### **Copies of Documents**

- 75.1.03(1)** A party to an action under this Rule shall, within 30 days after the close of pleadings and at the party's own expense, serve on every other party,
- (a) an affidavit of documents (Form 30A or 30B) disclosing to the full extent of the party's knowledge, information and belief all documents relating to any matter in issue in the action that are or have been in the party's possession, control or power; and
  - (b) copies of the documents referred to in Schedule A of the affidavit of documents.

### **List of Potential Witnesses and Witness Statements**

- (2) Unless the court otherwise orders, the affidavit of documents shall include,
  - (a) a list of the names and addresses of persons who might reasonably be expected to have knowledge of matters in issue in the action; and
  - (b) a summary of the substance of the evidence to be given by each witness, including experts, that a party intends to have give evidence at trial whether orally or by affidavit.

### **Effect of Failure to Disclose**

- (3) At the trial of the action, unless the court otherwise orders,
  - (a) a party may not call as a witness a person whose name has not been disclosed in the party's affidavit of documents or any supplementary affidavit of documents; and
  - (b) a witness may not give evidence on direct examination or by affidavit that differs substantially or materially from that which was indicated in the summary provided pursuant to subrule (2).

### **Lawyer's Certificate**

- (4) The lawyer's certificate under subrule 30.03(4) (full disclosure in affidavit) shall include a statement that the lawyer has explained to the deponent the necessity of complying with subrules (1) and (2).

### **NO DISCOVERY, CROSS-EXAMINATION ON AN AFFIDAVIT OR EXAMINATION OF WITNESS**

**75.1.04** The following are not permitted in an action under this Rule:

- (a) Examination for discovery under Rule 31.03 or 31.10.
- (b) Examination for discovery by written questions and answers under Rule 35.
- (c) Cross-examination of a deponent on an affidavit under Rule 39.02.
- (d) Examination of a witness on a motion under Rule 39.03.

### **MOTIONS**

#### **Motion Form**

**75.1.05(1)** The moving party shall serve a motion form (Form 75.1B) in accordance with Rule 37.07 and shall submit it to the court before the motion is heard.

#### **Procedure**

- (2) Depending on the practical requirements of the situation, the motion may be made,
  - (a) with or without supporting material or a motion record;
  - (b) by attendance, in writing, by fax or under Rule 1.07 (telephone)

and video conferences).

### **Motions Dealt With By Prothonotary**

- (3) When a motion described in subrule (5) meets one of the following conditions, the prothonotary shall make an order granting the relief sought:
  - (a) The motion is for an order on consent, the consent of all parties is filed and the consent states that no party affected by the order is under disability.
  - (b) No responding material is filed and the notice of motion or the motion form states that no party affected by the order is under disability.
- (4) Subrule (3) applies to a motion for
  - (a) amendment of a pleading or notice of motion;
  - (b) addition, deletion or substitution of a party whose consent is filed;
  - (c) removal of a solicitor as solicitor of record;
  - (d) setting aside the noting of a party in default;
  - (e) setting aside a default judgment;
  - (f) discharge of a certificate of pending litigation;
  - (g) security for costs in a specified amount; or
  - (h) dismissal of a proceeding with or without costs.

### **Disposition**

- (5) The court or the prothonotary shall record the disposition of the motion on the motion form.
- (6) No formal order is required unless
  - (a) the court or prothonotary orders otherwise;
  - (b) an appeal is made to a judge; or
  - (c) an appeal or motion for leave to appeal is made to an appellate court.

## **DISMISSAL BY PROTHONOTARY**

### **If no Defence Filed**

- 75.1.06(1)** The prothonotary shall make an order dismissing an action as abandoned if the following conditions are satisfied, unless the court orders otherwise:
- (a) More that 180 days have passed since the date of the originating process was issued.
  - (b) No statement of defence has been filed.
  - (c) The action has not been disposed of by final order or judgment.

- (d) The action has not been set down for trial or summary trial.
- (e) The registrar has given 45 days notice that the action will be dismissed as abandoned.

#### **If Defence Filed**

- (2) The prothonotary shall make an order dismissing an action as abandoned if the following conditions are satisfied, unless the court orders otherwise:
  - (a) More than 150 days have passed since the filing of the first statement of defence or notice of intent to defend.
  - (b) The action has not been disposed of by final order or judgment.
  - (c) The action has not been set down for trial or summary trial.
  - (d) The registrar has given 45 days notice that the action will be dismissed as abandoned.

#### **Service on Parties**

- (3) The registrar shall serve a copy of the order made under subrule (1) or (2) on the parties.

#### **Effect on Subsequent Action**

- (4) The dismissal of an action as abandoned has the same effect as a dismissal for delay under Rule 24.05.

### **SUMMARY JUDGMENT**

#### **Where Available**

- 75.1.07**(1) After the close of pleadings, a party may move before a judge with supporting affidavit material for summary judgment.

#### **Application of Summary Judgment Procedure**

- (2) Rules 20.02 to 20.09 apply to the motion.

### **SETTLEMENT DISCUSSION AND DOCUMENTARY DISCLOSURE**

- 75.1.08** Within 60 days after the filing of the first statement of defence or notice of intent to defend, the parties shall, in a meeting or telephone call, consider whether

- (a) all documents relating to any matter at issue have been disclosed; and
- (b) settlement of any or all issues is possible.

### **PRE-TRIAL CONFERENCE**

#### **Notice**

- 75.1.09**(1) The registrar shall serve notice of a pre-trial conference at least 45 days before the scheduled date.

#### **Attendance**

- (2) A party and his or her lawyer shall, unless the court orders otherwise, participate in the pre-trial conference

- (a) by personal attendance; or
- (b) under Rule 1.07 (telephone and video conferences) if personal attendance would require undue amounts of travel time or expense.

#### **Authority to Settle**

- (3) A party who requires another person's approval before agreeing to a settlement shall, before the pre-trial conference, arrange to have ready telephone access to the other person throughout the conference, whether it takes place during or after regular business hours.

#### **Documents**

- (4) At least five days before the pre-trial conference, each party shall
  - (a) file
    - (i) a copy of the party's affidavit of documents and copies of the documents relied on for the party's claim or defence,
    - (ii) a copy of any expert report, and
    - (iii) any other material necessary for the conference;
  - (b) deliver
    - (i) a two-page statement setting out the issues and the party's position with respect to them, and
    - (ii) a trial management checklist (Form 75.1C).

#### **Trial Date**

- (5) The pre-trial conference judge or the registrar shall fix a date for trial.

#### **Mode of Trial**

- (6) The parties may agree that the trial shall be an ordinary trial or a summary trial under Rule 75.1.11; if they do not agree, the pre-trial conference judge shall determine the mode of trial that is appropriate in all the circumstances.
- (7) If the trial is to be a summary trial under Rule 75.1.11, the pre-trial conference judge
  - (a) shall set a timetable for the delivery of all the parties' affidavits; and
  - (b) may vary the order and time of presentation.

### **PLACING DEFENDED ACTION ON TRIAL LIST**

#### **Registrar**

- 75.1.10(1)** The registrar shall place a defended action on the appropriate trial list immediately after the pre-trial conference.

#### **Trial Record**

- (2) At least 10 days before the date fixed for trial, the party who set the action down for trial shall serve a trial record on every party to the

action and any counterclaim, crossclaim or third party claim, and file the record with proof of service.

- (3) In the case of an ordinary trial, the trial record shall be prepared in accordance with Rule 48.03.
- (4) In the case of a summary trial under Rule 75.1.11, the trial record shall contain, in consecutively numbered pages arranged in the following order:
  - (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
  - (b) a copy of the pleadings, including those relating to any counterclaim, crossclaim or third party claim;
  - (c) a copy of any demand or order for particulars of a pleading and the particulars delivered in response;
  - (d) a copy of any order respecting the trial;
  - (e) a copy of all the affidavits served by all the parties for use on the summary trial; and
  - (f) a certificate signed by the solicitor of the party filing the trial record, stating that it contains the documents described in clauses (a) to (e).

## **SUMMARY TRIAL**

### **Procedure**

- 75.1.11(1)** At a summary trial, the evidence and argument shall be presented as follows, subject to any direction under subrule 75.1.09(7):
- (a) The plaintiff shall adduce evidence by affidavit.
  - (b) A party who is adverse in interest may cross-examine the deponent of any affidavit served by the plaintiff.
  - (c) The plaintiff may re-examine any deponent who is cross-examined under this subrule for not more than 10 minutes.
  - (d) When any cross-examinations and re-examinations of the plaintiff's deponents are concluded, the defendant shall adduce evidence by affidavit.
  - (e) A party who is adverse in interest may cross-examine the deponent of any affidavit served by a defendant.
  - (f) A party shall complete all of the party's cross-examinations within 50 minutes.
  - (g) A defendant may re-examine any deponent who is cross-examined under this subrule for not more than 10 minutes.
  - (h) When any cross-examinations and re-examinations of the defendant's deponents are concluded, the plaintiff may, with leave of the trial judge, adduce any proper reply evidence.

- (i) After the presentation of evidence, each party may make oral argument for not more than 45 minutes.
- (2) The trial judge may extend a time provided in subrule (1).
- (3) A party who intends to cross-examine the deponent of an affidavit at the summary trial shall, at least 10 days before the date fixed for trial, give notice of that intention to the party who filed the affidavit, who shall arrange for the deponent's attendance at the trial.

#### **Judgment after Summary Trial**

- (4) The judge shall grant judgment after the conclusion of the summary trial.

### **COSTS CONSEQUENCES**

#### **Opting In**

- 75.1.12(1)** Regardless of the outcome of the action, if this Rule applies as the result of amendment of the pleadings under subrule 75.1.02(7), the party whose pleadings are amended shall pay, on a substantial indemnity basis, the costs incurred by the opposing party up to the date of the amendment that would not have been incurred had the claim originally complied with subrule 75.1.02(1), unless the court orders otherwise.

#### **Plaintiff Denied Costs**

- (2) Subrules (3) to (9) apply to a plaintiff who obtains a judgment that satisfied the following conditions:
  - (a) The judgment awards exclusively one or more of the following:
    - (i) Money.
    - (ii) Real property.
    - (iii) Personal property.
  - (b) The total of the following amounts is \$25,000 or less, exclusive of interest and costs:
    - (i) The amount of money awarded, if any;
    - (ii) The fair market value of any real property and of any personal property awarded, as at the date the action is commenced.
- (3) The plaintiff shall not recover any costs unless
  - (a) the action was proceeding under this Rule at the commencement of the trial; or
  - (b) the court is satisfied that it was reasonable for the plaintiff
    - (i) to have commenced and continued the action under the ordinary procedure, or
    - (ii) to have allowed the action to be continued under the ordinary procedure, by not abandoning claims or parts of claims that do not comply with subrule 75.1.02(1).

- (4) Subrule (3) applies despite subrule 49.10(1) (plaintiff's offer to settle).
- (5) Subrule (3) does not apply if this Rule was unavailable because of the counterclaim, crossclaim or third party claim of another party.

#### **Plaintiff May be Ordered to Pay Defendant's Costs**

- (6) The plaintiff may, in the trial judge's discretion, be ordered to pay all or part of the defendant's costs, including substantial indemnity costs, in addition to any costs the plaintiff is required to pay under subrule 49.10(2) (defendant's offer to settle).

#### **Defendant Objecting to Simplified Procedure**

- (7) In an action that includes a claim for real or personal property, if the defendant objected to proceeding under this Rule on the ground that the property's fair market value exceeded \$25,000 at the date the action was commenced and the court finds the value did not exceed that amount at that date, the defendant shall pay, on a substantial indemnity basis, the costs incurred by the plaintiff that would not have been incurred had the claim originally complied with subrule 75.1.02(1), unless the court orders otherwise.

#### **Burden of Proof**

- (8) The burden of proving that the fair market value of the real or personal property at the date of commencement of the action was \$25,000 or less is on the plaintiff.

#### **Counterclaims, Crossclaims and Third Party Claims**

- (9) Subrules (1) to (8) apply, with necessary modifications, to counterclaims, crossclaims and third party claims.

*Durrell v. Lloyd Underwriters* 2005 PESCAD 17

Rule 75.1.02(7) as it read prior to an amendment effective September 1, 2004, did not foreclose the operation of Rule 26 when a plaintiff wished to amend a statement of claim to bring the action within Rule 75.1 – Simplified Procedure.

It is the procedure under Rule 75.1 which is meant to be simple – not the issues in the cases. The procedure is available for any action, except those referred to in Rule 75.1.01(1).

*Irving Oil v. WCI Inc. & ADI Inc.* 2004 PESCTD 28

The threshold test for granting summary judgment in an action brought under the Simplified Procedure Rule is much lower than the threshold test for obtaining summary judgment under Rule 20. If the court is satisfied there is sufficient material on which to resolve that issue on the motion, the court may grant summary judgment under Rule 75.1.07, notwithstanding there may be a genuine issue for trial.