

## YOU CAN TEACH AN OLD LAWYER NEW RULES?

Stephen J. Berezowskyj

On July 1, 2010, while the rest of Canada celebrates 143 years of Confederation, judges, lawyers and litigants in British Columbia will be bracing for the launch of the new *Rules of Court*. The new Rules, which govern the conduct of civil litigation, are designed to promote better access to the courts by reducing the complexity and increasingly high costs of litigation.

The impetus for change came from a working group of the B.C. Justice Review Task Force. After years of research and consultation, the Task Force concluded that the high cost of litigation was discouraging and, in some cases, preventing people from accessing the judicial process to resolve disputes. To address this concern, it recommended a complete overhaul of the existing Rules. At root, the new Rules introduce the concept of proportionality—balancing the cost of the litigation with the value of the dispute is the underlying rationale for most of the changes.

Proportionality is the overarching feature of all the new Rules. The current Rules state that their purpose is to promote a “just, speedy and inexpensive determination of a proceeding”; to achieve this end, the new Rules direct that courts bear in mind the amount involved, the importance of the issues, and the complexity of the litigation.

Some of the more significant features of the new Rules that will undoubtedly impact future litigation are:

**Active Case Planning** The courts will become more involved in helping to manage litigation at case planning conferences; judges will apply proportionality to establish timeframes and limits on the exchange of documents, examinations for discovery, expert reports and other pre-trial procedures.

**Limits on Document Discovery** Currently, litigants are required to produce all documents in their control “relating to every matter in question in the action.” Too often this resulted in litigants spending countless hours collecting, describing and disclosing a huge volume of paper, at great expense, even though most of the information was of little or no importance to the “real” issues in the case. The prevalence of electronic documents, such as e-mails, added to this burden. The new

Rules significantly reduce the scope of document production by requiring parties to now produce only those documents which “could be used at trial to prove or disprove a material fact.”

**Limits on Oral Discovery** Under the current Rules, there is no limit on the time which may be spent conducting oral discovery. It is not uncommon for days or even weeks of lengthy and expensive examinations for discovery which, while thorough, are not necessarily focussed on the critical issues. Under the new Rules, an examination for discovery will be limited to seven hours, unless the parties agree or a court orders otherwise.

**Changing Role for Experts** In theory, experts provide an independent opinion on technical matters to assist a court. In many cases, the Task Force found, experts take on the role of an advocate and trials are reduced to a “battle of experts”. The new Rules will require an expert to certify that he or she is aware of the duty to be objective and to assist the court. A judge can also require “competing” experts to confer at the case planning conference. (For more information on this topic, see *Letter of the Law*, Fall 2007.)

Only time will tell if the new Rules will achieve their ambitious objective. But it is certain that the new Rules represent a radical change in how litigation will proceed in British Columbia.

To make the most effective use of the new Rules, it will be important not only to know what has changed but to understand how the changes will impact litigation to achieve successful and cost-effective results. At Singleton Urquhart, we have established a committee to study the new Rules, update internal resources, and develop a new set of practice guidelines. Starting in January, the committee will begin presenting a series of in-house training sessions to ensure that we “hit the ground running” on July 1.

Daniel Barber, articulated student, assisted with the research and writing of this article.