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Hosted by Stephen L. Taran, H.B.A., LL.B.

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Letter Requesting Expert's Report & Annotated Discovery Plan

One of TVA's Virtual Associates with over 30 years of personal injury experience has drafted precedents to help you implement two of the amendments to the Rules of Civil Procedure.

As of January 1, 2010, expert reports that you intend to rely upon at trial will need to comply with the new rules. As such, letters that you are sending to an expert requesting a report (or an updated report) need to set out these new requirements. Similarly, the new rules require that all parties to an action agree to a discovery plan before attempting to obtain evidence by way of Rules 30, 31, 32, 33 or 35.

Email Nicole Maniar at nmaniar@virtualassociates.ca to purchase these precedents now. An invoice for \$99.75 (i.e. \$95 + GST) will be included with your precedents. Please make your cheque payable to "Taran Virtual Associates" as we do not accept credit cards.



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CIVIL JUSTICE REFORM AND AMENDMENTS TO THE ONTARIO RULES OF CIVIL PROCEDURE

O. Regs. 438/08, 394/09 and 453/09 made under the *Courts of Justice Act* came into force 1-Jan-2010, with limited exceptions.

There are no general transitional provisions, so that amendments will apply to existing proceedings except as noted.

This table is intended as a guideline only. The statutory provisions listed must be consulted.

Topic	Section	Former Rule	New Rule
Definitions	1.03(1)	Newly added	Definition of “timetable”
Interpretation	1.04(1.1)	Newly added	In applying the Rules, the Court shall make orders proportionate to importance, complexity, and amounts
Telephone & Video Conferences	1.08(1)	Para 8 allowed pre-trial conf, case conf, settlement conf, or trial management conf to be conducted by way of telephone or video	Para 8 allows only pre-trial conference and case conference to be conducted by way of telephone or video
	1.08(3)	Where no consent, motion required for telephone or video conference	Court may make order on a motion or on its own initiative
	1.08.1(9)	Rule re video conference re: Solicitors Act assessments revoked 1 Jan ‘10	Revocation revoked - the rule remains in place
Time	3.01(1)(b)	Computation of time – where less than 7 days, holidays are not counted	Where 7 days or less, holidays are not counted
	3.02(4)	Extension/Abridgment of Time – time for serving, filing, delivering can be extended on consent (except in case management actions)	Extensions on consent allowed in case management actions
	3.04	Newly added	Rules regarding “Timetables” (1) and (2) may be amended by written agreement (3) parties may not agree to amend the date before which an action shall be set down for trial (4) failure to comply with timetable may lead to a stay, dismissal, striking of defence, or any other just order
Filing of Documents	4.05(2)	Newly added	Para 4 – documents re: motions to transfer an action shall be filed in the court to which the transfer is sought
Duty of Expert	4.1.01	Newly added	(1) to provide fair, objective, non-partisan opinion evidence related only to matters within area of expertise, and provide additional assistance as the court requires (2) this duty prevails over any other obligation
Separate Hearings	6.1.01	Newly added	On consent, the court may order separate hearings on separate issues, including issues of liability and damages
Commencement of Proceedings	13.1.02 (3.1)	Newly added	A motion to transfer a proceeding may be brought in the county to which the transfer is sought

Topic	Section	Former Rule	New Rule
Summary Judgment	20.04(2.1) 20.04(2.2)	Newly added	Judge may exercise following powers on a SJ motion: weigh the evidence, evaluate credibility, draw reasonable inferences, order oral evidence to be presented
	20.05	Powers of the Court where summary judgment refused and matter ordered to be set down for trial – terms that court could impose limited to payment into court, security for costs, and limiting the nature and scope of discovery	Powers much more broad and designed to have appropriate cases tried expeditiously: setting time limits for delivery of documents, bringing of motions and filing of material facts not in dispute; establishment of a discovery plan; time limits on examinations; ordering evidence by affidavit; ordering experts to meet; delivery of opening statements; payment into court; security for costs
	20.06	Presumption that where moving party loses, the Court shall fix costs on a substantial indemnity basis	Presumption removed – the Court may fix costs on a substantial indemnity basis if a party acted unreasonably or acted in bad faith for the purpose of delay
Discontinuance & Withdrawal	23.03(1) 23.05	Discontinuance against Defendant results in dismissal with costs	Costs are not automatic. Upon discontinuance, any party to the action, cross claim (if any), or third party claim (if any) may make a motion respecting costs within 30 days
Dismissal for Delay	24.02.1 24.04(1.1)	Newly added	If action dismissed for delay, Defendant must serve Order on every Defendant who has cross-claimed and cross-claim is deemed to be dismissed 30 days after Order served
	24.04(1) 24.05.1	Dismissal for delay entitles Defendant to costs	Costs are not automatic - any party to the action, cross claim (if any), or 3rd party claim (if any) may make a motion respecting costs within 30 days
Mandatory Mediation	24.1.04 24.1.04 24.1.04	Applies to Toronto, Ottawa, Essex County, and Rule 78, 77, and some Rule 76 actions Exceptions: actions under the Substitute Decisions Act, 1992; Succession Law Reform Act, and Insurance Act	(1) Applies to actions governed by the Rule prior to 1 Jan '10, and still applies to Toronto, Ottawa, and Essex County (2) and (2.1) Old exceptions still apply, plus: Toronto actions on the Commercial List, Rule 64 (Mortgage) Actions, actions under the Construction Lien Act and Bankruptcy and Insolvency Act, and class actions that have been certified
	24.1.09(1)	Mediation must take place within 90 days of defence being filed	Mediation must take place within 180 days of defence being filed
	24.1.09(2.1)	Newly added	Transition – for actions governed by the rule immediately before 1 Jan '10, 180 days begins to run on 1 Jan '10
	24.1.09(5)	Within 30 days of defence filing, plaintiff must file Form 24.1A (Notice of Name of Mediator and date of Session)	Before setting action down one of the parties must file Form 24.1A or a mediator's report that matter has concluded
	24.1.09(6) 24.1.09(6.1)	Mediation co-ordinator to assign a mediator if not done by the parties 'within the times provided'	Mediation coordinator to assign mediator if not done by the parties within 180 days of first defence filing
	24.1.09(7.1)	Newly added	Mediation to be held 90 days after appointment of mediator
	24.1.11(1.1)	Representative of insurer also required to attend mediation with the insured	Representative of insurer shall attend; insured no longer required to attend
	Third Party Claim	29.14	Newly added

Topic	Section	Former Rule	New Rule
Discovery	29.1	Newly added – “Discovery Plan”	<p>.03(1) Discovery Plans must be agreed to by the parties wherever a party intends to have a discovery by way of documents, oral or written examination, inspection of property, or medical examination</p> <p>.03(2) Plan shall be agreed to on the earlier of 60 days from the close of pleadings, and attempting to obtain evidence</p> <p>.03(3) Plan shall be in writing and include intended scope of documentary discovery (taking into account relevance, cost, and importance and complexity of the issues); dates for service of affidavits of documents; timing, costs, and manner of production of documents; names of persons to be produced for oral examination; timing and length of oral examinations</p> <p>.03(4) Parties shall have regard to The Sedona Principles Addressing Electronic Discovery</p> <p>.04 Plan must be updated when information changes;</p> <p>.05 On any motion regarding discovery, a court may refuse to grant relief if this rule has not been complied with.</p>
	29.2	Newly added – “Proportionality in Discovery”	In determining whether a question must be answered or document produced, the court must consider whether: time required would be unreasonable; cost would be unjustified; undue prejudice would be caused; it would unduly interfere with the orderly progress of the file; the information is available elsewhere; and the order would result in an excessive volume of documents to be produced
	30.02, 30.03, 31.06 & 34.10	Semblance of relevance test (i.e. “relating to any matter in issue”) re. disclosure, production and scope of examinations	Simple relevance test (i.e. “relevant to any matter in issue”) re. disclosure, production and scope of examinations
	30.03(1)	Service of Affidavit of Documents within 10 days after close of pleadings – documents relating to	Service of Affidavit of Documents – documents relevant to (no time prescribed, but see new Rule 29.1)
	31.03(4)	Newly added	In determining whether to allow more than one party to be examined on behalf of a corporation, partnership, or sole proprietorship, the court has to be satisfied that the answers cannot be obtained from one person without undue expense and inconvenience, and that examination of more than one person would expedite the conduct of the action
	31.05.1	Newly added	<p>(1) Examinations cannot exceed 7 hours, regardless of the number of parties, except on consent or with leave</p> <p>(2) In considering granting of leave, court will consider the amount at issue; complexity of issues; reasonable time required; financial position of each party; the conduct of any party; and a party’s denials or refusals which should have been answered</p>

Motions & Applications	31.03(1) 38.03(1.1)	Motions/Apps heard in the county where proceeding commenced, or to which transferred	Brought and heard in the county where proceeding commenced, or to which transferred
	37.07(6) 39.01(2)	Serve Notice of Motion (and Affidavit) 4 days in advance	7 days (note – see Rule 3.01(1)(b) re computation of time)
	37.08(1) 38.06(4)	File Notice of Motion 3 days in advance; File Notice of App 4 days in advance	7 days (note – see Rule 3.01(1)(b) re computation of time)
	37.10(1) 38.09(1)	Serve & file Motion Record 3 days in advance; Serve App Record and Factum 4 days in advance; file App Record and Factum 2 days in advance	7 days (note – see Rule 3.01(1)(b) re computation of time)
	37.10(3) 38.09(3.1) & (3.2) 39.01(3)	Serve & file Responding Motion Record/ Responding App Record (and Affidavit) 2 days in advance	4 days
	20.03(2) 21.03(2) 22.02(2) 37.10(7) 40.04(2) 42.02(3)	Serve Moving Factum 4 days in advance (file 2 days in advance)	Serve and file 7 days in advance (note – see Rule 3.01(1)(b) re computation of time)
	20.03(3) 21.03(3) 22.02(3) 37.10(8) 38.09(1) 40.04(3) 42.02(4)	Serve Responding Factum 2 days in advance (file 2 days in advance)	Serve and file 4 days in advance
	34.18(2)	Where a transcript will be referred to at the hearing of a motion or application, it must be filed 2 days in advance	4 days
	37.10(10)(a)	Serve & file refusals & undertakings chart at least 3 days in advance	7 days (note – see Rule 3.01(1)(b) re computation of time)
	37.10(10)(b)	Serve and file response to refusals & undertakings chart 2 days in advance	4 days
	37.10.1(1)(b) 38.09.1(1)(b)	Confirm motion/application by 2 p.m. 2 days before motion/application	by 2 p.m. 3 days before
	37.15(1.2)	Newly added	A judge/master who is directed to hear all motions in complicated/series of proceedings may make procedural orders to promote expeditious and least expensive determination
	37.15(2)	Judge who hears all motions in a proceeding shall not hear the trial	Added – except with written consent of all parties

<p>Listing for Trial</p>	<p>48.14</p>	<p>Entire rule re Status Notices revoked and replaced. Many subsections remain essentially the same</p>	<p>(0.1) & (1) rule re: status notices applies to actions in which a “defence” has been filed, meaning a statement of defence, notice of intent to defend, or notice of motion in response to an action (but not a motion challenging court’s jurisdiction) (2) Status notice can be issued if a matter that was struck from the trial list was not restored to the list w/in 180 days (10) presumption that status hearing is held in writing if a timetable and draft order are filed 7 days before hearing (11) contents of timetable: identify steps to be completed (and dates) and identify date on which matter will be set down or restored (must be within 12 months of status hearing)</p>
	<p>48.15</p>	<p>Newly added subsection “Action Abandoned”</p>	<p>Registrar may dismiss action as abandoned if: more than 180 days have passed since originating process was issued, no defence is filed (see definition of “defence” at 48.14(0.1), no final order or judgment has been made, action has not been set down for trial, and registrar has given 45 days notice (6) transition subsection for actions commenced prior to 1 Jan ’10: if a step is taken within 2 years of 1 Jan ’10, section applies as if the action was commenced on the date the step was taken; if no step taken in those 2 years, action is deemed to be dismissed as abandoned on 1 Jan ’12</p>
<p>Pre-Trial Conference</p>	<p>50</p>	<p>Entire Rule revoked and replaced. Many subsections remain essentially the same</p>	<p>.01 purpose of the rule is to settle without a hearing and to obtain court orders and directions to assist in the most expeditious and least expensive disposition .02 parties must schedule a pre trial conference within 180 days of action being set down for trial, otherwise the registrar will do so and give notice to the parties .04 serve and file pre trial conference brief at least 5 days in advance: nature of action, issues, party’s position, names of witnesses, length of time required per witness, steps and timing of steps required before action ready for trial .05 lawyers must attend, parties participate either in person or under Rule 1.08 (telephone/video conference), party must be able to give instructions or obtain instructions .06 new matters to be considered –number of witnesses (incl. experts), and dates for service of experts’ reports .07 if not settled, judge may establish a timetable, order a case conference (Rule 77 matters), make any other order .08(1) if date for trial is fixed, judge completes pre-trial conf report stating steps that need to be completed, time required for steps, length of trial, any other relevant matter .08(2) copy of report and timetable filed with trial record) .08(3) lawyer signs certificate acknowledging obligation to be ready to proceed on the date fixed for trial .08(4) lawyer advises party of contents of report, and obligation .10 pre-trial judge may conduct trial on consent of parties</p>

Evidence at Trial (Expert Witnesses)	53.03(1) 53.03(2)	Serve expert report 90 days before trial Serve responding report 60 days before trial	Serve expert report 90 days before pre-trial conference Serve responding report 60 days before pre-trial conference
	53.03(2.1)	Newly added items that expert's report shall contain	- expert's area of expertise, employment, and education; - instructions provided to the expert; - nature of opinion sought and issues in the proceeding to which opinion relates; - opinion re each issue and, where there is a range of opinions given, a summary of and reasons for the range; - reasons for opinion including factual assumptions, research conducted, and a list of documents relied on - a signed Form 53 - acknowledgement of expert's duty (see new Rule 4.1.01)
	53.03(2.2)	Newly added	Within 60 days of action being set down for trial, parties shall agree to a schedule re: dates for service of experts reports to meet requirements of (1) and (2)
Enforcement of Orders (Garnishment)	60.08(12)	Debt of the garnishee includes a debt payable when the Notice is served and a debt payable within 6 years after the Notice is served	Debt includes a debt payable when the Notice is served and a debt payable within 6 years after the Notice is issued
Appeals to an Appellate Court	61.13(5) 61.13(8) 61.16(8) 61.13.1(2)	Circumstances by which an appeal, cross appeal, or motion in appellate court are dismissed "with costs" (i.e. failure to deliver materials in time)	Costs fixed at \$750
Appeals from Interlocutory Orders	62.01(5) 62.01(7)	File Notice of Appeal; serve and file Appeal Record and Factum 4 days before hearing	7 days (note – see Rule 3.01(1)(b) re computation of time)
	62.01(8) 62.01(8.1)	Serve and file Responding Factum 2 days before hearing	4 days
	62.02(6.1)	Moving party in motion for leave to appeal to serve Factum 4 days before hearing	Serve and file 7 days before hearing (note – see Rule 3.01(1)(b) re computation of time)
	62.02(6.2)	Responding party in motion for leave to appeal to serve Factum 2 days before hearing	Serve and file 4 days before hearing
Judicial Review	68.06(3)	Application for judicial review shall be dismissed for delay "with costs"	Costs fixed at \$750
Simplified Procedure	76.02(1) 76.13(2) 76.13(7), (8)	Rule available for claims worth \$50,000 or less	\$100,000 or less
	76.03(1)(a) 76.08(a)	Semblance of relevance test (i.e. "relating to any matter in issue") re. disclosure and production	Simple relevance test (i.e. "relevant to any matter in issue") re. disclosure and production

Simplified Procedure	76.04(1) 76.04(2)	All discovery, including oral, not permitted	Oral examinations for discovery limited to 2 hours, regardless of number of parties to be examined
	76.06 76.07	Rules regarding dismissal by Registrar and Summary Judgment	Revoked
	76.09(1)	Plaintiff to set matter down for trial within 90 days of first defence filed	180 days
	76.10(2) 76.10(3)	Rules regarding attendance at Pre Trial Conference and Authority to Settle	Revoked
	76.12(1)1.1 76.12(1)4.1	Newly added	Re: Summary Trials – plaintiff/defendant may examine in chief the deponent of any affidavit served for up to 10 minutes
	76.13(11)	Newly added – transition	In actions commenced after 1 Jan '02 and before 1 Jan '10, subrules (2), (7), (8) apply as if "\$100,000" read "\$50,000"
Civil Case Management	77	Entire rule revoked and replaced. Many subsections remain essentially the same	.01 purpose of the rule – only for cases where a need for the court's intervention is demonstrated - responsibility for managing proceedings remains with the parties - nature of case management shall be informed by local practices or judicial resources .02 rule applies only to actions in Ottawa, Toronto, and Essex County assigned to case management by order (same exceptions apply) .05(2) action may be assigned to case management on court's own initiative, on the request of a party, or on motion .05(4) criteria re: whether to assign to case management essentially the same, except new purpose of the rule must be considered, as well as whether there has been substantial delay in the proceeding .06 all steps in a proceeding may be directed to be heard by the same judge (including motions - .07(2)), who cannot preside at the trial, except with the parties' written consent .07 not required to file a case management motion form, costs of motions shall be addressed at the end of each motion, regardless of whether the motion was contested .08 transition rules – if Rule 77 or 78 applied to an action before 1 Jan '10, it shall continue to apply; and all orders, directions, and timetables shall remain in force
Toronto Civil Case Management Pilot Project	78	Entire rule revoked as of 1 July '09	Entire rule revoked as of 1 Jan '10
Small Claims Court	O Reg. 439/08	Monetary jurisdiction \$10,000 or less (O. Reg. 626/00)	Monetary jurisdiction \$25,000 or less



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3. TVA has created 2 new precedents to help you implement two of the amendments to the *Rules of Civil Procedure*: Letter Requesting Expert's Report & Annotated Discovery Plan - *order both for only \$95.*
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8. TVA has a graphic designer to create demonstrative evidence for use at mediation through video animations, Power Point presentations and medical illustrations.
9. TVA is the source for Barbara Legate's Standard Statements of Law. These precedents were recently updated in the fall of 2009.
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Consider it done.

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