

INTO THE FUTURE
PROCEDURES FOR DEALING WITH SMALLER CLAIMS
BRITISH COLUMBIA SUPREME COURT

By Master William McCallum

1. Procedure in the Supreme Court of British Columbia is governed by the Rules of Court. The Rules are regulations passed on recommendation by the Attorney General after consultation with the Chief Justice. The Attorney General is advised by the Rules Revision Committee comprised of members of the court and members of the bar.

2. The ***Court Rules Act*** specifically provides for the making of different rules “for the expeditious and efficient conduct of proceedings if the amount claimed is \$100,000 or less”. An amendment to that section (not yet in force) would allow for “special rules to implement an economical litigation program”.

3. Effective September 1, 2005 a pilot project rule was introduced to deal with claims of \$100,000 or less in 5 specific registries in the province. Rule 68 (Expedited Litigation Project Rule) is intended to streamline procedures for certain claims of \$100,000 or less thereby reducing the time and cost required of litigants to dispose of the cases.

4. Rule 68 applies to any action commenced in the pilot registries where the total of the monetary claims is \$100,000 or less exclusive of interest and

costs. Family law proceedings and proceedings commenced under the ***Class Proceedings Act*** are excluded from the rule. Jury trials are not permitted in actions under Rule 68.

5. The overarching principle guiding Rule 68 is proportionality. The court is required, on every application, to consider whether the proposed step is reasonable in relation to the amount at issue in the action. There is no similar provision elsewhere in the Rules.
6. Rule 68 imposes new limitations on pre-trial procedures and on the evidence that can be called at trial. The scope of document discovery is more limited than under the general rules and parties are required to make disclosure at an earlier stage of the action. Examinations for discovery of parties adverse in interest are only available where parties consent or an order is made. Examinations, if ordered, cannot exceed 2 hours in length plus 2 additional hours on further application.
7. Contested interlocutory applications are not allowed until the parties and counsel have attended a Case Management Conference mandated by Rule 68. The CMC is conducted by a judge or master who may make a wide range of orders aimed at narrowing the issues and ensuring the case is ready for trial. Orders may be made at a CMC on the basis of oral submissions only

without the need to file affidavits.

- 8.** Litigants in Rule 68 actions are required to exchange witness lists with a summary of each witness's evidence within 60 days of the close of pleadings. The parties may not adduce the evidence of more than one expert unless the court orders otherwise. A party may rely on the evidence of one additional expert if their expert does not have the expertise to respond to the other side's expert. The parties cannot consent to the use of additional experts – the court must sanction that step. Rule 68 contains specific provisions for the use of joint experts to encourage the use of that practice.

- 9.** The final step before trial in a Rule 68 action is a mandatory Trial Management Conference to be held between 15 and 30 days pre trial before a judge. The parties are required to exchange comprehensive trial briefs prior to the TMC summarizing their positions on the issues, the evidence and the orders to be sought at trial. The TMC judge has a wide range of powers available to assist in ensuring an efficient trial bearing in mind the overriding principle of proportionality. The TMC judge may order, for example: that evidence be given by affidavit; that submissions or witness examination be limited in time; that the parties admit certain facts or document or enter into document agreements and that submissions be in writing.

10. Rule 68 represents a significant shift in direction in British Columbia. The pilot project is to be the subject of a formal evaluation and will be revisited prior to the pilot project ending on September 1, 2007.