Simplified Procedure

Simplified Procedure Regime Gets An Overhaul: Staying Ahead of the Changes

Audrey P. Ramsay

Blouin Dunn LLP

Right to Jury Trial

Before January 2020

A party may require that the issues of fact be tried or the damages assessed by a jury, unless otherwise specified [s. 108(1), s. 108 (2) of the CJA].

After January 2020

The issues of fact and the assessment of damages in actions proceeding under Rule 76 of the Rules of Civil Procedure shall be tried without a jury [Para 2 of s. 108(2) of the CJA].

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Right to Jury Trial cont.

No equivalent current provision in *Rules*.

Post-January 1, 2020

- An action under r. 76 shall not be tried with a jury.
- No party to the action may deliver a jury notice under subrule 47.01.
- If a jury notice is delivered, action cannot proceed under r. 76

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A party to an action proceeding under the simplified procedure may deliver a jury notice in the following instances:

Claim for relief involving:

- Slander
- Libel
- Malicious Arrest
- Malicious Prosecution
- False Imprisonment (r. 76.02.1 (2))

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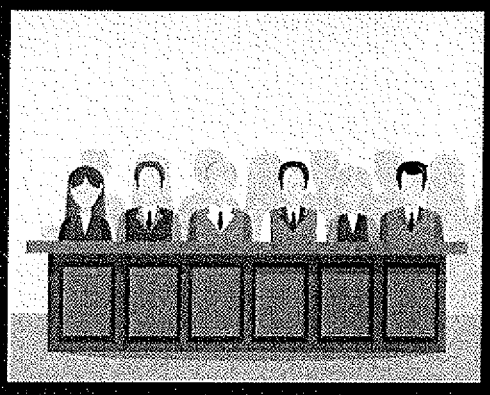
If Jury Notice Delivered:



- Action may no longer proceed under r. 76.
- Party serving jury notice must deliver prescribed form indicating that action will continue as an ordinary action.
- However, the action may continue under the Simplified Procedure if jury notice is struck (r. 76.02.1 (2)).

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Case Management

Actions assigned to case management under subrule 77.05 will continue under the ordinary rule.

Monetary Jurisdiction

- Monetary jurisdiction pre-January 2020 is $100,000 [subrule 76.02]
- Monetary jurisdiction for simplified procedure actions post January 1, 2020 is $200,000

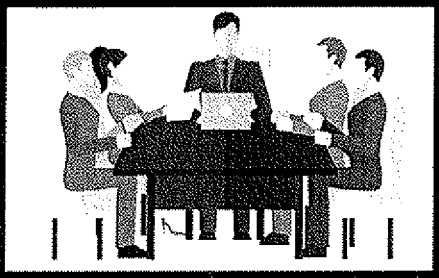
Examination for Discovery

BEFORE January 2020

- No party shall conduct oral examinations for discovery exceeding TWO hours.

AFTER January 2020

- Oral examinations for discovery will have a time limit of up to THREE hours.



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Expert Evidence

- Default Provision under rule 53.03

Shall comply with subrule 53.03

Examination in chief should be by way of affidavit

Expert report to be appended to affidavit

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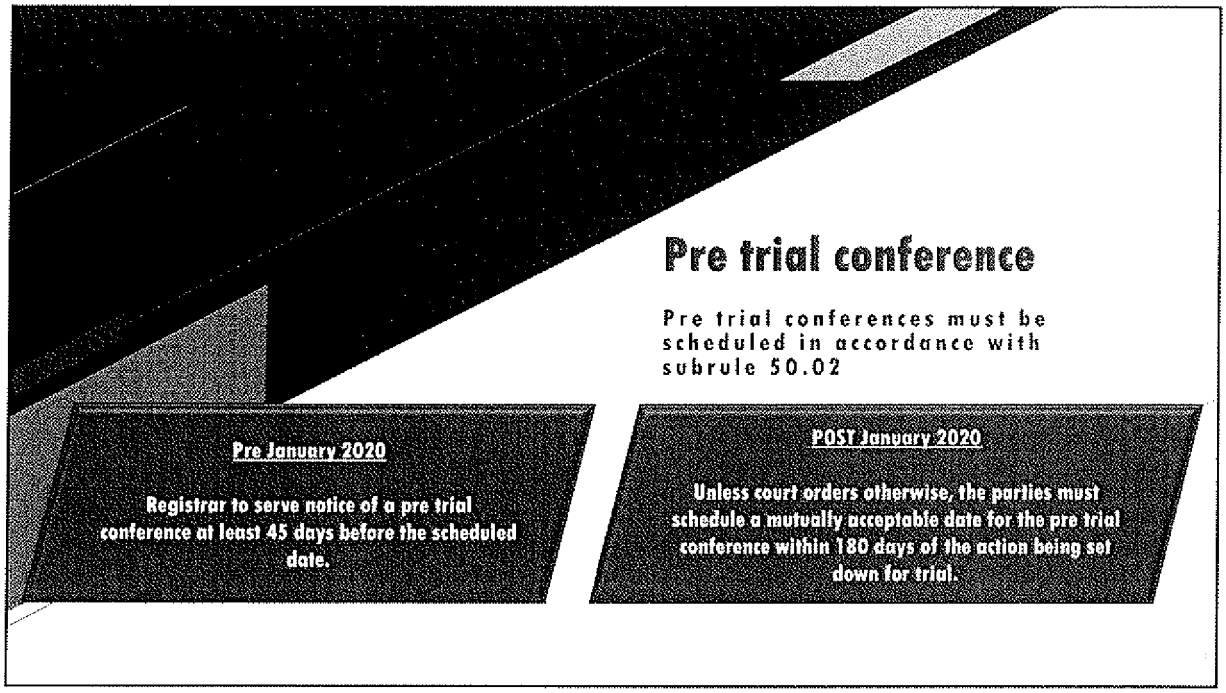
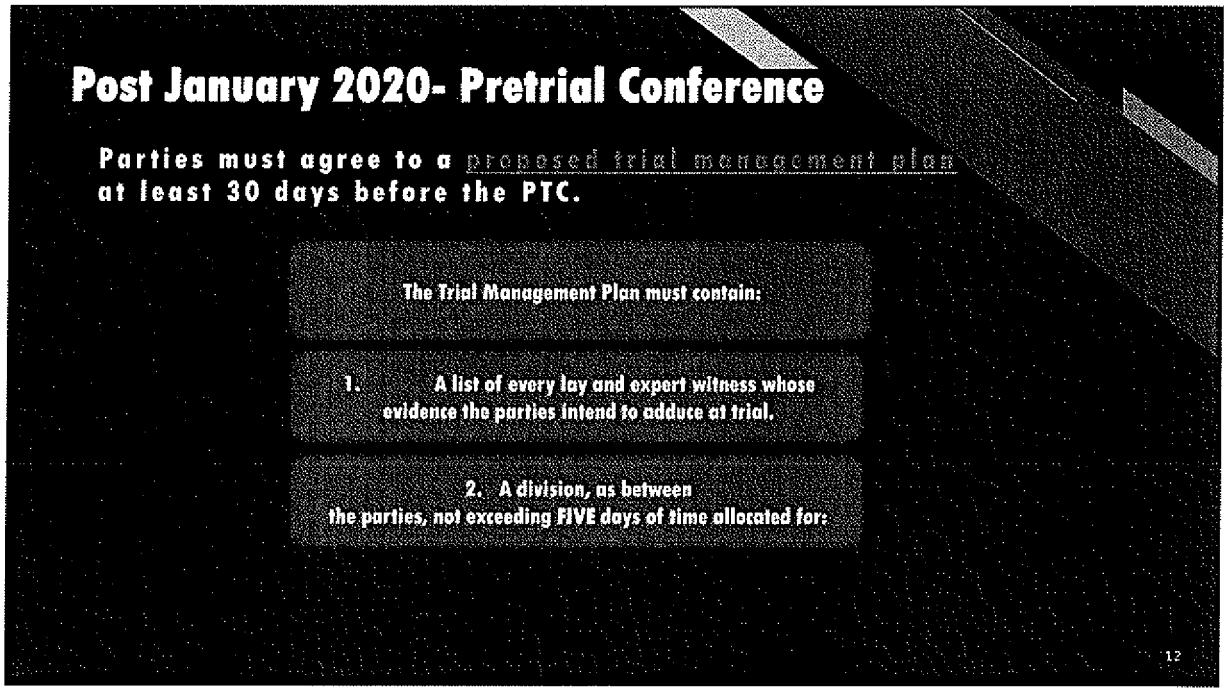

Pre trial conference
Pre trial conferences must be scheduled in accordance with subrule 50.02
Pre January 2020
Registrar to serve notice of a pre trial conference at least 45 days before the scheduled date.
POST January 2020
Unless court orders otherwise, the parties must schedule a mutually acceptable date for the pre trial conference within 180 days of the action being set down for trial.


Post January 2020- Pretrial Conference
Parties must agree to a proposed trial management plan at least 30 days before the PTC.
The Trial Management Plan must contain:
1. A list of every lay and expert witness whose evidence the parties intend to adduce at trial.
2. A division, as between the parties, not exceeding FIVE days of time allocated for:
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Documents to be filed 5 days before Pre-trial

[Sub. 76.10(4)(a), (b)]

Pre January 2020

- Parties' affidavit of documents and documents relied upon
- Copy of any expert report
- Other material necessary for conference
- Two page statement setting out the issue's and party's position
- Trial management checklist *Form 76D

Post January 2020

- Copy of proposed trial management plan
- Parties' affidavit of documents and documents relied upon
- Copy of any expert affidavit, other than a supplementary expert affidavit
- Other material necessary for conference
- A statement not exceeding three pages setting out the issue's and party's position
- Trial management checklist *Form 76D

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Trial Planning

Pre January 2020

- The PTC judge or case management master shall fix a date for trial, subject to the direction of the regional senior judge [Sub. 76.10(5)]

Post January 2020

- The pre-trial conference judge or case management master shall:
  - (a) fix the number of witnesses (other than experts) whose evidence each party may adduce at trial
  - (b) fix the dates for delivery of any witness affidavits, including expert witnesses
  - (c) fix a date for trial, subject to direction of regional senior judge
  - (d) approve the proposed trial management plan, with any changes that the judge or case management master may specify, DURATION OF TRIAL NOT TO EXCEED FIVE DAYS

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Trial Record Documents

[Rule 76.11(4)(a)-(f)]

Pre January 2020

- (d) A copy of any order respecting the trial
- (e) Copy of all affidavits for use at the summary trial
- (f) Certificate signed by the lawyer of the party filing the trial record, stating that it contains the documents described under this rule

Post January 2020

- A copy of any order respecting the trial, including a copy of the
- Copy of all affidavits for use at the
- A certificate stating the trial record contains the documents under the rule, signed by either the lawyer of the party filing the trial record

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Trial Procedures

Subject to an approved trial management plan, a trial of an action shall proceed AS FOLLOWS:

Post January 2020

1.	Each party may make an opening statement
2.	The plaintiff may adduce evidence by affidavit under rule 39.11
3.	A party who is adverse in interest may cross examine the deponent of any affidavit served by the plaintiff
4.	The plaintiff may conduct a re-examination of any deponent who is cross- examined under this subrule
5.	When any cross- examinations and re- examinations of the plaintiff's deponents are concluded, the defendant may adduce evidence by affidavit under rule 39.11
6.	A party who is adverse in interest may cross examine the deponent of any affidavit served by a defendant
7.	A defendant may conduct a re- examination of the defendant's deponents
8.	When cross examination and re examination of the defendant's deponents are concluded, the plaintiff may adduce reply evidence (with leave of the judge)
9.	Oral arguments made by each party

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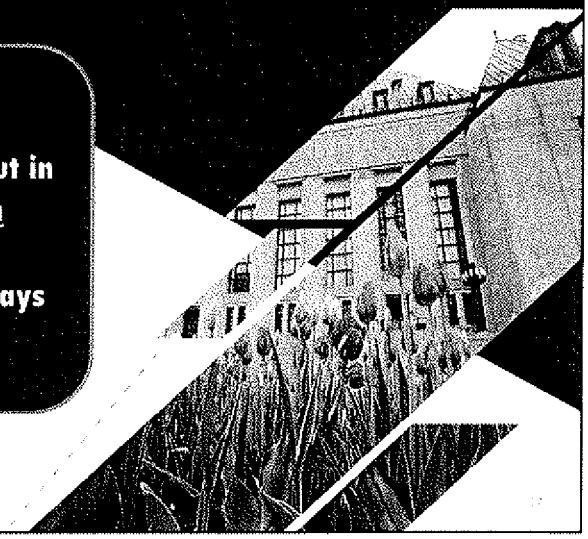
Mode of Trial

2) The trial judge may vary a time set out in the approved trial management plan

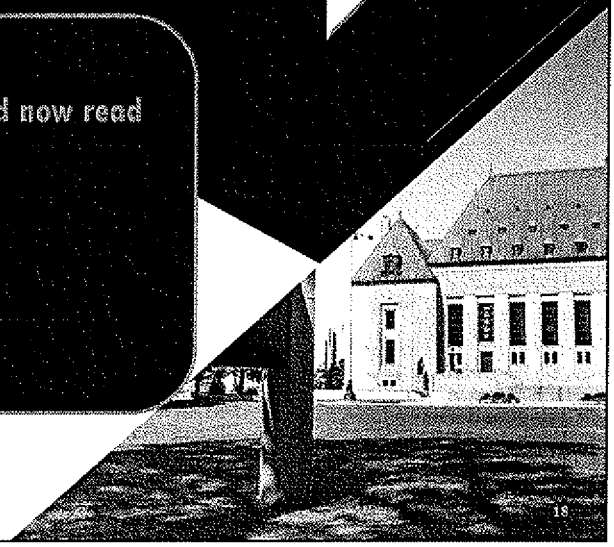
Duration of trial may not exceed FIVE days



Summary Trials now Proceeding as "Trials"

Any reference to "summary trial" should now read "TRIAL"

- Subrule 76.11(4)
- Subrule 76.12(3)
- Subrule 76.12(4)



Costs

Pre January 2020

- Costs are in discretion of the trial judge (s. 131 CJA, s. 49.10, s. 57.01, s. 76.13 *Rules*)

Post January 2020

- Costs limited to a maximum of $50,000, exclusive of HST
- Disbursements limited to a maximum of $25,000, exclusive of HST

TRANSITION

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$200,000 applies to actions commenced on or after January 1, 2020

Prohibition against jury does not apply to actions where jury notice delivered before January 1, 2020.

Limits on costs and disbursements not applicable to actions commenced before January 1, 2020.

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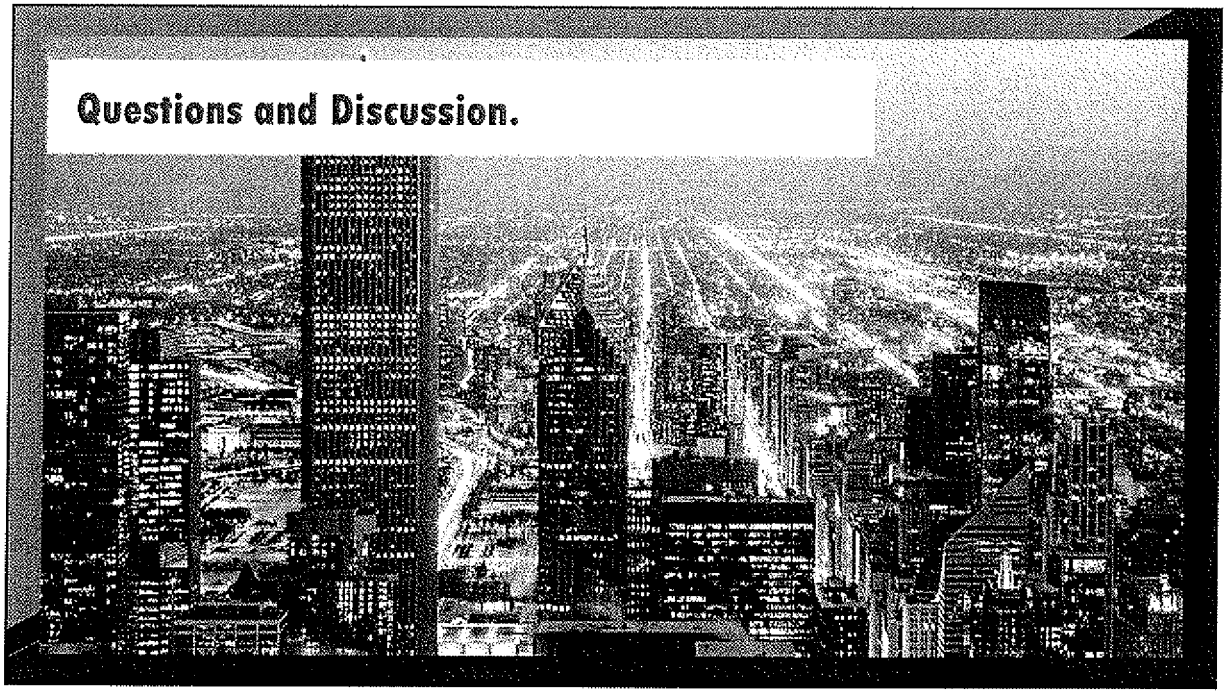

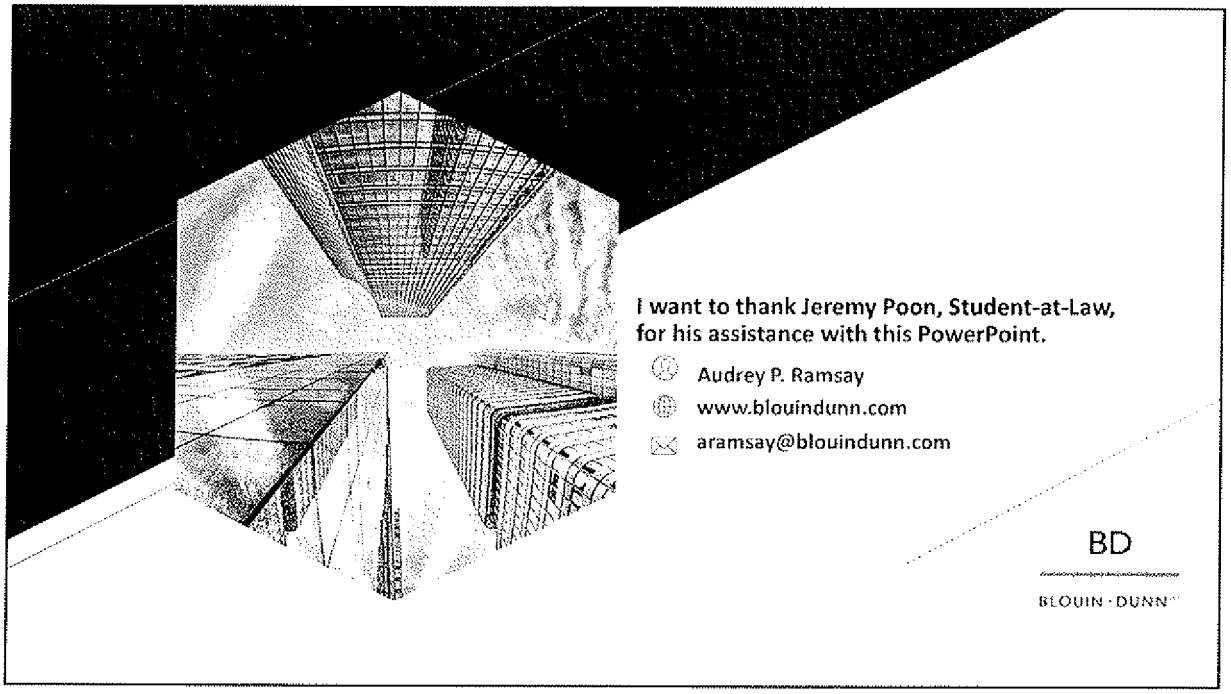

I want to thank Jeremy Poon, Student-at-Law, for his assistance with this PowerPoint.

Audrey P. Ramsay
www.blouindunn.com
aramsay@blouindunn.com

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