Court File No. CV-20-00652216-000

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant/Respondent

AND

ADAMSON BARBECUE LIMITED
AND WILLIAM ADAMSON SKELLY

Respondents/Applicants

REPLY FACTUM OF THE RESPONDENTS (APPLICANTS TO CONSTITUTIONAL QUESTION)

June 22, 2021

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PART I – OVERVIEW

1. This proceeding is a continuation of a Notice of Application commenced by the Province of Ontario seeking a restraining order pursuant to s. 9 of the *Reopening Ontario Act*[1], as against the Respondents, Adamson Barbecue Limited and William Adamson Skelly. The Respondents are the Applicants in the Motion considering the Notice of Constitutional Question.

2. Justice Kimmel granted the restraining order on December 4, 2020, and then provided directions for a come-back motion to be scheduled.[2] As directed, the Respondents filed a Notice of Motion on December 28th, 2020, and a Notice of Constitutional Question.[3] The matter was then case managed. On February 1st, 2020, a Motion Record was filed, setting out the Relief sought, and including a Notice of Constitutional Question.[4]

3. The prayer for Relief in the Factum of the Respondents is as follows[5]:

   i. Declaration that the *Emergency Management and Civil Protection Act* and the *Re-Opening of Ontario Act* are unconstitutional, and pursuant to S 52 (1) of the *Constitution Act, 1982*, are of no force or effect;
   ii. Removal of injunction and costs awarded against the Respondents;
   iii. A hearing pursuant to Section 24 (1) for compensation for losses;
   iv. Costs of this Application;
   v. Such further and other relief that this Court may grant.

4. The Applicants have been on Notice since December 11, 2020, that this was a come-back Motion, which identified a constitutional issue, which was confirmed by a Notice of Constitutional Question as provided for in the *Rules of Civil Procedure*[6]. The factum regarding the Constitutional Question then set out the Relief sought by the Respondents as set out above in paragraph 3.

5. Damages for *Charter* breach are recognized by the Supreme Court of Canada as flowing from a finding of constitutional breach and are appropriate. The Court observed as follows:[7]

   > If the claimant establishes breach of his Charter rights and shows that an award of damages under s. 24(1) of the Charter would serve a functional purpose, having regard to the objects

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[1] *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17.
[2] *Ontario v. Adamson Barbecue Limited, 2020 ONSC 7679 (CanLII)* at paras. 44, 45.
[3] Motion Record ["MR"]: Tabs 4 and 5.
[4] MR: Tab 4.
[5] Respondents' Factum, para 188-192.
[6] R.R.O. 1990, Reg. 194: RULES OF CIVIL PROCEDURE, under *Courts of Justice Act*, R.S.O. 1990, c. C.43
[7] *Vancouver (City) v. Ward, 2010 SCC 27 (CanLII), [2010] 2 SCR 28* at para. 24.

> of s. 24(1) damages, and the state fails to negate that the award is "appropriate and just", the final step is to determine the appropriate amount of the damages[8]

6. In *Doucet-Boudreau v Nova Scotia*, the Supreme Court of Canada observed as follows[9]:

> [25] Purposive interpretation means that remedies provisions must be interpreted in a way that provides "a full, effective and meaningful remedy for *Charter* violations" since "a right, no matter how expansive in theory, is only as meaningful as the remedy provided for its breach" (*Dunedin, supra*, at paras. 19-20). A purposive approach to remedies in a *Charter* context gives modern vitality to the ancient maxim *ubi jus, ibi remedium*: where there is a right, there must be a remedy. More specifically, a purposive approach to remedies requires at least two things. First, the purpose of the right being protected must be promoted: courts must craft *responsive* remedies. Second, the purpose of the remedies provision must be promoted: courts must craft *effective* remedies.[10]

7. The Crown has had notice of a claim for damages since at least February 1st, 2020. This is ample notice and meets the requirements of the plain language of the *Crown Liability and Proceedings Act*, 2019[11]. Lack of notice is not fatal to a Section 24 (1) *Charter* remedy.[12]

8. Provisions which establish that a rule may be invoked to foreclose consideration of a *Charter* issue, non-compliance with the rule, is not fatal to the *Charter* application.[13] The Court of Appeal further observed that a trial judge is required to consider and weigh a variety of factors to determine which course of action is required by the purpose of the rule.[14]

9. The Respondents submit that the Motion Record of February 1st, 2021, is more than sufficient notice to the Applicants. As observed by Perell, J., no particular form is required.[15]

10. This case involved a constitutional challenge to the validity of provincial legislation, violations of Section 2, 7, 8, and 9 rights, and Section 36 (1) of the *Constitution Act, 1982*. In the event a determination of constitutional breach, the Respondents would then be entitled to a Section 24 (1) hearing to determine proper remedies, including damages."[16]

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[8] *Ibid* at para. 45.
[9] *Doucet-Boudreau v. Nova Scotia (Minister of Education), 2003 SCC 62 (CanLII), [2003] 3 SCR 3*
[10] *Ibid* at para. 25.
[11] *Crown Liability and Proceedings Act, 2019,* S.O. 2019, c. 7, Sched. 17.
[12] *R. v. Bugden, 2015 CanLII 27425 (NL PC)*
[13] *R. v. Blom, 2002 CanLII 45026 (ON CA)* at para. 22.
[14] *R. v. Loveman, 1992 CanLII 2830 (ON CA)* at para 17, 19.
[15] *Adamson v Ontario, 2014 ONSC 3787 (CanLII)* at para. 52.
[16] *Vancouver (City), supra* note 7, at 31.

11. The Applicants have not properly responded to the Notice of Constitutional Question. There is no response in this Factum to the constitutional principles raised by the Respondent. The Applicants have not responded to any of these challenges.

PART II – FACTS

The Covid-19 pandemic in Ontario

A. Effective early treatment strategies

12. The existence of reasonable alternatives to emergency measures expressly precludes the enactment of said emergency measures.[17]

13. **Hydroxychloroquine:** Hydroxychloroquine ["HCQ"] is an effective treatment for Covid-19.[18] Studies testing HCQ in elderly and other high-risk individuals consistently showed that HCQ is effective at reducing hospitalization and mortality rates in high-risk individuals and counters the notion that HCQ is too dangerous to use in the general population.[19] Studies showed a 2-fold or better, reduction in hospitalization and mortality.[20] Fatalities in those treated with HCQ are rare, even in those with multiple comorbidities and those that that are high risk such as the elderly or those with autoimmune diseases.[21]

14. **Vitamin D3:** Vitamin D3 is another effective treatment for Covid-19.[22] On May 21, 2021 a clinical trial was authorized by Health Canada to determine if dietary supplements of Vitamin D/Vitamin K-Vitamin D would reduce symptoms severity and duration in people with SARS-COV-2.[23] The use of vitamin D3 to support the proper functioning of the human immune system is a fundamental immunological fact based on decades of high-quality scientific research.[24] Currently there are seventy-seven (77) peer-reviewed scientific articles available

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[17] *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s. 7.0.2(2)(b); *Quarantine* Act, S.C. 2005, c. 20., s. 58(1). Cross-Examination of Dr. Byram Bridle on May 17, 2021 at RBOT 439, line 3-8: Respondents/Applicants Book of Transcripts ["RBOT"].
[18] Affidavit of Dr. Harvey Risch, sworn April 12, 2021.
[19] Risch, Affidavit at Motion Record ["MR"], at 1030-1037.
[20] Risch, Affidavit at MR 1042.
[21] Risch, Affidavit at MR 1037.
[22] Bridle, RBOT 432.
[23] https://www.canada.ca/en/health-canada/services/drugs-health-products/covid19-industry/drugs-vaccines-treatments/list-authorized-trials.html#a2
[24] Reply Affidavit of Dr. Byram Bridle sworn May 17, 2021, MR 1820; Bridle, RBOT 436, line 14.

that demonstrate the importance of vitamin D to the proper functioning of the human immune system to kill SARS-CoV-2.[25] According to the massive body of scientific evidence, public health officials, by not promoting the use of vitamin D, have caused Canadians to miss an effective preventive strategy.[26] As a result, Canadians have suffered substantially greater COVID-19-induced morbidities and mortalities.[27]

15. **Ivermectin:** Ivermectin is another viable alternative treatment for Covid-19.[28] Currently there are approximately 70 clinical trials worldwide evaluating the clinical benefits of ivermectin to treat or prevent Covid-19.[29] Ivermectin, a widely available generic drug, is currently re-purposed for the treatment of patients with the Covid-19 virus.[30] Worldwide use indicates the treatment works, both in the early and late stages of the disease. A review of the scientific literature and clinical trials, leads to the conclusion that the data is such Canada should include ivermectin for early out-patient treatment for Covid-19, and as a prophylactic, while people are being vaccinated.[31]

B. Cases, Outbreaks and ICU Numbers

16. **Cases:** When reference is made to "cases", it means, "a human who has a positive Covid-19 test."[32] The Polymerase Chain Reaction ["PCR"] test is used in Ontario to determine positive cases.[33] In Ontario, where PCR testing is not standardized[34], the PCR cycle range is between 20 and 40 depending on the laboratory.[35] A reasonable cut-off for cycle numbers for good-quality RT-PCR test for SARS-CoV2 is thirty-four (34). Public Health Ontario runs the test at 40 cycles.[36] Tests with cycles values above 22-30 are almost certainly not indicative of the presence of replication-competent SARS-CoV-2 resulting in a very large number of positive

[25] Bridle, Reply Affidavit, MR 1820; Bridle RBOT 435, line 3.
[26] Bridle, RBOT 436, line 21; Cross-Examination of Dr. Matthew Hodge on June 2, 2021: RBOT 92 at Q246, Q247.
[27] Bridle, Reply Affidavit, MR 1820; Bridle RBOT 437, line 1.
[28] Bridle RBOT 429, line 5.
[29] Bridle, Affidavit, MR 1410; Bridle RBOT 430, line1.
[30] Bridle, Affidavit, MR 1412-1413.
[31] Bridle, Affidavit, MR 1414; Bridle RBOT 432, line 9.
[32] Hodge, RBOT 34, Q97.
[33] Hodge, RBOT 35, Q99, Q102
[34] Bridle, Affidavit, MR 1393.
[35] Hodge, RBOT 35-36; Q103, Q106, Q107.
[36] Bridle, Affidavit, MR 1392; Bridle RBOT 490-493.

cases reported in Ontario which are not true positives.[37] The implication that asymptomatic individuals can be substantial spreaders of the virus comes from the PCR test.[38] The PCR test is being used as the "Gold Standard" of both practitioners and others administering the tests; this is unprecedented and detrimental.[39] Unless there is a clear reason otherwise, most hospitalized patients that die with a positive PCR test are classified as Covid cases.[40]

17. **Outbreaks:** Health Canada defines a "COVID-19 Outbreak" as "Two or more confirmed cases of COVID-19 epidemiologically linked to a specific setting and/or location. Excluding households, since household cases may not be declared or managed as an outbreak if the risk of transmission is contained. This definition also excludes cases that are geographically clustered."[41] Highest number of outbreaks as of April 24, 2021, is in long-term care homes.[42] Long-term care homes are under the supervision and guidance of the Province of Ontario.[43] Food, drink, and retail, for the same period saw 11 outbreaks and 3 reported deaths.[44] This represents the second lowest risk on the scale produced with personal care being the lowest number and matches the average number of deaths by lightning strike in Canada.[45]

18. **ICU Numbers:** The Province has indicated that Covid-19 has challenged Ontario's ICU capacity.[46] Despite this contention, little to no evidence has been provided in support of that analysis.[47] Ontario has historically had an insufficient infrastructure in terms of the ICU capacity prior to the pandemic lending to the need for reasonable early treatment alternatives.[48] A review of the "dashboard of the Science Table" (a "Covid-19 Advisory" for Ontario, not an official government board[49]) found no data pertaining to hospitalization and ICU admission rates of people in their 40's and 50's as put forward by Ontario.[50] Independent research by the

[37] Bridle, Affidavit MR 1393; Affidavit of Dr. Gilbert Berdine sworn April 9, 2021, MR 708.
[38] Bridle, RBOT 487, line 15 and RBOT 493, line 5-9.
[39] Bridle, RBOT 487, line 15, and RBOT 490.
[40] Hodge, RBOT 134, Q343.
[41] https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/health-professionals/national-case-definition.html - Exhibit No. 2 – Hodge, RBOT 293.
[42] Hodge, RBOT 154-155, Q398 & Q399
[43] Hodge, RBOT 155, Q400, Q401, Q402.
[44] Hodge, RBOT 155, Q403.
[45] Hodge, RBOT 155-156, Q405, Q406; Briggs MR 1192.
[46] Hodge, Ontario's Responding Record ["RMR"] – Affidavit – para 12.
[47] Hodge, Affidavit sworn May 14, 2021, RMR 112-113, 336, paras 12-14, Exhibit "M".
[48] Bridle, RBOT 575-576, line 22; Briggs, Reply Affidavit, MR 1627.
[49] Hodge, RBOT 130, Q331.
[50] Hodge, Affidavit, RMR 111, para 10; Reply Affidavit of Dr. Joel Kettner sworn May 17, 2021, MR 1784-1785.

Respondents' experts indicates as early as March 2020, there were 3,000 critical care beds available, of which 1,647 had ventilator capacity.[51] Ontario's evidence[52] showed hospitalizations having a peak of 1,200 or so (not just COVID) patients in the ICU, and a peak of about 750 of all patients who were mechanically ventilated which are clearly below Ontario's ICU capacity, and the numbers are falling.[53]

Opinion Evidence of Dr. Hodge

19. Dr. Matthew Hodge was the only expert put forward by Ontario and Ontario only chose to cross-examine the Applicant, Mr. William Adamson Skelly, and Dr. Byram Bridle. The remaining five (5) expert reports, corresponding reply reports and opinion evidence remain unrefuted.

A. Impartiality

20. Dr. Hodge was retained as a public health expert for the purposes of supporting Public Health Ontario and the Government's response to various legal actions.[54] Doctor Hodge was asked in his capacity to opine on "why the measures to limit COVID transmission needed in Ontario?" but was unable to speak to any cost-benefit analysis of that necessity indicating it was not his area of expertise.[55] Other areas outside of Dr. Hodge's expertise were, PCR Testing[56], effects of lockdowns on businesses[57], legal concepts for emergency planning[58], duty of public health official or government to show justification for use of restrictive interventions[59], standardized protocol and coding for death certificates[60], application of the international instruments[61], and isolation of the virus[62].

[51] Reply Affidavit of Dr. William Briggs sworn May 17, 2021, MR 1626.
[52] Hodge, Affidavit RMR 230, Figure 4.
[53] Briggs, Reply Affidavit, MR 1627.
[54] Hodge, RBOT 70, Q201.
[55] Hodge, RBOT 75, Q214-Q215.
[56] Hodge, RBOT 34-35, Q98, Q104.
[57] Hodge, RBOT 75, Q214.
[58] Hodge, RBOT 113, Q300.
[59] Hodge, RBOT 116, Q302.
[60] Hodge, RBOT 177, Q477.
[61] Hodge, RBOT 303, Q567, Q568.
[62] Hodge, RBOT 317, Q603, Q604.

B. Supporting Evidence

21. Dr. Hodge, in his limited capacity as an expert, put forward a number of statements, observations and opinions without evidentiary substantiation leaving gaps in the analysis. Dr. Allen highlighted at least 6 paragraphs of unsubstantiated opinion evidence[63], Dr. Berdine referred to at least 5 areas of concern[64], whereas Dr. Kettner indicated discrepancy in proof in at least 5 instances[65] and Dr. Bridle also made reference to these concerns[66].

PART III – ISSUES AND THE LAW

A. ISSUES

22. The Applicants have misstated the issues. In the event they want to strike the Notice of Constitutional Question, they must bring a Motion to that effect. They have not. If they wish to strike Mr. Skelly's Affidavit, they must bring a Motion. They have not. The issues identified in paragraph 36 (a) and (b) are not issues in the Notice of Constitutional Question.

23. The Respondents have demonstrated that the Relief sought in the Motion Record and the Factum to the Constitutional Question, the Motion Record was delivered on February 1st, 2021.

24. The Applicants took no remedial action in relation to Mr. Skelly's attendance at cross-examination. The transcript reveals that they were invited to ask him questions on his Affidavit but chose not to do so.[67] In general, Courts are disinclined to dismiss an action or strike out.

25. A defence for failure to comply with the rules of Court, and while Courts are empowered to do so, and do from time to time dismiss claims or strike defences, judges much prefer to decide actions on their merits.[68]

26. In *Jack v Gowling, Strathy & Henderson*[69], where the Plaintiff had failed to comply with undertakings despite two Court orders that she do so, the Court of Appeal set aside an Order

[63] Reply Affidavit of Dr. Douglas Allen sworn May 17, 2021, MR 1870-1873.
[64] Reply Affidavit of Dr. Gilbert Berdine sworn May 17, 2021, MR 1888, 1892.
[65] Kettner, Reply Affidavit, MR 1783, 1785-1788.
[66] Bridle, Reply Affidavit, MR 1808.
[67] Cross-Examination of Adam Skelly on May 31, 2021, RBOT 614, line 19.
[68] *Gomommy Software.com Inc. v Blackmount Inc*. 2014 ONSC 2478 (Ont. S.C.J.), at para. 52.
[69] *Jack v. Gowling, Strathy & Henderson, 2011 ONCA 736 (CanLII).*

dismissing the action because the Defendant could not show any objective prejudice from the Plaintiff's non-compliance with the Court orders.

B. CONSTITUTIONAL CHALLENGES

27. The Respondents submit that the constitutional issues in this case are set out in the Amended Amended Notice of Constitutional Question and the Factum. The Applicants have only responded to the Section 7 argument, and a general commentary on Section 1 of the *Charter*. The Applicants have not committed on Ground #1, Ground #2, Ground #3, except for Section 7. No argument on Section 2, 8, and 9. The Applicants Factum is void of any argument on the constitutional issues raised.

28. The purpose of the guarantees in Section 2 of the *Charter* is to permit free expression in order to promote truth, political and social participation and self-fulfillment. Freedom of expression is entrenched in the *Charter* to ensure that anyone can manifest thoughts, opinions, beliefs, and indeed all experience of the heart and mind however unpopular, distasteful or contrary to mainstream.[70]

29. As to the Applicants commentary on Section 7 of the *Charter*, the Supreme Court of Canada did not rule out the possibility that a right with an economic component may fall within "security of person."[71]

30. It has been found that by excluding petitioners from the opportunity to practice in competition with other doctors, legislation and regulations have the effect of depriving petitioners of their right to liberty within the meaning of s. 7 of the *Charter*. In that case, the scheme, Act and regulations were found to be so procedurally flawed and manifestly unfair, that they violated principles of fundamental justice.[72]

C. DR. HODGE AS EXPERT

[70] *Bracken v. Niagara Parks Police, 2018 ONCA 261 (CanLII)* at para. 15.
[71] *Irwin Toy Ltd. v Quebec (Attorney General)*, 1989 CarswellQue 115 (S.C.C.).
[72] *Wilson v. Medical Services Commission of British Columbia, 1988 CanLII 177 (BC CA)*

31. The Respondents submit that Dr. Hodge should not be admitted as an expert witness as he is not able to fulfill the duty set out in Rule 4.1.01 of the *Rules of Civil Procedure* due to Dr. Hodge's lack of impartiality and/or independence.

32. In a cross examination held on May 14, 2021, the following exchange occurred:[73]

> A: Sorry, who's providing advice to Public Health Ontario?
> Q: You as a consultant.
> A: No, no, my consulting related to supporting the government in relation to actions like the one initiated by your client. So if you're…
> Q: Supporting actions like what was the initiative…
> A: So, I am retained as a public health expert for the purpose of supporting Public Health Ontario and the government's response to various legal actions.

33. The prevailing standard in Canadian law is that an expert's lack of independence and impartiality goes to the admissibility of the evidence, in addition to being considered in relation to the weight to be given to the evidence if admitted.[74]

34. The Supreme Court of Canada, in *White Burgess* also had this to say:

> [54] Finding that expert evidence meets the basic threshold does not end the inquiry. Consistent with the structure of the analysis developed following *Mohan* which I have discussed earlier, the judge must still take concerns about the expert's independence and impartiality into account in weighing the evidence at the gatekeeping stage. At this point, relevance, necessity, reliability and absence of bias can helpfully be seen as part of a sliding scale where a basic level must first be achieved in order to meet the admissibility threshold and thereafter continue to play a role in weighing the overall competing considerations in admitting the evidence. At the end of the day, the judge must be satisfied that the potential helpfulness of the evidence is not outweighed by the risk of the dangers materializing that are associated with expert evidence.[75]

35. The Respondents submit that the expert witness has a special duty to the Court to provide fair, objective and not-partisan assistance. An expert who is unwilling or unable to comply with this duty is not qualified to give expert opinion evidence and should not be permitted to do so.[76]

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[73] Hodge, RBOT 70, line 4.
[74] *White Burgess v Abbott*, 2015 Carswell NS 314 (S.C.C.), at para. 35.
[75] *Ibid*, at para. 54.
[76] *Ibid*, at para. 2.

36. By Dr. Hodge's own admission he has been hired exclusively by the Province of Ontario to provide evidence in legal challenges brought against the Province. It cannot be said that in these circumstances he can fulfill the objective duty required of an expert, pursuant to the *Rules of Civil Procedure*. Dr. Hodge should not be qualified as an expert, and his evidence should not be permitted.

37. The Applicants have not properly responded to the Notice of Constitutional Question in their Factum. The Applicants do not address any of the arguments advanced by the Respondents in their factum, except for cursory comment regarding Section 7 and Section 1 of the *Charter*. The Respondents are left to respond to procedural issues raised, which should be the subject of a separate Application by the Applicants, but way of motion, if they are seeking relief which excludes pleadings or evidence.

38. The Respondents will advance their constitutional arguments at the hearing date, despite the lack of response from the Province of Ontario.

PART IV – ORDER REQUESTED

39. The Respondents seek the following relief;

a) Disqualification of Dr. Hodge as an expert;

b) Declaration that the *Emergency Management and Civil Protection Act* and the *Re-Opening of Ontario Act* are unconstitutional, and pursuant to S 52 (1) of the *Constitution Act, 1982*, are of no force or effect;

c) Declaration that one or more reasonable alternatives exist for emergency measures;

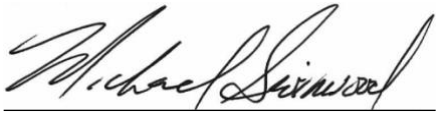
d) Removal of injunction and costs awarded against the Applicants;

e) A hearing pursuant to Section 24 (1) for compensation for losses;

f) Costs of this Application;

g) Such further and other relief that this Court may grant

All of which is respectfully submitted this 22nd day of June 2021



Schedule "A"

1. *Adamson v Ontario*, 2014 ONSC 3787 (CanLII)
2. *Bracken v. Niagara Parks Police*, 2018 ONCA 261 (CanLII)
3. *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62 (CanLII), [2003] 3 SCR 3
4. *Gomommy Software.com Inc. v Blackmount Inc*. 2014 ONSC 2478 (Ont. S.C.J.)
5. *Irwin Toy Ltd. v Quebec (Attorney General)*, 1989 CarswellQue 115 (S.C.C.)
6. *Jack v. Gowling, Strathy & Henderson*, 2011 ONCA 736 (CanLII)
7. *Her Majesty the Queen in Right of Ontario v. Adamson Barbecue Limited*, 2020 ONSC 7679 (CanLII)
8. *R. v. Blom*, 2002 CanLII 45026 (ON CA)
9. *R. v. Bugden*, 2015 CanLII 27425 (NL PC)
10. *R. v. Loveman*, 1992 CanLII 2830 (ON CA)
11. *Vancouver (City) v. Ward*, 2010 SCC 27 (CanLII), [2010] 2 SCR 28
12. *White Burgess v Abbott*, 2015 Carswell NS 314 (S.C.C.)
13. *Wilson v. Medical Services Commission of British Columbia*, 1988 CanLII 177 (BC CA)

Schedule "B"

LEGISLATION

1. Rules of Civil Procedure, RRO 1990, Reg 194: Rules 1.04, 2.01, 2.02, 2.03, 4.11, 4.1.01, 14.05, 14.06, 25.08, 25.09, 26, 34, 37, 39, 59
2. *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17
3. *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9
4. *Crown Liability and Proceedings Act*, 2019, S.O. 2019, c. 7, Sched. 17
5. *Quarantine Act*, S.C. 2005, c. 20

Schedule "B"

1. Rules of Civil Procedure, RRO 1990, Reg 194:

Rules 1.04, 2.01, 2.02, 2.03, 4.11, 4.1.01, 14.05, 14.06, 25.08, 25.09, 26, 34, 37, 39, 59

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits. R.R.O. 1990, Reg. 194, r. 1.04 (1).

(1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding. O. Reg. 438/08, s. 2.

EFFECT OF NON-COMPLIANCE

2.01 (1) A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court,

(a) may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute; or

(b) only where and as necessary in the interest of justice, may set aside the proceeding or a step, document or order in the proceeding in whole or in part. R.R.O. 1990, Reg. 194, r. 2.01 (1).

(2) The court shall not set aside an originating process on the ground that the proceeding should have been commenced by an originating process other than the one employed. R.R.O. 1990, Reg. 194, r. 2.01 (2).

ATTACKING IRREGULARITY

2.02 A motion to attack a proceeding or a step, document or order in a proceeding for irregularity shall not be made, except with leave of the court,

(a) after the expiry of a reasonable time after the moving party knows or ought reasonably to have known of the irregularity; or

(b) if the moving party has taken any further step in the proceeding after obtaining knowledge of the irregularity. R.R.O. 1990, Reg. 194, r. 2.02.

COURT MAY DISPENSE WITH COMPLIANCE

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time. R.R.O. 1990, Reg. 194, r. 2.03.

NOTICE OF CONSTITUTIONAL QUESTION

4.11 The notice of constitutional question referred to in section 109 of the *Courts of Justice Act* shall be in Form 4F. R.R.O. 1990, Reg. 194, r. 4.11.

DUTY OF EXPERT

4.1.01 (1) It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a proceeding under these rules,

(a) to provide opinion evidence that is fair, objective and non-partisan;

(b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and

(c) to provide such additional assistance as the court may reasonably require to determine a matter in issue. O. Reg. 438/08, s. 8.

Duty Prevails

(2) The duty in subrule (1) prevails over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged. O. Reg. 438/08, s. 8.

APPLICATIONS — BY NOTICE OF APPLICATION OR APPLICATION FOR CERTIFICATE

14.05 (1) The originating process for the commencement of an application is, as applicable,

(a) a notice of application (Form 14E, 14E.1, 68A or 73A); or

(b) an application for a certificate of appointment of estate trustee (Form 74.4, 74.4.1, 74.5, 74.5.1, 74.14, 74.15, 74.21, 74.24, 74.27 or 74.30), small estate certificate (Form 74.1A) or amended small estate certificate (Form 74.1E). O Reg. 383/21, s. 3).

Information for Court Use

(1.1) Form 14F (Information for court use) shall be filed together with a notice of application in Form 14E, 14E.1, 68A or 73A. O. Reg. 260/05, s. 2; O. Reg. 43/14, s. 5 (2).

Application under Statute

(2) A proceeding may be commenced by an application to the Superior Court of Justice or to a judge of that court, if a statute so authorizes. R.R.O. 1990, Reg. 194, r. 14.05 (2); O. Reg. 292/99, s. 1 (2).

Application under Rules

(3) A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,

(a) the opinion, advice or direction of the court on a question affecting the rights of a person in respect of the administration of the estate of a deceased person or the execution of a trust;

(b) an order directing executors, administrators or trustees to do or abstain from doing any particular act in respect of an estate or trust for which they are responsible;

(c) the removal or replacement of one or more executors, administrators or trustees, or the fixing of their compensation;

(d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution;

(e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges;

(f) the approval of an arrangement or compromise or the approval of a purchase, sale, mortgage, lease or variation of trust;

(g) an injunction, mandatory order or declaration or the appointment of a receiver or other consequential relief when ancillary to relief claimed in a proceeding properly commenced by a notice of application;

(g.1) for a remedy under the Canadian Charter of Rights and Freedoms; or

(h) in respect of any matter where it is unlikely that there will be any material facts in dispute requiring a trial. R.R.O. 1990, Reg. 194, r. 14.05 (3); O. Reg. 396/91, s. 3; O. Reg. 537/18, s. 2.

TITLE OF PROCEEDING

14.06 (1) Every originating process shall contain a title of the proceeding setting out the names of all the parties and the capacity in which they are made parties, if other than their personal capacity. R.R.O. 1990, Reg. 194, r. 14.06 (1).

(2) In an action, the title of the proceeding shall name the party commencing the action as the plaintiff and the opposite party as the defendant. R.R.O. 1990, Reg. 194, r. 14.06 (2); O. Reg. 131/04. s. 7.

(3) In an application, the title of the proceeding shall name the party commencing the application as the applicant and the opposite party, if any, as the respondent and the notice of application shall state the statutory provision or rule, if any, under which the application is made. R.R.O. 1990, Reg. 194, r. 14.06 (3).

WHERE A REPLY IS NECESSARY

Different Version of Facts

25.08 (1) A party who intends to prove a version of the facts different from that pleaded in the opposite party's defence shall deliver a reply setting out the different version, unless it has already been pleaded in the claim. R.R.O. 1990, Reg. 194, r. 25.08 (1).

Affirmative Reply

(2) A party who intends to reply in response to a defence on any matter that might, if not specifically pleaded, take the opposite party by surprise or raise an issue that has not been raised by a previous pleading shall deliver a reply setting out that matter, subject to subrule 25.06 (5) (inconsistent claims or new claims). R.R.O. 1990, Reg. 194, r. 25.08 (2).

Reply Only Where Required

(3) A party shall not deliver a reply except where required to do so by subrule (1) or (2). R.R.O. 1990, Reg. 194, r. 25.08 (3).

Deemed Denial of Allegations Where No Reply

(4) A party who does not deliver a reply within the prescribed time shall be deemed to deny the allegations of fact made in the defence of the opposite party. R.R.O. 1990, Reg. 194, r. 25.08 (4).

RULES OF PLEADING — APPLICABLE TO REPLIES

Admissions

25.09 (1) A party who delivers a reply shall admit every allegation of fact in the opposite party's defence that the party does not dispute. R.R.O. 1990, Reg. 194, r. 25.09 (1).

STRIKING OUT A PLEADING OR OTHER DOCUMENT

25.11 The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

(a) may prejudice or delay the fair trial of the action;

(b) is scandalous, frivolous or vexatious; or

(c) is an abuse of the process of the court. R.R.O. 1990, Reg. 194, r. 25.11.

GENERAL POWER OF COURT

26.01 On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment. R.R.O. 1990, Reg. 194, r. 26.01.

WHEN AMENDMENTS MAY BE MADE

26.02 A party may amend the party's pleading,

(a) without leave, before the close of pleadings, if the amendment does not include or necessitate the addition, deletion or substitution of a party to the action;

(b) on filing the consent of all parties and, where a person is to be added or substituted as a party, the person's consent; or

(c) with leave of the court. R.R.O. 1990, Reg. 194, r. 26.02.

HOW AMENDMENTS MADE

26.03 (1) An amendment to a pleading shall be made on the face of the copy filed in the court office, except that where the amendment is so extensive as to make the amended pleading difficult or inconvenient to read the party shall file a fresh copy of the original pleading as amended, bearing the date of the original pleading and the title of the pleading preceded by the word "amended". R.R.O. 1990, Reg. 194, r. 26.03 (1).

(2) An amendment to a pleading shall be underlined so as to distinguish the amended wording from the original, and the registrar shall note on the amended pleading the date on which, and the authority by which, the amendment was made. R.R.O. 1990, Reg. 194, r. 26.03 (2).

(3) Where a pleading has been amended more than once each subsequent amendment shall be underlined with an additional line for each occasion. R.R.O. 1990, Reg. 194, r. 26.03 (3).

SERVICE OF AMENDED PLEADING

Service on Every Party to Action and Related Actions

26.04 (1) An amended pleading shall be served forthwith on every person who is, at the time of service, a party to the main action or to a counterclaim, crossclaim or third party claim in the main action, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 26.04 (1).

(2) Proof of service of an amended pleading other than an originating process shall be filed forthwith after it is served. R.R.O. 1990, Reg. 194, r. 26.04 (2).

Amended Originating Process

(3) Where an amended pleading is an originating process,

(a) it need not be served personally on a party who was served with the original pleading and responded to it; and

(b) it shall be served personally or by an alternative to personal service under rule 16.03 on an opposite party who has not responded to the original pleading, whether or not the party has been noted in default. R.R.O. 1990, Reg. 194, r. 26.04 (3).

RESPONDING TO AN AMENDED PLEADING

26.05 (1) A party shall respond to an amended pleading within the time remaining for responding to the original pleading, or within ten days after service of the amended pleading, whichever is the longer period, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 26.05 (1).

(2) A party who has responded to a pleading that is subsequently amended and does not respond to the amended pleading within the prescribed time shall be deemed to rely on the party's original pleading in answer to the amended pleading. R.R.O. 1990, Reg. 194, r. 26.05 (2).

AMENDMENT AT TRIAL

26.06 Where a pleading is amended at the trial, and the amendment is made on the face of the record, an order need not be taken out and the pleading as amended need not be filed or served unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 26.06.

APPLICATION OF THE RULE

34.01 Rules 34.02 to 34.19 apply to,

(a) an oral examination for discovery under Rule 31;

(b) the taking of evidence before trial under rule 36.01, subject to rule 36.02;

(c) a cross-examination on an affidavit for use on a motion or application under rule 39.02;

(d) the examination out of court of a witness before the hearing of a pending motion or application under rule 39.03; and

(e) an examination in aid of execution under rule 60.18. R.R.O. 1990, Reg. 194, r. 34.01.

BEFORE WHOM TO BE HELD

34.02 (1) An oral examination to be held in Ontario shall be held at a time and place set out in the notice of examination or summons to a witness, before a person assigned by,

(a) an official examiner;

(b) a reporting service agreed on by the parties; or

(c) a reporting service named by the examining party. O. Reg. 171/98, s. 8.

(2) A person who objects to being examined at the time or place set out in the notice of examination or before a person assigned under subrule (1) may make a motion to show that the time, place or person is unsuitable for the proper conduct of the examination. O. Reg. 171/98, s. 8.

(3) If a motion under subrule (2) is dismissed, the court shall fix the responding party's costs on a substantial indemnity basis and order the moving party to pay them forthwith, unless the court is satisfied that the making of the motion, although unsuccessful, was nevertheless reasonable. O. Reg. 171/98, s. 8; O. Reg. 284/01, s. 8.

PLACE OF EXAMINATION

34.03 Where the person to be examined resides in Ontario, the examination shall take place in the county in which the person resides, unless the court orders or the person to be examined and all the parties agree otherwise. R.R.O. 1990, Reg. 194, r. 34.03.

HOW ATTENDANCE REQUIRED

Party

34.04 (1) Where the person to be examined is a party to the proceeding, a notice of examination (Form 34A) shall be served,

(a) on the party's lawyer of record; or

(b) where the party acts in person, on the party, personally or by an alternative to personal service. R.R.O. 1990, Reg. 194, r. 34.04 (1); O. Reg. 739/94, s. 2 (1); O. Reg. 575/07, s. 20 (1).

Person Examined on Behalf or in Place of Party

(2) Where a person is to be examined for discovery or in aid of execution on behalf or in place of a party, a notice of examination shall be served,

(a) on the party's lawyer of record; or

(b) on the person to be examined, personally and not by an alternative to personal service. R.R.O. 1990, Reg. 194, r. 34.04 (2); O. Reg. 575/07, s. 20 (2).

Deponent of Affidavit

(3) Where a person is to be cross-examined on an affidavit, a notice of examination shall be served,

(a) on the lawyer for the party who filed the affidavit; or

(b) where the party who filed the affidavit acts in person, on the person to be cross-examined, personally and not by an alternative to personal service. R.R.O. 1990, Reg. 194, r. 34.04 (3); O. Reg. 739/94, s. 2 (2); O. Reg. 575/07, s. 1.

Others

(4) Where the person to be examined,

(a) is neither a party nor a person referred to in subrule (2) or (3); and

(b) resides in Ontario,

the person shall be served with a summons to witness (Form 34B), personally and not by an alternative to personal service. R.R.O. 1990, Reg. 194, r. 34.04 (4).

Attendance Money

(5) When a summons to witness is served on a witness, attendance money calculated in accordance with Tariff A shall be paid or tendered to the witness at the same time. R.R.O. 1990, Reg. 194, r. 34.04 (5).

Summons may be Issued in Blank

(6) On the request of a party or a lawyer and on payment of the prescribed fee, a registrar shall sign, seal and issue a blank summons to witness and the party or lawyer may complete the summons and insert the names of any number of witnesses. R.R.O. 1990, Reg. 194, r. 34.04 (6); O. Reg. 575/07, s. 1.

Person Outside Ontario

(7) Rule 53.05 (summons to a witness outside Ontario) applies to the securing of the attendance for examination of a person outside Ontario and the attendance money paid or tendered to the person shall be calculated in accordance with the *Interprovincial Summonses Act*. R.R.O. 1990, Reg. 194, r. 34.04 (7).

Person in Custody

(8) Rule 53.06 (compelling attendance of witness in custody) applies to the securing of the attendance for examination of a person in custody. R.R.O. 1990, Reg. 194, r. 34.04 (8).

34.04.1 Revoked: O. Reg. 171/98, s. 9.

NOTICE OF TIME AND PLACE

Person to be Examined

34.05 (1) Where the person to be examined resides in Ontario, he or she shall be given not less than two days notice of the time and place of the examination, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 34.05 (1).

Every Other Party

(2) Every party to the proceeding other than the examining party shall be given not less than two days notice of the time and place of the examination. R.R.O. 1990, Reg. 194, r. 34.05 (2).

EXAMINATIONS ON CONSENT

34.06 A person to be examined and all the parties may consent to the time and place of the examination and,

(a) to the minimum notice period and the form of notice; or

(b) to dispense with notice. R.R.O. 1990, Reg. 194, r. 34.06.

WHERE PERSON TO BE EXAMINED RESIDES OUTSIDE ONTARIO

Contents of Order for Examination

34.07 (1) Where the person to be examined resides outside Ontario, the court may determine,

(a) whether the examination is to take place in or outside Ontario;

(b) the time and place of the examination;

(c) the minimum notice period;

(d) the person before whom the examination is to be conducted;

(e) the amount of attendance money to be paid to the person to be examined; and

(f) any other matter respecting the holding of the examination. R.R.O. 1990, Reg. 194, r. 34.07 (1).

Commission and Letter of Request

(2) Where the person is to be examined outside Ontario, the order under subrule (1) shall be in Form 34E and shall, if the moving party requests it, provide for the issuing of,

(a) a commission (Form 34C) authorizing the taking of evidence before a named commissioner; and

(b) a letter of request (Form 34D) directed to the judicial authorities of the jurisdiction in which the person is to be found, requesting the issuing of such process as is necessary to compel the person to attend and be examined before the commissioner. R.R.O. 1990, Reg. 194, r. 34.07 (2).

(3) The commission and letter of request shall be prepared and issued by the registrar. R.R.O. 1990, Reg. 194, r. 34.07 (3).

Attendance Money

(4) Where the person to be examined resides outside Ontario and is not a party or a person to be examined on behalf or in place of a party, the examining party shall pay or tender to the person to be examined the amount of attendance money fixed by the order under subrule (1). R.R.O. 1990, Reg. 194, r. 34.07 (4).

Duties of Commissioner

(5) A commissioner shall, to the extent that it is possible to do so, conduct the examination in the form of oral questions and answers in accordance with these rules, the law of evidence of Ontario and the terms of the commission, unless some other form of examination is required by the order or the law of the place where the examination is conducted. R.R.O. 1990, Reg. 194, r. 34.07 (5).

(6) As soon as the transcript of the examination is prepared, the commissioner shall,

(a) return the commission, together with the original transcript and exhibits, to the registrar who issued it;

(b) keep a copy of the transcript and, where practicable, the exhibits; and

(c) notify the parties who appeared at the examination that the transcript is complete and has been returned to the registrar who issued the commission. R.R.O. 1990, Reg. 194, r. 34.07 (6).

Examining Party to Serve Transcript

(7) The registrar shall send the transcript to the lawyer for the examining party and the lawyer shall forthwith serve every other party with the transcript free of charge. R.R.O. 1990, Reg. 194, r. 34.07 (7); O. Reg. 575/07, s. 1.

PERSON TO BE EXAMINED TO BE SWORN

34.08 (1) Before being examined, the person to be examined shall take an oath or make an affirmation and, where the examination is conducted in Ontario, the oath or affirmation shall be administered by an official examiner or by a person authorized to administer oaths in Ontario. R.R.O. 1990, Reg. 194, r. 34.08 (1).

(2) Where the examination is conducted outside Ontario, the oath or affirmation may be administered by the person before whom the examination is conducted, a person authorized to administer oaths in Ontario or a person authorized to take affidavits or administer oaths or affirmations in the jurisdiction where the examination is conducted. R.R.O. 1990, Reg. 194, r. 34.08 (2).

INTERPRETER

34.09 (1) Where the person to be examined does not understand the language or languages in which the examination is to be conducted or is deaf or mute, a competent and independent interpreter shall, before the person is examined, take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation and the questions to and answers of the person being examined. R.R.O. 1990, Reg. 194, r. 34.09 (1).

(2) Where an interpreter is required by subrule (1) for the examination of,

(a) a party or a person on behalf or in place of a party, the party shall provide the interpreter;

(b) any other person, the examining party shall provide the interpreter,

unless the interpretation is from English to French or from French to English and an interpreter is provided by the Ministry of the Attorney General. R.R.O. 1990, Reg. 194, r. 34.09 (2).

PRODUCTION OF DOCUMENTS ON EXAMINATION

Interpretation

34.10 (1) Subrule 30.01 (1) (meaning of "document", "power") applies to subrules (2), (3) and (4). R.R.O. 1990, Reg. 194, r. 34.10 (1).

Person to be Examined Must Produce Required Documents and Things

(2) The person to be examined shall produce for inspection at the examination,

(a) on an examination for discovery, all documents in his or her possession, control or power that are not privileged and that subrule 30.04 (4) requires the person to produce; and

(b) on any examination, including an examination for discovery, all documents and things in his or her possession, control or power that are not privileged and that the notice of examination or summons to witness requires the person to produce. O. Reg. 248/21, s. 6 (1).

Notice or Summons May Require Documents and Things

(3) Unless the court orders otherwise, the notice of examination or summons to witness may require the person to be examined to produce for inspection at the examination,

(a) all documents and things relevant to any matter in issue in the proceeding that are in his or her possession, control or power and are not privileged; or

(b) such documents or things described in clause (a) as are specified in the notice or summons. R.R.O. 1990, Reg. 194, r. 34.10 (3); O. Reg. 438/08, s. 31; O. Reg. 248/21, s. 6 (2).

Duty to Produce Other Documents

(4) Where a person admits, on an examination, that he or she has possession or control of or power over any other document that is relevant to a matter in issue in the proceeding and is not privileged, the person shall produce it for inspection by the examining party forthwith, if the person has the document at the examination, and if not, within two days thereafter, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 34.10 (4); O. Reg. 453/09, s. 2.

RE-EXAMINATION

On Examination for Discovery

34.11 (1) A person being examined for discovery may be re-examined by his or her own lawyer and by any party adverse in interest to the examining party. R.R.O. 1990, Reg. 194, r. 34.11 (1); O. Reg. 575/07, s. 3.

On Cross-Examination on Affidavit or Examination in Aid of Execution

(2) A person being cross-examined on an affidavit or examined in aid of execution may be re-examined by his or her own lawyer. R.R.O. 1990, Reg. 194, r. 34.11 (2); O. Reg. 575/07, s. 3.

Timing and Form

(3) The re-examination shall take place immediately after the examination or cross-examination and shall not take the form of a cross-examination. R.R.O. 1990, Reg. 194, r. 34.11 (3).

On Examination for Motion or Application

(4) Re-examination of a witness examined,

(a) before the hearing of a motion or application, is governed by subrule 39.03 (2); and

(b) at the hearing of a motion or application, is governed by subrule 39.03 (4). R.R.O. 1990, Reg. 194, r. 34.11 (4).

On Examination Before Trial

(5) Re-examination of a witness examined before trial under Rule 36 is governed by subrule 36.02 (2). R.R.O. 1990, Reg. 194, r. 34.11 (5).

OBJECTIONS AND RULINGS

34.12 (1) Where a question is objected to, the objector shall state briefly the reason for the objection, and the question and the brief statement shall be recorded. R.R.O. 1990, Reg. 194, r. 34.12 (1).

(2) A question that is objected to may be answered with the objector's consent, and where the question is answered, a ruling shall be obtained from the court before the evidence is used at a hearing. R.R.O. 1990, Reg. 194, r. 34.12 (2).

(3) A ruling on the propriety of a question that is objected to and not answered may be obtained on motion to the court. R.R.O. 1990, Reg. 194, r. 34.12 (3).

34.13 Revoked: O. Reg. 171/98, s. 10.

IMPROPER CONDUCT OF EXAMINATION

Adjournment to Seek Directions

34.14 (1) An examination may be adjourned by the person being examined or by a party present or represented at the examination, for the purpose of moving for directions with respect to the continuation of the examination or for an order terminating the examination or limiting its scope, where,

(a) the right to examine is being abused by an excess of improper questions or interfered with by an excess of improper interruptions or objections;

(b) the examination is being conducted in bad faith, or in an unreasonable manner so as to annoy, embarrass or oppress the person being examined;

(c) many of the answers to the questions are evasive, unresponsive or unduly lengthy; or

(d) there has been a neglect or improper refusal to produce a relevant document on the examination. R.R.O. 1990, Reg. 194, r. 34.14 (1).

Sanctions for Improper Conduct or Adjournment

(2) Where the court finds that,

(a) a person's improper conduct necessitated a motion under subrule (1); or

(b) a person improperly adjourned an examination under subrule (1),

the court may order the person to pay personally and forthwith the costs of the motion, any costs thrown away and the costs of any continuation of the examination and the court may fix the costs and make such other order as is just. R.R.O. 1990, Reg. 194, r. 34.14 (2).

SANCTIONS FOR DEFAULT OR MISCONDUCT BY PERSON TO BE EXAMINED

34.15 (1) Where a person fails to attend at the time and place fixed for an examination in the notice of examination or summons to witness or at the time and place agreed on by the parties, or refuses to take an oath or make an affirmation, to answer any proper question, to produce a document or thing that he or she is required to produce or to comply with an order under rule 34.14, the court may,

(a) where an objection to a question is held to be improper, order or permit the person being examined to reattend at his or her own expense and answer the question, in which case the person shall also answer any proper questions arising from the answer;

(b) where the person is a party or, on an examination for discovery, a person examined on behalf or in place of a party, dismiss the party's proceeding or strike out the party's defence;

(c) strike out all or part of the person's evidence, including any affidavit made by the person; and

(d) make such other order as is just. R.R.O. 1990, Reg. 194, r. 34.15 (1).

(2) Where a person does not comply with an order under rule 34.14 or subrule (1), a judge may make a contempt order against the person. R.R.O. 1990, Reg. 194, r. 34.15 (2).

EXAMINATION TO BE RECORDED

34.16 Every examination shall be recorded in its entirety in question and answer form in a manner that permits the preparation of a typed transcript of the examination, unless the court orders or the parties agree otherwise. R.R.O. 1990, Reg. 194, r. 34.16; O. Reg. 689/20, s. 20.

TYPED TRANSCRIPT

34.17 (1) The official examiner or person who recorded an examination shall, on the request of a party, have a typed transcript of the examination prepared and completed within four weeks after receipt of the request. O. Reg. 689/20, s. 21.

Certification

(2) The transcript shall be certified as correct by the person who recorded the examination, but need not be read to or signed by the person examined. O. Reg. 689/20, s. 21.

Copy to be Provided

(3) As soon as the transcript is prepared, the official examiner or person who recorded the examination shall send a copy of the transcript to the party who requested it. O. Reg. 689/20, s. 21.

FILING OF TRANSCRIPT

Party to Have Transcript Available

34.18 (1) It is the responsibility of a party who intends to refer to evidence given on an examination to have a copy of the transcript of the examination available for filing with the court. R.R.O. 1990, Reg. 194, r. 34.18 (1).

Filing for Use on Motion or Application

(2) Where a party intends to refer to a transcript on the hearing of a motion or application, a copy of the transcript for the use of the court shall be filed in the court office where the motion or application is to be heard, at least four days before the hearing. R.R.O. 1990, Reg. 194, r. 34.18 (2); O. Reg. 171/98, s. 11; O. Reg. 394/09, s. 14.

(3) The party may file a copy of a portion of the transcript if the other parties consent. R.R.O. 1990, Reg. 194, r. 34.18 (3).

Filing for Use at Trial

(4) A copy of a transcript for the use of the court at trial shall not be filed until a party refers to it at trial, and the trial judge may read only the portions to which a party refers. R.R.O. 1990, Reg. 194, r. 34.18 (4).

VIDEOTAPING OR OTHER RECORDING OF EXAMINATION

34.19 (1) On consent of the parties or by order of the court, an examination may be recorded by videotape or other similar means and the tape or other recording may be filed for the use of the court along with the transcript. R.R.O. 1990, Reg. 194, r. 34.19 (1).

(2) Rule 34.18 applies, with necessary modifications, to a tape or other recording made under subrule (1). R.R.O. 1990, Reg. 194, r. 34.19 (2).

NOTICE OF MOTION

37.01 A motion shall be made by a notice of motion (Form 37A) unless the nature of the motion or the circumstances make a notice of motion unnecessary. R.R.O. 1990, Reg. 194, r. 37.01.

JURISDICTION TO HEAR A MOTION

Jurisdiction of Judge

37.02 (1) A judge has jurisdiction to hear any motion in a proceeding. R.R.O. 1990, Reg. 194, r. 37.02 (1).

Jurisdiction of a Case Management Master

(2) A case management master has jurisdiction to hear any motion in a proceeding, and has all the jurisdiction of a judge in respect of a motion, except a motion,

(a) where the power to grant the relief sought is conferred expressly on a judge by a statute or rule;

(b) to set aside, vary or amend an order of a judge;

(c) to abridge or extend a time prescribed by an order that a case management master could not have made;

(d) for judgment on consent in favour of or against a party under disability;

(e) relating to the liberty of the subject;

(f) under section 4 or 5 of the *Judicial Review Procedure Act*; or

(g) in an appeal. R.R.O. 1990, Reg. 194, r. 37.02 (2); O. Reg. 711/20, s. 7.

Jurisdiction of Registrar

(3) The registrar shall make an order granting the relief sought on a motion for an order on consent, if,

(a) the consent of all parties (including the consent of any party to be added, deleted or substituted) is filed;

(b) the consent states that no party affected by the order is under disability; and

(c) the order sought is for,

(i) amendment of a pleading, notice of application or notice of motion,

(ii) addition, deletion or substitution of a party,

(iii) removal of a lawyer as lawyer of record;

(iv) setting aside the noting of a party in default,

(v) setting aside a default judgment,

(vi) discharge of a certificate of pending litigation,

(vii) security for costs in a specified amount,

(viii) re-attendance of a witness to answer questions on an examination,

(ix) fulfilment of undertakings given on an examination, or

(x) dismissal of a proceeding, with or without costs. O. Reg. 19/03, s. 8; O. Reg. 575/07, s. 21.

WHERE MOTIONS TO BE BROUGHT

37.03 Unless the court orders otherwise, all motions shall be brought in the county where the proceeding was commenced or to which it has been transferred under rule 13.1.02 and, if a motion is to be heard in person, it shall be heard in that county. O. Reg. 689/20, s. 22.

MOTIONS — TO WHOM TO BE MADE

37.04 A motion shall be made to the court if it is within the jurisdiction of a case management master or registrar and otherwise shall be made to a judge. R.R.O. 1990, Reg. 194, r. 37.04; O. Reg. 19/03, s. 9; O. Reg. 711/20, s. 7.

HEARING DATE FOR MOTIONS

Where no practice direction

37.05 (1) At any place where no practice direction concerning the scheduling of motions is in effect, a motion may be set down for hearing on any day on which a judge or case management master is scheduled to hear motions. O. Reg. 770/92, s. 10; O. Reg. 711/20, s. 7.

Exception, lengthy hearing

(2) If a lawyer estimates that the hearing of the motion will be more than two hours long, a hearing date shall be obtained from the registrar before the notice of motion is served. O. Reg. 770/92, s. 10; O. Reg. 575/07, s. 3.

Urgent motion

(3) An urgent motion may be set down for hearing on any day on which a judge or case management master is scheduled to hear motions, even if a lawyer estimates that the hearing is likely to be more than two hours long. O. Reg. 770/92, s. 10; O. Reg. 575/07, s. 3; O. Reg. 711/20, s. 7.

CONTENT OF NOTICE

37.06 Every notice of motion (Form 37A) shall,

(a) state the precise relief sought;

(b) state the grounds to be argued, including a reference to any statutory provision or rule to be relied on; and

(c) list the documentary evidence to be used at the hearing of the motion. R.R.O. 1990, Reg. 194, r. 37.06.

SERVICE OF NOTICE

Required as General Rule

37.07 (1) The notice of motion shall be served on any party or other person who will be affected by the order sought, unless these rules provide otherwise. R.R.O. 1990, Reg. 194, r. 37.07 (1); O. Reg. 260/05, s. 9 (1).

Where Not Required

(2) Where the nature of the motion or the circumstances render service of the notice of motion impracticable or unnecessary, the court may make an order without notice. R.R.O. 1990, Reg. 194, r. 37.07 (2).

(3) Where the delay necessary to effect service might entail serious consequences, the court may make an interim order without notice. R.R.O. 1990, Reg. 194, r. 37.07 (3).

(4) Unless the court orders or these rules provide otherwise, an order made without notice to a party or other person affected by the order shall be served on the party or other person, together with a copy of the notice of motion and all affidavits and other documents used at the hearing of the motion. O. Reg. 219/91, s. 3; O. Reg. 260/05, s. 9 (2).

Where Notice Ought to Have Been Served

(5) Where it appears to the court that the notice of motion ought to have been served on a person who has not been served, the court may,

(a) dismiss the motion or dismiss it only against the person who was not served;

(b) adjourn the motion and direct that the notice of motion be served on the person; or

(c) direct that any order made on the motion be served on the person. R.R.O. 1990, Reg. 194, r. 37.07 (5).

Minimum Notice Period

(6) Where a motion is made on notice, the notice of motion shall be served at least seven days before the date on which the motion is to be heard. R.R.O. 1990, Reg. 194, r. 37.07 (6); O. Reg. 171/98, s. 12; O. Reg. 438/08, s. 33.

FILING OF NOTICE OF MOTION

37.08 (1) Where a motion is made on notice, the notice of motion shall be filed with proof of service at least seven days before the hearing date in the court office where the motion is to be heard. R.R.O. 1990, Reg. 194, r. 37.08 (1); O. Reg. 171/98, s. 13; O. Reg. 438/08, s. 34.

(2) Where service of the notice of motion is not required, it shall be filed at or before the hearing. R.R.O. 1990, Reg. 194, r. 37.08 (2).

ABANDONED MOTIONS

37.09 (1) A party who makes a motion may abandon it by delivering a notice of abandonment. R.R.O. 1990, Reg. 194, r. 37.09 (1).

(2) A party who serves a notice of motion and does not file it or appear at the hearing shall be deemed to have abandoned the motion unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 37.09 (2).

(3) Where a motion is abandoned or is deemed to have been abandoned, a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 37.09 (3).

MATERIAL FOR USE ON MOTIONS

Where Motion Record Required

37.10 (1) Where a motion is made on notice, the moving party shall, unless the court orders otherwise before or at the hearing of the motion, serve a motion record on every other party to the motion and file it, with proof of service, in the court office where the motion is to be heard, at least seven days before the hearing, and the court file shall not be placed before the judge or case management master hearing the motion unless he or she requests it or a party requisitions it. R.R.O. 1990, Reg. 194, r. 37.10 (1); O. Reg. 171/98, s. 14 (1); O. Reg. 438/08, s. 35 (1); O. Reg. 711/20, s. 7.

Contents of Motion Record

(2) The motion 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 notice of motion;

(c) a copy of all affidavits and other material served by any party for use on the motion;

(d) a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves; and

(e) a copy of any other material in the court file that is necessary for the hearing of the motion. R.R.O. 1990, Reg. 194, r. 37.10 (2).

Responding Party's Motion Record

(3) Where a motion record is served a responding party who is of the opinion that it is incomplete may serve on every other party, and file, with proof of service, in the court office where the motion is to be heard, at least four days before the hearing, a responding party's motion record containing, 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; and

(b) a copy of any material to be used by the responding party on the motion and not included in the motion record. R.R.O. 1990, Reg. 194, r. 37.10 (3); O. Reg. 171/98, s. 14 (2); O. Reg. 438/08, s. 35 (2).

Material may be Filed as Part of Record

(4) A notice of motion and any other material served by a party for use on a motion may be filed, together with proof of service, as part of the party's motion record and need not be filed separately. R.R.O. 1990, Reg. 194, r. 37.10 (4).

Transcript of Evidence

(5) A party who intends to refer to a transcript of evidence at the hearing of a motion shall file a copy of the transcript as provided by rule 34.18. R.R.O. 1990, Reg. 194, r. 37.10 (5).

Factum

(6) A party may serve on every other party a factum consisting of a concise argument stating the facts and law relied on by the party. O. Reg. 14/04, s. 18.

(7) The moving party's factum, if any, shall be served and filed with proof of service in the court office where the motion is to be heard at least seven days before the hearing. O. Reg. 394/09, s. 15 (1).

(8) The responding party's factum, if any, shall be served and filed with proof of service in the court office where the motion is to be heard at least four days before the hearing. O. Reg. 394/09, s. 15 (2).

(9) REVOKED: O. Reg. 394/09, s. 15 (3).

Refusals and Undertakings Chart

(10) On a motion to compel answers or to have undertakings given on an examination or cross-examination satisfied,

(a) the moving party shall serve on every other party to the motion and file with proof of service, in the court office where the motion is to be heard, at least seven days before the hearing, a refusals and undertakings chart (Form 37C) that sets out,

(i) the issue that is the subject of the refusal or undertaking and its connection to the pleadings or affidavit,

(ii) the question number and a reference to the page of the transcript where the question appears, and

(iii) the exact words of the question; and

(b) the responding party shall serve on the moving party and every other party to the motion and file with proof of service, in the court office where the motion is to be heard, at least four days before the hearing, a copy of the undertakings and refusals chart that was served by the moving party completed so as to show,

(i) the answer provided, or

(ii) the basis for the refusal to answer the question or satisfy the undertaking. O. Reg. 132/04, s. 8; O. Reg. 438/08, s. 35 (5, 6).

CONFIRMATION OF MOTION

37.10.1 (1) A party who makes a motion on notice to another party shall confer or attempt to confer with the other party and shall, not later than 2 p.m. three days before the hearing date,

(a) give the registrar a confirmation of motion (Form 37B) by,

(i) sending it by fax, or by e-mail if available in the court office, or

(ii) leaving it at the court office; and

(b) send a copy of the confirmation of motion to the other party by e-mail. O. Reg. 537/18, s. 7 (1); O. Reg. 689/20, s. 23 (1).

Failure to Send Copy of Confirmation

(2) If a party fails to send a copy of the confirmation of motion to a responding party in accordance with clause (1) (b), the responding party may, not later than 10 a.m. two days before the hearing date,

(a) give the registrar a confirmation of motion (Form 37B) by,

(i) sending it by fax, or by e-mail if available in the court office, or

(ii) leaving it at the court office; and

(b) send a copy of the confirmation of motion to the moving party by e-mail. O. Reg. 537/18, s. 7 (1); O. Reg. 689/20, s. 23 (2).

Duty to Update

(3) A party who has given a confirmation of motion and later determines that the confirmation is no longer correct shall immediately,

(a) give the registrar a corrected confirmation of motion (Form 37B) by,

(i) sending it by fax, or by e-mail if available in the court office, or

(ii) leaving it at the court office; and

(b) send a copy of the corrected confirmation of motion to the other party by e-mail. O. Reg. 14/04, s. 19; O. Reg. 689/20, s. 23 (3).

Effect of Failure to Confirm

(4) If no confirmation is given under subrule (1), the motion shall not be heard and is deemed to have been abandoned, unless the court orders otherwise. O. Reg. 537/18, s. 7 (2).

Costs

(5) If a motion is deemed to have been abandoned under subrule (4) and the responding party gave a confirmation of motion in accordance with subrule (2), the responding party may be heard on the costs of the abandoned motion on the hearing date scheduled for the abandoned motion. O. Reg. 537/18, s. 7 (2).

Note: On July 1, 2021, Rule 37.10.1 of the Regulation is amended by striking out "by fax, or" wherever it appears. (See: O Reg. 383/21, s. 4)

HEARING IN ABSENCE OF PUBLIC

37.11 (1) A motion may be heard in the absence of the public where,

(a) the motion is to be heard and determined without oral argument;

(b) because of urgency, it is impractical to have the motion heard in public;

(c) the motion is to be heard by telephone conference or video conference;

(d) the motion is made in the course of a pre-trial conference or case conference; or

(e) the motion is before a single judge of an appellate court. R.R.O. 1990, Reg. 194, r. 37.11 (1); O. Reg. 465/93, s. 4 (1); O. Reg. 24/00, s. 7; O. Reg. 170/14, s. 9.

(2) The hearing of all other motions shall be open to the public, except as provided in section 135 of the *Courts of Justice Act*, in which case the presiding judge, case management master or officer shall endorse,

(a) on the notice of motion leave for a hearing in the absence of the public; or

(b) on a separate document in accordance with subrule 59.02 (2), with necessary modifications. O. Reg. 689/20, s. 24.

37.12 Revoked: O. Reg. 288/99, s. 15.

HEARING WITHOUT ORAL ARGUMENT

Consent motions, unopposed motions and motions without notice

37.12.1 (1) Where a motion is on consent, unopposed or without notice under subrule 37.07 (2), the motion may be heard in writing without the attendance of the parties, unless the court orders otherwise. O. Reg. 465/93, s. 4 (2).

(2) Where the motion is on consent, the consent and a draft order shall be filed with the notice of motion. O. Reg. 766/93, s. 1 (1).

(2.1) In the case of a motion on consent in the Court of Appeal, an affidavit or other document setting out the reasons why it is appropriate to make the order sought on the motion shall also be filed with the notice of motion. O. Reg. 82/17, s. 3.

(3) Where the motion is unopposed, a notice from the responding party stating that the party does not oppose the motion and a draft order shall be filed with the notice of motion. O. Reg. 766/93, s. 1 (1).

Opposed Motions in Writing

(4) The moving party may propose in the notice of motion that the motion be heard in writing without the attendance of the parties, in which case,

(a) the motion shall be made on at least fourteen days notice;

(b) the moving party shall serve with the notice of motion and immediately file, with proof of service in the court office where the motion is to be heard, a motion record, a draft order and a factum entitled factum for a motion in writing, setting out the moving party's argument;

(c) the motion may be heard in writing without the attendance of the parties, unless the court orders otherwise. O. Reg. 465/93, s. 4 (2); O. Reg. 766/93, s. 1 (2); O. Reg. 689/20, s. 25.

(5) Within ten days after being served with the moving party's material, the responding party shall serve and file, with proof of service, in the court office where the motion is to be heard,

(a) a consent to the motion;

(b) a notice that the responding party does not oppose the motion;

(c) a motion record, a notice that the responding party agrees to have the motion heard and determined in writing under this rule and a factum entitled factum for a motion in writing, setting out the party's argument; or

(d) a notice that the responding party intends to make oral argument, along with any material intended to be relied upon by the party. O. Reg. 465/93, s. 4 (2).

(6) Where the responding party delivers a notice under subrule (5) that the party intends to make oral argument, the moving party may either attend the hearing and make oral argument or not attend and rely on the party's motion record and factum. O. Reg. 465/93, s. 4 (2).

DISPOSITION OF MOTION

37.13 (1) On the hearing of a motion, the presiding judge or officer may grant the relief sought or dismiss or adjourn the motion, in whole or in part and with or without terms, and may,

(a) where the proceeding is an action, order that it be placed forthwith, or within a specified time, on a list of cases requiring speedy trial; or

(b) where the proceeding is an application, order that it be heard at such time and place as are just. R.R.O. 1990, Reg. 194, r. 37.13 (1).

(2) A judge who hears a motion may,

(a) in proper case, order that the motion be converted into a motion for judgment; or

(b) order the trial of an issue, with such directions as are just, and adjourn the motion to be disposed of by the trial judge. R.R.O. 1990, Reg. 194, r. 37.13 (2).

(3) Where on a motion a judge directs the trial of an issue, subrules 38.10 (2) and (3) (issue treated as action) apply with necessary modifications. R.R.O. 1990, Reg. 194, r. 37.13 (3).

Exception, motions in estate matters

(4) Clause (2) (b) and subrule (3) do not apply to a motion under Rule 74, 74.1 or 75. O. Reg. 484/94, s. 7; O. Reg. 111/21, s. 4.

SETTING ASIDE, VARYING OR AMENDING ORDERS

Motion to Set Aside or Vary

37.14 (1) A party or other person who,

(a) is affected by an order obtained on motion without notice;

(b) fails to appear on a motion through accident, mistake or insufficient notice; or

(c) is affected by an order of a registrar,

may move to set aside or vary the order, by a notice of motion that is served forthwith after the order comes to the person's attention and names the first available hearing date that is at least three days after service of the notice of motion. R.R.O. 1990, Reg. 194, r. 37.14 (1); O. Reg. 132/04, s. 9.

(2) On a motion under subrule (1), the court may set aside or vary the order on such terms as are just. R.R.O. 1990, Reg. 194, r. 37.14 (2).

Order Made by Registrar

(3) A motion under subrule (1) or any other rule to set aside, vary or amend an order of a registrar may be made to a judge or case management master, at a place determined in accordance with rule 37.03 (where motions to be brought). R.R.O. 1990, Reg. 194, r. 37.14 (3); O. Reg. 689/20, s. 26; O. Reg. 711/20, s. 7.

Order Made by Judge

(4) A motion under subrule (1) or any other rule to set aside, vary or amend an order of a judge may be made,

(a) to the judge who made it, at any place; or

(b) to any other judge, at a place determined in accordance with rule 37.03 (where motions to be brought). R.R.O. 1990, Reg. 194, r. 37.14 (4); O. Reg. 689/20, s. 26.

Order Made by Case Management Master

(5) A motion under subrule (1) or any other rule to set aside, vary or amend an order of a case management master may be made,

(a) to the case management master who made it, at any place; or

(b) to any other case management master or to a judge, at a place determined in accordance with rule 37.03 (where motions to be brought). R.R.O. 1990, Reg. 194, r. 37.14 (5); O. Reg. 689/20, s. 26; O. Reg. 711/20, s. 7.

Order Made in Court of Appeal or Divisional Court

(6) A motion under subrule (1) or any other rule to set aside, vary or amend an order made by a judge or panel of the Court of Appeal or Divisional Court may be made,

(a) where the order was made by a judge, to the judge who made it or any other judge of the court; or

(b) where the order was made by a panel of the court, to the panel that made it or any other panel of the court. R.R.O. 1990, Reg. 194, r. 37.14 (6); O. Reg. 82/17, s. 4, 17.

MOTIONS IN A COMPLICATED PROCEEDING OR SERIES OF PROCEEDINGS

37.15 (1) Where a proceeding involves complicated issues or where there are two or more proceedings that involve similar issues, the Chief Justice or Associate Chief Justice of the Superior Court of Justice, a regional senior judge of the Superior Court of Justice or a judge designated by any of them may direct that all motions in the proceeding or proceedings be heard by a particular judge, and rule 37.03 (where motions to be brought) does not apply to those motions. R.R.O. 1990, Reg. 194, r. 37.15 (1); O. Reg. 292/99, ss. 2 (3), 4; O. Reg. 689/20, s. 27.

(1.1) A judge who is directed to hear all motions under subrule (1) may refer to a case management master any motion within the jurisdiction of a case management master under subrule 37.02 (2) unless the judge who made the direction under subrule (1) directs otherwise. O. Reg. 348/97, s. 2; O. Reg. 711/20, s. 7.

(1.2) A judge who is directed to hear all motions under subrule (1) and a case management master to whom a motion is referred under subrule (1.1) may give such directions and make such procedural orders as are necessary to promote the most expeditious and least expensive determination of the proceeding. O. Reg. 438/08, s. 37 (1); O. Reg. 394/09, s. 16; O. Reg. 711/20, s. 7.

(2) A judge who hears motions pursuant to a direction under subrule (1) shall not preside at the trial of the actions or the hearing of the applications except with the written consent of all parties. R.R.O. 1990, Reg. 194, r. 37.15 (2); O. Reg. 438/08, s. 37 (2).

PROHIBITING MOTIONS WITHOUT LEAVE

37.16 On motion by any party, a judge or case management master may by order prohibit another party from making further motions in the proceeding without leave, where the judge or case management master on the hearing of the motion is satisfied that the other party is attempting to delay or add to the costs of the proceeding or otherwise abuse the process of the court by a multiplicity of frivolous or vexatious motions. R.R.O. 1990, Reg. 194, r. 37.16; O. Reg. 711/20, s. 7.

MOTION BEFORE COMMENCEMENT OF PROCEEDING

37.17 In an urgent case, a motion may be made before the commencement of a proceeding on the moving party's undertaking to commence the proceeding forthwith. R.R.O. 1990, Reg. 194, r. 37.17.

EVIDENCE BY AFFIDAVIT

Generally

39.01 (1) Evidence on a motion or application may be given by affidavit unless a statute or these rules provide otherwise. R.R.O. 1990, Reg. 194, r. 39.01 (1).

Service and Filing

(2) Where a motion or application is made on notice, the affidavits on which the motion or application is founded shall be served with the notice of motion or notice of application and shall be filed with proof of service in the court office where the motion or application is to be heard at least seven days before the hearing. R.R.O. 1990, Reg. 194, r. 39.01 (2); O. Reg. 171/98, s. 18 (1); O. Reg. 394/09, s. 17 (1).

(3) All affidavits to be used at the hearing in opposition to a motion or application or in reply shall be served and filed with proof of service in the court office where the motion or application is to be heard at least four days before the hearing. R.R.O. 1990, Reg. 194, r. 39.01 (3); O. Reg. 171/98, s. 18 (2); O. Reg. 394/09, s. 17 (2).

Contents — Motions

(4) An affidavit for use on a motion may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit. R.R.O. 1990, Reg. 194, r. 39.01 (4).

Contents — Applications

(5) An affidavit for use on an application may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit. R.R.O. 1990, Reg. 194, r. 39.01 (5).

Full and Fair Disclosure on Motion or Application Without Notice

(6) Where a motion or application is made without notice, the moving party or applicant shall make full and fair disclosure of all material facts, and failure to do so is in itself sufficient ground for setting aside any order obtained on the motion or application. R.R.O. 1990, Reg. 194, r. 39.01 (6).

Expert Witness Evidence

(7) Opinion evidence provided by an expert witness for the purposes of a motion or application shall include the information listed under subrule 53.03 (2.1). O. Reg. 259/14, s. 8.

EVIDENCE BY CROSS-EXAMINATION ON AFFIDAVIT

On a Motion or Application

39.02 (1) A party to a motion or application who has served every affidavit on which the party intends to rely and has completed all examinations under rule 39.03 may cross-examine the deponent of any affidavit served by a party who is adverse in interest on the motion or application. R.R.O. 1990, Reg. 194, r. 39.02 (1).

(1.1) Subrule (1) does not apply to an application made under subsection 140 (3) of the *Courts of Justice Act*. O. Reg. 43/14, s. 11.

(2) A party who has cross-examined on an affidavit delivered by an adverse party shall not subsequently deliver an affidavit for use at the hearing or conduct an examination under rule 39.03 without leave or consent, and the court shall grant leave, on such terms as are just, where it is satisfied that the party ought to be permitted to respond to any matter raised on the cross-examination with evidence in the form of an affidavit or a transcript of an examination conducted under rule 39.03. R.R.O. 1990, Reg. 194, r. 39.02 (2).

To be Exercised with Reasonable Diligence

(3) The right to cross-examine shall be exercised with reasonable diligence, and the court may refuse an adjournment of a motion or application for the purpose of cross-examination where the party seeking the adjournment has failed to act with reasonable diligence. R.R.O. 1990, Reg. 194, r. 39.02 (3).

Additional Provisions Applicable to Motions

(4) On a motion other than a motion for summary judgment or a contempt order, a party who cross-examines on an affidavit,

(a) shall, where the party orders a transcript of the examination, purchase and serve a copy on every adverse party on the motion, free of charge; and

(b) is liable for the partial indemnity costs of every adverse party on the motion in respect of the cross-examination, regardless of the outcome of the proceeding, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 39.02 (4); O. Reg. 284/01, s. 10.

EVIDENCE BY EXAMINATION OF A WITNESS

Before the Hearing

39.03 (1) Subject to subrule 39.02 (2), a person may be examined as a witness before the hearing of a pending motion or application for the purpose of having a transcript of his or her evidence available for use at the hearing. R.R.O. 1990, Reg. 194, r. 39.03 (1).

(2) A witness examined under subrule (1) may be cross-examined by the examining party and any other party and may then be re-examined by the examining party on matters raised by other parties, and the re-examination may take the form of cross-examination. R.R.O. 1990, Reg. 194, r. 39.03 (2).

(2.1) Subrules (1) and (2) do not apply to an application made under subsection 140 (3) of the *Courts of Justice Act*. O. Reg. 43/14, s. 12.

To be Exercised with Reasonable Diligence

(3) The right to examine shall be exercised with reasonable diligence, and the court may refuse an adjournment of a motion or application for the purpose of an examination where the party seeking the adjournment has failed to act with reasonable diligence. R.R.O. 1990, Reg. 194, r. 39.03 (3).

At the Hearing

(4) With leave of the presiding judge or officer, a person may be examined at the hearing of a motion or application in the same manner as at a trial. R.R.O. 1990, Reg. 194, r. 39.03 (4).

Summons to Witness

(5) The attendance of a person to be examined under subrule (4) may be compelled in the same manner as provided in Rule 53 for a witness at a trial. R.R.O. 1990, Reg. 194, r. 39.03 (5).

EVIDENCE BY EXAMINATION FOR DISCOVERY

Adverse Party's Examination

39.04 (1) On the hearing of a motion, a party may use in evidence an adverse party's examination for discovery or the examination for discovery of any person examined on behalf or in place of, or in addition to, the adverse party, and rule 31.11 (use of discovery at trial) applies with necessary modifications. O. Reg. 534/95, s. 1.

Party's Examination

(2) On the hearing of a motion, a party may not use in evidence the party's own examination for discovery or the examination for discovery of any person examined on behalf or in place of, or in addition to, the party unless the other parties consent. O. Reg. 534/95, s. 1.

EFFECTIVE DATE

59.01 An order is effective from the date on which it is made, unless it provides otherwise. R.R.O. 1990, Reg. 194, r. 59.01.

ENDORSEMENT OF ORDERS

59.02 (1) An endorsement of an order shall be made on the appeal book, compendium, record, notice of motion, notice of application or on a separate document by the judge, case management master or officer making the order. O. Reg. 689/20, s. 38.

Requirements if Separate Document

(2) A separate document on which an endorsement is made,

(a) may be in paper or electronic format;

(b) may include the reasons for the decision; and

(c) shall include,

(i) the name and signature of the judge, case management master or officer making the order,

(ii) the date on which the endorsement is made,

(iii) the date of the hearing or conference,

(iv) the nature of the hearing or conference,

(v) the relief requested,

(vi) the disposition made at the hearing or conference, and

(vii) a list of the parties and lawyers who participated in the hearing or conference and a list of any parties or lawyers who did not participate in the hearing or conference. O. Reg. 689/20, s. 38.

Court File

(3) The registrar shall file endorsements in the court file. O. Reg. 689/20, s. 38.

PREPARATION AND FORM OF ORDER

Preparation of Draft Order

59.03 (1) Any party or person affected by an order may prepare a draft order and send it to all parties who participated in the hearing or conference for approval of its form and content. O. Reg. 689/20, s. 39.

Approval

(2) If all the parties who participated in the hearing or conference approve the draft order, the party or other person who prepared the draft order may request that it be issued by the registrar by filing,

(a) the draft order; and

(b) evidence that the parties have approved the draft order. O. Reg. 689/20, s. 39.

General Form of Order

(3) A draft order must be in Form 59A (order), 59B (judgment) or 59C (order or certificate on appeal) and must contain,

(a) the name of the judge, case management master or officer who made the order;

(b) the date on which the order was made;

(c) a recital of the particulars necessary to understand the order, including the date of the hearing or conference, the parties who participated in the hearing or conference and those who did not, and any undertaking given by a party as a condition of the order; and

(d) if the order is for the payment of money on which postjudgment interest is payable, the rate of interest and the date from which interest is payable. O. Reg. 689/20, s. 39.

(4) The operative parts of an order shall be divided into paragraphs, numbered consecutively. R.R.O. 1990, Reg. 194, r. 59.03 (4).

Order Directing Payment for Minor

(5) An order directing payment into court or to a trustee on behalf of a minor shall show the minor's birth date and full address and shall direct that a copy of the order be served on the Children's Lawyer. R.R.O. 1990, Reg. 194, r. 59.03 (5); O. Reg. 69/95, s. 19.

Order for Costs

(6) An order for the payment of costs shall direct payment to the party entitled to receive the costs and not to the party's lawyer. R.R.O. 1990, Reg. 194, r. 59.03 (6); O. Reg. 575/07, s. 1.

Order on which Interest Payable

(7) An order for the payment of money on which postjudgment interest is payable shall set out the rate of interest and the date from which interest is payable. R.R.O. 1990, Reg. 194, r. 59.03 (7).

(8) REVOKED: O. Reg. 131/04, s. 14.

ISSUING ORDERS

Issuance

59.04 (1) An order is considered to have been issued on the completion of the following steps:

1. The signing of the order,

i. by the judge, case management master or officer making the order, or

ii. by the registrar in accordance with subrule (3).

2. The registrar's dating and sealing of the order with the seal of the court. O. Reg. 689/20, s. 40.

Electronic Issuance

(2) If an order is issued electronically,

(a) subrule (1) applies instead of subrule 4.05 (1.1); and

(b) for greater certainty, the order may be sealed by use of an electronic version of the seal. O. Reg. 689/20, s. 40.

Registrar's Signature

(3) A registrar where the hearing or conference was held or where the proceeding was commenced may sign a draft order filed under subrule 59.03 (2), if the registrar is satisfied that the draft order,

(a) is in proper form; and

(b) complies with and reflects the terms of an endorsement or decision made by the person indicated in the draft order. O. Reg. 689/20, s. 40.

Provision of Issued Order

(4) An issued order shall be provided to the person who filed the draft order by,

(a) having the order e-mailed to,

(i) the e-mail address most recently indicated for the person in the applicable court file, or

(ii) the e-mail address most recently indicated for the person's lawyer in the applicable court file or, if no e-mail address is indicated in the court file, the e-mail address for the lawyer as published on the Law Society of Ontario's website;

(b) providing the order through CaseLines, if CaseLines is being used for the hearing or conference; or

(c) making the order available for pickup at the court counter, at the person's request or if e-mail or CaseLines is not available. O. Reg. 689/20, s. 40.

Procedure if Registrar not Satisfied

(5) If the registrar is not satisfied that the draft order meets requirements set out in subrule (3), the registrar shall provide notice using a method set out in subrule (4) to the person who filed the draft order that it does not comply with the requirements. O. Reg. 689/20, s. 40.

(6) If the person receives a notice from the registrar under subrule (5), the person may,

(a) file a revised draft order and, if required by the registrar, file the approval of the parties to the order in that form; or

(b) obtain an appointment to have the order settled by the person who made the order, in which case notice of the appointment (Form 59D) shall be served on all parties who participated in the hearing or conference and filed, with proof of service, at least seven days before the appointment date. O. Reg. 689/20, s. 40.

Appointment to Settle Where Form of Draft Order not Approved

(7) If approval of the draft order by the parties who participated in the hearing or conference is not received, the person may obtain an appointment to have the order settled by the registrar or, if the registrar considers it necessary, by the person who made the order, and notice of the appointment (Form 59D) shall be served on all other parties who participated in the hearing or conference and filed, with proof of service, at least seven days before the appointment date. O. Reg. 689/20, s. 40.

Urgent Cases

(8) In a case of urgency, the order may be settled and signed by the person who made it without the approval of any of the parties who participated in the hearing or conference. O. Reg. 689/20, s. 40.

Appointment to Settle Disputed Order

(9) If an objection is taken to the proposed form of the order in the course of its settlement before a registrar, the registrar shall settle the order in the form the registrar considers proper and the

objecting party may obtain an appointment with the person who made the order to settle the part of the order to which objection has been taken, in which case the objecting party shall serve notice of the appointment (Form 59D) on all other parties who participated in the hearing or conference and file it, with proof of service, at least seven days before the appointment date. O. Reg. 689/20, s. 40.

(10) If the order was made by a court that consisted of more than one judge, the appointment shall be with the judge who presided at the hearing or, where that judge is unavailable, any other judge who participated in the hearing. O. Reg. 689/20, s. 40.

(11) The judge with whom an appointment is obtained under subrule (10) may refer the settling of the order to the full court that made the order. O. Reg. 689/20, s. 40.

(12) If an appointment is not obtained under subrule (9) or (10) within seven days after the registrar settles the order, the person who filed the draft order or any party may require the registrar to issue the order as settled by the registrar. O. Reg. 689/20, s. 40.

(13) After an order has been settled under subrule (9) by the person who made it, or under subrule (10) or (11), the registrar shall issue the order. O. Reg. 689/20, s. 40.

Ceasing to Hold Office or Incapacity

(14) If a judge ceases to hold office or becomes incapacitated after making an order but before it is signed, another judge may settle and sign it. O. Reg. 689/20, s. 40.

(15) If a case management master ceases to hold office or becomes incapacitated after making an order but before it is signed, another case management master or a judge may settle and sign it. O. Reg. 689/20, s. 40.

Transition

(16) This rule, as it read immediately before the day section 40 of Ontario Regulation 689/20 came into force, continues to apply with respect to any orders that were issued before that day and any draft orders that were filed before that day. O. Reg. 689/20, s. 40.

ENTERING ORDERS

Order to be Entered and Filed

59.05 (1) On the issuance of an order, the registrar shall,

(a) enter the issued order in accordance with subrule (2) at the place where the proceeding was commenced or to which it has been transferred under rule 13.1.02; and

(b) file it in the court file. O. Reg. 689/20, s. 41; O. Reg. 248/21, s. 8 (1).

(2) The registrar shall enter the issued order by saving a copy of the order in electronic format in the court's case tracking system and entering details about the order as required by the case tracking system. O. Reg. 689/20, s. 41.

(3) An order of the Court of Appeal shall be entered not only by the registrar referred to in subrule (1) but also by the Registrar of the Court of Appeal. O. Reg. 689/20, s. 41.

(4) The certificate of the Registrar of the Supreme Court of Canada in respect of an order made on an appeal to that court shall be entered by the registrar in the office where the action or application was commenced, and all subsequent steps may be taken as if the order had been made in the court from which the appeal was taken. O. Reg. 689/20, s. 41; O. Reg. 248/21, s. 8 (2).

Transition

(5) This rule, as it read immediately before the day section 41 of Ontario Regulation 689/20 came into force, continues to apply with respect to any orders that were issued before that day. O. Reg. 689/20, s. 41.

AMENDING, SETTING ASIDE OR VARYING ORDER

Amending

59.06 (1) An order that contains an error arising from an accidental slip or omission or requires amendment in any particular on which the court did not adjudicate may be amended on a motion in the proceeding. R.R.O. 1990, Reg. 194, r. 59.06 (1).

Setting Aside or Varying

(2) A party who seeks to,

(a) have an order set aside or varied on the ground of fraud or of facts arising or discovered after it was made;

(b) suspend the operation of an order;

(c) carry an order into operation; or

(d) obtain other relief than that originally awarded,

may make a motion in the proceeding for the relief claimed. R.R.O. 1990, Reg. 194, r. 59.06 (2).

2. *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17

Proceedings to restrain contravention of order

9 Despite any other remedy or any penalty, the contravention by any person of a continued section 7.0.2 order may be restrained by order of a judge of the Superior Court of Justice upon application without notice by the Crown in right of Ontario or a member of the Executive Council and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Superior Court of Justice.

3. *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9

Declaration of emergency

7.0.1 (1) Subject to subsection (3), the Lieutenant Governor in Council or the Premier, if in the Premier's opinion the urgency of the situation requires that an order be made immediately, may by order declare that an emergency exists throughout Ontario or in any part of Ontario. 2006, c. 13, s. 1 (4).

Confirmation of urgent declaration

(2) An order of the Premier that declares an emergency is terminated after 72 hours unless the order is confirmed by order of the Lieutenant Governor in Council before it terminates. 2006, c. 13, s. 1 (4).

Criteria for declaration

(3) An order declaring that an emergency exists throughout Ontario or any part of it may be made under this section if, in the opinion of the Lieutenant Governor in Council or the Premier, as the case may be, the following criteria are satisfied:

1. There is an emergency that requires immediate action to prevent, reduce or mitigate a danger of major proportions that could result in serious harm to persons or substantial damage to property.
2. One of the following circumstances exists:

i. The resources normally available to a ministry of the Government of Ontario or an agency, board or commission or other branch of the government, including existing legislation, cannot be relied upon without the risk of serious delay.

ii. The resources referred to in subparagraph i may be insufficiently effective to address the emergency.

iii. It is not possible, without the risk of serious delay, to ascertain whether the resources referred to in subparagraph i can be relied upon. 2006, c. 13, s. 1 (4).

Section Amendments with date in force (d/m/y)

Emergency powers and orders
Purpose

7.0.2 (1) The purpose of making orders under this section is to promote the public good by protecting the health, safety and welfare of the people of Ontario in times of declared

emergencies in a manner that is subject to the *Canadian Charter of Rights and Freedoms*. 2006, c. 13, s. 1 (4).

Criteria for emergency orders

(2) During a declared emergency, the Lieutenant Governor in Council may make orders that the Lieutenant Governor in Council believes are necessary and essential in the circumstances to prevent, reduce or mitigate serious harm to persons or substantial damage to property, if in the opinion of the Lieutenant Governor in Council it is reasonable to believe that,

(a) the harm or damage will be alleviated by an order; and

(b) making an order is a reasonable alternative to other measures that might be taken to address the emergency. 2006, c. 13, s. 1 (4).

Limitations on emergency order

(3) Orders made under this section are subject to the following limitations:

1. The actions authorized by an order shall be exercised in a manner which, consistent with the objectives of the order, limits their intrusiveness.
2. An order shall only apply to the areas of the Province where it is necessary.
3. Subject to section 7.0.8, an order shall be effective only for as long as is necessary. 2006, c. 13, s. 1 (4).

Emergency orders

(4) In accordance with subsection (2) and subject to the limitations in subsection (3), the Lieutenant Governor in Council may make orders in respect of the following:

1. Implementing any emergency plans formulated under section 3, 6, 8 or 8.1.
2. Regulating or prohibiting travel or movement to, from or within any specified area.
3. Evacuating individuals and animals and removing personal property from any specified area and making arrangements for the adequate care and protection of individuals and property.
4. Establishing facilities for the care, welfare, safety and shelter of individuals, including emergency shelters and hospitals.
5. Closing any place, whether public or private, including any business, office, school, hospital or other establishment or institution.
6. To prevent, respond to or alleviate the effects of the emergency, constructing works, restoring necessary facilities and appropriating, using, destroying, removing or disposing of property.
7. Collecting, transporting, storing, processing and disposing of any type of waste.

8. Authorizing facilities, including electrical generating facilities, to operate as is necessary to respond to or alleviate the effects of the emergency.

9. Using any necessary goods, services and resources within any part of Ontario, distributing, and making available necessary goods, services and resources and establishing centres for their distribution.

10. Procuring necessary goods, services and resources.

11. Fixing prices for necessary goods, services and resources and prohibiting charging unconscionable prices in respect of necessary goods, services and resources.

12. Authorizing, but not requiring, any person, or any person of a class of persons, to render services of a type that that person, or a person of that class, is reasonably qualified to provide.

13. Subject to subsection (7), requiring that any person collect, use or disclose information that in the opinion of the Lieutenant Governor in Council may be necessary in order to prevent, respond to or alleviate the effects of the emergency.

14. Consistent with the powers authorized in this subsection, taking such other actions or implementing such other measures as the Lieutenant Governor in Council considers necessary in order to prevent, respond to or alleviate the effects of the emergency. 2006, c. 13, s. 1 (4).

Terms and conditions for services

(5) An order under paragraph 12 of subsection (4) may provide for terms and conditions of service for persons providing and receiving services under that paragraph, including the payment of compensation to the person providing services. 2006, c. 13, s. 1 (4).

Employment protected

(6) The employment of a person providing services under an order made under paragraph 12 of subsection (4) shall not be terminated because the person is providing those services. 2006, c. 13, s. 1 (4).

Disclosure of information

(7) The following rules apply with respect to an order under paragraph 13 of subsection (4):

1. Information that is subject to the order must be used to prevent, respond to or alleviate the effects of the emergency and for no other purpose.

2. Information that is subject to the order that is personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* is subject to any law with respect to the privacy and confidentiality of personal information when the declared emergency is terminated. 2006, c. 13, s. 1 (4).

Exception

(8) Paragraph 2 of subsection (7) does not prohibit the use of data that is collected as a result of an order to disclose information under paragraph 13 of subsection (4) for research purposes if,

(a) information that could be used to identify a specific individual is removed from the data; or

(b) the individual to whom the information relates consents to its use. 2006, c. 13, s. 1 (4).

Authorization to render information anonymous

(9) A person who has collected or used information as the result of an order under paragraph 13 of subsection (4) may remove information that could be used to identify a specific individual from the data for the purpose of clause (8) (a). 2006, c. 13, s. 1 (4).

4. *Crown Liability and Proceedings Act*, 2019, S.O. 2019, c. 7, Sched. 17

5. *Quarantine Act*, S.C. 2005, c. 20

Order prohibiting entry into Canada

58 (1) The Governor in Council may make an order prohibiting or subjecting to any condition the entry into Canada of any class of persons who have been in a foreign country or a specified part of a foreign country if the Governor in Council is of the opinion that

(a) there is an outbreak of a communicable disease in the foreign country;

(b) the introduction or spread of the disease would pose an imminent and severe risk to public health in Canada;

(c) the entry of members of that class of persons into Canada may introduce or contribute to the spread of the communicable disease in Canada; and

(d) no reasonable alternatives to prevent the introduction or spread of the disease are available.

Effect of order

(2) The order has effect for the period specified in it and may be renewed if the conditions in subsection (1) continue to apply.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO Applicant/Respondent	and	**ADAMSON BARBECUE LIMITED AND WILLIAM ADAMSON SKELLY** Respondents/Applicants	Court File No. CV-20-00652216-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at the City of Toronto

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