



Jayson W. Thomas | Barrister & Solicitor

330 Bay Street, Suite 820, Toronto, Ontario M5H 2S8

Tel: (647) 347-5450 Fax: (647) 723-7431

Email: jthomas@toronto-law.com

SIMPLIFIED PROCEDURE: EXPEDIENT AND ECONOMICAL JUSTICE

In Ontario, actions for damages in the amount of \$50,000 or less, or for real or personal property valued at \$50,000 or less, *must* be commenced under the Simplified Procedure.¹ The rules governing the Simplified Procedure were developed with the goal of allowing actions falling within this modest monetary range to be pursued in a more expedient and feasible manner. This goal is achieved through the following features, unique to the Simplified Procedure:

1. No Examinations for Discovery

Under the ordinary procedure, a representative of each party is subject to an examination for discovery, wherein he or she is required to answer questions under oath that relate to any matter at issue in the case. Depending on the complexity of the action, preparation for and attendance at examinations for discovery can consume considerable time and resources. To avoid this, actions commenced under the Simplified Procedure do not include examinations for discovery. Because this phase of the litigation process is omitted altogether, the regular delays flowing from attempting to schedule examinations for discovery, which is always subject to the availability of all parties and their lawyers, are absent. This alone can result in a time saving of anywhere from 3 to 6 months.

2. Affidavits of Documents Must Include a List of Potential Witnesses

Under both the ordinary and Simplified Procedure, parties to an action are required to serve and file an affidavit of documents disclosing all documents that are or

¹ Additionally, an action for damages exceeding \$50,000, or for real or personal property valued at more than \$50,000 can be commenced under the Simplified Procedure. However, the defendant to such an action has the option of objecting to the use of the Simplified Procedure, in which case the action must continue under the ordinary procedure.

have been in the parties' possession, and which relate to any matter at issue in the litigation. Additionally, affidavits of documents under the Simplified Procedure must also include a list of the names and addresses of all persons who might reasonably be expected to have knowledge of the matters in issue in the action. While the former requirement assists each party in collecting all of the documentary evidence that may assist in proving its case, the latter forces a party to put its mind to the witnesses it may call to provide evidence at trial. This has the effect of forcing a party to evaluate the potential evidence of any witnesses it has in support of its claim at an early stage in the litigation process. By doing so, this allows that party to better assess the merits of its case. In an action commenced under the ordinary procedure, witness information is not required to be exchanged until a judicial pre-trial conference is held (although this information is often demanded at examinations for discovery).

3. **Simplified Motions**

Pre-trial motions can consume significant time and resources. To alleviate this, the procedure relevant to bringing motions in actions under the Simplified Procedure is made less onerous.

- (a) *Registrars have increased powers to grant orders where the parties consent or where no response is filed by the opposing party*

Under the Simplified Procedure, parties are able to advance a number of routine motions in writing before the Registrar, where all parties consent to the relief sought or *no responding material is filed*. While motions may be brought in writing to the Registrar for certain forms of relief under the ordinary procedure if the consent of the parties is provided, under the Simplified Procedure, even if no consent is provided, the Registrar has the jurisdiction to adjudicate the motion where no responding material is filed. This is significant since opposing parties often fail to consent to relief sought on motions even though they do not intend on opposing, thereby necessitating an otherwise redundant attendance before a Justice or Master of the Court. As a result, this feature can amount to significant savings in the time and legal fees that are often incurred under the ordinary procedure.

(b) *Cross examinations on affidavits filed in support of motions are not permitted*

Under the ordinary procedure, evidence used on a motion is submitted by way of a sworn affidavit. Accordingly, a party to an action has the right to cross examine the deponent of its affidavit in order to test the evidence contained therein. As with examinations for discovery, this procedure requires the parties to coordinate schedules and incur the time and costs associated with conducting the cross examinations. However, no such right exists under the Simplified Procedure. The absence of this right serves to make advancing motions more convenient under the Simplified Procedure than under the ordinary procedure.

(c) *Non-party witnesses cannot be summoned to give evidence in support of a motion*

Along with the right to cross examine the deponent of an affidavit under the ordinary procedure, a party also has the right to summons and examine a witness to have a transcript of his or her evidence available for use at the hearing of the motion. There is no right to summons and examine a witness on a motion under the Simplified Procedure. Again, this achieves a significant savings in the cost and time required to advance a motion under the Simplified Procedure.

4. **Mandatory Settlement Discussion**

A unique feature of the Simplified Procedure is that the parties to an action are required to engage in a meeting or telephone discussion to consider: (i) whether all relevant documents have been disclosed; and (ii) whether settlement of any or all issues is possible. The first requirement serves the parties by ensuring that a complete documentary record has been produced. The latter requirement may assist in an early resolution of the dispute. However, since this discussion happens at a relatively early phase of the litigation process, the probability of an action settling is not high. Nonetheless, this discussion may be useful for the parties in evaluating each other's expectations going forward. Therefore, if conducted prudently and in good faith, this discussion can form the foundation for a successful mediation or pre-trial conference.

5. **A Less Stringent Test for Summary Judgment**

Summary judgment is a remedy that can be sought by way of motion whereby a party asks the Court to grant judgment in its favour, before a trial is held. Under the ordinary procedure, summary judgment may only be granted where the Court is satisfied that there is *no genuine issue for trial with respect to a claim or defence*, or where the parties agree to have all or part of a claim determined by summary judgment and the court is satisfied that an order for summary judgment is appropriate. The burden to prove that there is no genuine issue for trial remains with the party seeking summary judgment, and is a high burden to meet. On a motion for summary judgment under the ordinary procedure, the Court will not determine questions of fact, assess credibility or weigh the evidence before it. The rules governing summary judgment motions under the ordinary procedure impose a high burden because on such a motion, the moving party is essentially asking the Court to dispose of its opponent's rights.

In contrast, under the Simplified Procedure, summary judgment will be granted *unless* the Court is unable to decide the issues in the action without cross examination or it would otherwise be unjust to grant summary judgment. This test provides a significantly lower burden than the test for summary judgment under the ordinary procedure. Specifically, under the Simplified Procedure, the Court may grant summary judgment even if there is a genuine issue for trial as long as the Court is presented with sufficient material to resolve that issue on the motion. Further, the Court has the authority to make findings of fact and to assess credibility. As a result, summary judgment under the Simplified Procedure is a more accessible remedy for a party seeking to dispose of an action at an early phase of the litigation process.

6. **Actions Must Be Set Down For Trial Within 90 Days of the Filing of a Statement of Defence or a Notice of Intent to Defend**

The Simplified Procedure requires that an action be set down for trial within 90 days from the filing of a statement of defence or a notice of intent to defend the plaintiff's action. A plaintiff who fails to set an action down for trial within this period risks having his or her action dismissed by the Registrar. This requirement serves to ensure that

actions proceed through the pleadings phase of the litigation process through to trial in an expeditious manner. Under the ordinary procedure, there is no similar time limit.

7. **The Availability of a Summary Trial**

A key feature of the Simplified Procedure is the availability of a summary trial. In a summary trial, a party presents evidence to the Court by way of affidavit, subject to the right of an opposing party to cross examine the deponent of that affidavit. All cross examinations conducted by a single party must be completed within 50 minutes. This procedure differs significantly from the ordinary trial procedure, wherein a party who wishes to present an individual's evidence to the Court *must* do so by calling that person to testify at trial. Finally, at the conclusion of the evidentiary portion of a summary trial, each party may make oral submissions which must be completed within 45 minutes.

The summary trial procedure ensures that trials are conducted in a highly efficient manner, and in recognition of the relatively modest amount of money and/or property involved in the case.

Changes to the Rules Governing the Simplified Procedure Effective January 1, 2010

Two sweeping changes to the rules governing the Simplified Procedure take effect on January 1, 2010: (i) the mandatory monetary jurisdiction of the Simplified Procedure will increase from \$50,000 to \$100,000; and (ii) examinations for discovery will be permitted, subject to the requirement that a party complete all of its examinations, regardless of the number of parties involved in the action, within 2 hours.

The increase in monetary jurisdiction from \$50,000 to \$100,000 is considered highly positive since more actions will be required to be commenced under the Simplified Procedure, and will therefore be adjudicated in a more cost-effective and expeditious manner. The opportunity to conduct examinations for discovery may result in some delay in actions proceeding under the Simplified Procedure. However, given the strict time restriction imposed, this delay may be a small trade off for the additional information that a party will be able to obtain from conducting these examinations.

Further, the strict time limit imposed will serve to ensure that such examinations will proceed in a well-focused manner.

If you are involved in a dispute regarding damages or property valued at \$100,000 or less, **contact us for a free initial consultation.** We will provide you with a candid assessment of your case, including an assessment of the costs involved in pursuing your claim under the Simplified Procedure. Further, if your matter involves an amount of money or property falling within the range of \$50,000 to \$100,000, and arises prior to January 1, 2010, we will provide you with a recommendation as to whether you should wait until the New Year prior to pursue an action.