

Changes to Simplified Procedure and Impact on Threshold Claims

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Ontario is making changes to the rules governing the Simplified Procedure under Rule 76 of the *Rules of Civil Procedure*. These changes, which will take effect January 1, 2020, are designed to expedite the litigation process, reduce the costs of advancing modest claims, and to ease the court's existing backlog. We expect that the impact of these changes will be significant for both insurers and claims handlers.

As all regular participants in litigation know, the cost and time associated with advancing modest claims in Ontario continue to increase. As a result, the following changes will be made to the Simplified Procedure to (hopefully) address this:

1. The monetary jurisdiction of the simplified procedure will now double to a maximum of \$200,000.
2. Jury trials will no longer be permitted.
3. The time limit for oral discoveries will increase to 3 hours.
4. Pre-trial conferences shall now be scheduled within 180 days after an action is set down for trial (unless the court orders otherwise).
5. The parties shall agree to a trial management plan at least 30 days before the pre-trial conference. The trial management plan will contain a list of all witnesses, and the allocation of time between the parties for the various aspects of the trial.
6. The pre-trial conference judge/case management master shall review and modify (as appropriate) the draft trial management plan and fix dates for each stage's completion in advance of and including at trial.
7. Trials shall not exceed 5 days.
8. Costs will now be capped at \$50,000, and disbursements at \$25,000.

In the motor vehicle context, these changes are meant to address the volume and the challenges associated with advancing relatively low value claims, often where the Plaintiff's injuries and impairments may not meet the verbal threshold.

Given the increased monetary jurisdiction, we expect that Plaintiffs with modest claims will be more inclined to proceed under the Simplified Procedure. They will have more incentive to make concessions on their prayers for relief, in exchange for a quicker trial and less risk of costs exposure, should they be unsuccessful at trial.

While the changes to the process will be impactful, perhaps the most significant procedural change will pertain to the trial itself. The elimination of juries will leave the assessment of damages to the judge alone, who will be provided with additional controls to allow for more expeditious trials. Additionally, the parties will need to be far more judicious about what evidence is lead, and the case to be presented, given that the maximum trial length is limited to 5 days.

It is important to note however, that the new changes do not apply retroactively and will only affect those actions that are commenced after January 1, 2020.

We expect that the new changes to the Simplified Procedure will result in more actions being commenced under the Simplified Procedure, as the changes limit a Plaintiff's personal risks and allows for their action to proceed summarily. Consequently, Defendants (and their insurers) will have less incentive to use some

of the more aggressive tools or positions previously favoured, and some of the leverage associated with the length and cost of trial will be lost. Needless to say, the changes will require nimble Defendants, insurers and counsel to reconsider old practices and adopt new litigation strategies to properly navigate the issues emerging from these changes.