

Litigation in motion: COVID-19 and forthcoming changes to the Rules of Civil Procedure

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COVID-19 has thrown the litigation world headfirst into the lap of technology, and these changes are here to stay.

On November 30, 2020, the Attorney General of Ontario announced upcoming changes to the *Rules of Civil Procedure* which will take effect starting January 1, 2021. Predictably, these changes are centred around incorporating electronic processes into the *Rules*, and codify what has become everyday practice since March of this year.

The proposed changes provide reassurance that the once-antiquated litigation process is ready to be permanently transformed. Most importantly, these changes not only promise to streamline the court system in a way that optimizes legal resources, but also offer better access to justice for all.

Some of the most significant changes introduced are:

Electronic Communications as the Preferred Method

- Court staff may email court documents, and communicate via email if an email address is available in the court file. They may also communicate with lawyers in such fashion if their emails are available on the Law Society website. (Rule 4.12)
- All lawyers and self-represented persons will be required to provide an e-mail address on court documents.
- Fax numbers will no longer have to be provided.

Electronic Service of Documents

- Service by e-mail for documents that are not required to be served personally, or by an alternative to personal service, is now permitted without consent or court order. An affidavit of service will still be required for service via email. (Subclauses 16.01 (4) (b) (iv) and 16.05 (1) (f))
- Service via fax will not be an option.

Virtual Attendances at Hearings

- Parties are now allowed to attend hearings, or part of a hearing, mandatory mediation, or oral examination for discovery by teleconference or video conference. Note that costs may be sought against parties who unreasonably object to proceeding by telephone conference or video-conference under this rule. (Rule 1.08)
- An oral examination of a person or witness at trial may proceed by videoconference. (Rule 20.05)
- This rule does not apply to proceedings at the Court of Appeal, which may be heard as directed by the Court.
- This rule also does not apply to case conferences, which shall be held by telephone conference unless the court specifies a different method.

CaseLines and Electronic Document Sharing (Rule 4.05.3)

- CaseLines is the new software that has been authorized by the Ministry of the Attorney General for the submission of documents. Parties will have to use CaseLines to submit filed documents for hearings, pre-trial conferences and case conferences as required by the court.

- Document requirements and deadlines for the submission of documents through CaseLines are outlined in the new changes.

Court Documents and Orders (Rule 59.04, 59.05 revoked)

- Judicial officials and court registrars may now use electronic signatures to issue orders or other court documents.
- Registrars may electronically issue a document. Any court document that requires issuance may be electronically issued, by signing and sealing with an electronic version of the seal of the court. This may be provided by email, through CaseLines, or by picking it up at the court.
- Court orders will be required to be entered electronically, rather than through paper processes or by microfilm.
- If an endorsement of an order is made on a separate document, that document may be in electronic format.

Remote Commissioning and Electronic Certification (Clause 4.06 (1) (e))

- Court documents may now both be certified electronically, and commissioned electronically.
- For electronic commissioning, the affidavit requirements will have to be in line with O.Reg. 431/20: *Administering Oath or Declaration Remotely*.

Electronic Transcripts (Rule 4.09)

- Transcripts are to be served and filed electronically in Superior Court of Justice or Divisional Court proceedings.
- This does not apply to proceedings in the court of Appeal.

Motions in Writing (Subrule 37.12.1 (4))

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

*The complete list of amendments may be found at:

<https://www.ontario.ca/laws/%20https://www.ontario.ca/laws/regulation/r20689>