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New Year, New Normal: Extensive Amendments to the *Rules of Civil Procedure*

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On November 30, 2020, a new regulation to amend the Ontario *Rules of Civil Procedure*, [O. Reg. 689/20](#), was filed. It came into effect on January 1, 2021.

The regulation introduces various amendments to the *Rules* which take into consideration our increasingly virtual litigation practices. These amendments will include new rules around virtual hearings, electronic signatures, commissioning, preparing documents and electronically exchanging documents. Some of the highlights and key takeaways are outlined below.

Virtual Attendance at Proceedings

- When requesting a hearing attendance (except case conferences or Ontario Court of Appeal attendances), parties will be expected to specify whether they propose that the hearing proceed in person, by teleconference or by videoconference (Rule 1.08(1)-(2)).
- If a party disagrees with a proposed method of attendance, they may file a notice of objection, following which the method of attendance will be determined by Court order (Rule 1.08(5)-(6)).
- A similar process will be established for determining the method of attendance for mandatory mediations and oral examinations for discovery (Rule 1.08(8)).
- Parties are no longer explicitly required to attend at pre-trial or case conferences by personal attendance (Rules 50.05(1) and 50.13(2)).

Standard Form for Court Documents

- Parties will be expected to adhere to specific formatting requirements for physically or electronically submitted documents (Rule 4.01).
- Lawyers of record and self-represented parties will be expected to include their e-mail addresses on the back page of documents (Rule 4.02(3)(f)-(g)).
- Parties will no longer be required to provide fax numbers for service (Rule 4.02(3)(h)).

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Electronic Signatures

- The Court, a registrar, a judge or an officer of the Court will be able to electronically sign documents (Rule 4.01.1).

Electronically Issuing and Filing Documents

- Documents to be issued under the *Rules* will be permitted to be issued electronically, either by the Court registrar or MAG-approved software (Rule 4.05(1.1)).
- Documents issued or filed outside of regular business hours will be deemed issued or filed on the following day that is not a holiday (Rule 4.05(7)-(8)).

CaseLines

- The Court will be able to require parties to submit every document filed in respect of or to be relied upon at a hearing or conference to CaseLines (Rule 4.05.3(3)1-2).
- When submitting documents to CaseLines, parties will be required to submit a compendium of excerpts from cases and evidence (Rule 4.05.3(3)3).
- Compendiums will include bookmarks and hyperlinks to cases on free websites and excerpts from cases which are not available on free websites (Rule 4.05(7)).
- Submitting documents to CaseLines will not amount to filing or service under the *Rules* (Rule 4.05(11)).

Affidavits

- Requirements for swearing and commissioning affidavits under the *Rules* will be aligned with the *Commissioners for Taking Affidavits Act* (Rule 4.06(1)(e)).

The Court's Communications

- The Court or registrar will be permitted to send documents or communications by e-mail (Rule 4.12).

Service of Documents

- Parties that are required to serve, file, send or otherwise provide transcripts under the *Rules* will be required to do so in electronic format, except for proceedings in the Ontario Court of Appeal (Rule 4.09(12)).
- If personal service or alternative to personal service is not required, parties will be permitted to serve documents by e-mail without consent (Rules 16.01(4)(b)(iv) and 16.05(1)(f)).

Motions and Applications

- Parties will be required to send their confirmation of motion or confirmation of application to other parties by e-mail (Rules 37.10.1 and 38.09.1).
- A moving party will be permitted to propose that a motion be heard in writing, without a requirement that the issues of fact and law not be complex (Rule 37.12.1(4)).
- On a motion for leave to appeal to the Divisional Court, parties may file their motion records, facts, and transcripts electronically (Rule 61.03).

Endorsements and Orders

- Endorsements for orders will be made on an appeal book, compendium, record, notice of motion, notice of application or separate document, in paper or electronic format (Rule 59.02).
- Orders will be permitted to be issued and sealed electronically (Rule 59.04(2)).
- Issued orders will be provided to the person who filed the draft order by e-mail, through CaseLines or by pickup at the Court counter (Rule 59.04(4)).
- The Court registrar will enter an issued order by saving a copy of the order in electronic format in the court's tracking system (rather than through paper processes or microfilm) (Rule 59.05(2)).

Takeaways

With litigators continuing to work remotely, these new amendments to the *Rules* will provide much-needed clarity on the Court's expectations around remote operations. There are important implications:

- virtual attendances will now be an option rather than an alternative;
- parties will be expected to communicate with each other and the Court more frequently by e-mail;
- court documents will be more easily issued, filed, entered and accessed electronically;
- CaseLines will become increasingly mandatory in the litigation process;
- service of court documents by e-mail will be more readily available; and
- parties will more readily be able to sign and commission documents electronically.

As the world adjusts to this new normal, so too is the Court. These new processes should help streamline and modernize litigation.