

New Rules Of Court Get First Judicial Interpretation: The Transitional Rule

I have volunteered to keep an eye on the New BC Supreme Court Rules and write about decisions interpreting and applying these. Today the first judgement considering the New Rules has come to my attention. Today's case dealt with Rule 24, the transitional rule.

In today's case ([Easton v. Cooper](#)) the Plaintiff was involved in 3 motor vehicle collisions. The Plaintiff sued for damages for each crash. The lawsuits were started under the old Rules of Court but were set to proceed to trial in November, 2010 (*some 5 months after the New Rules came into force*). The lawsuits were all started under Rule 68 of the old rules which required parties to exchange summaries of the evidence they expect their witnesses to give at trial. The Plaintiff did not produce statements in compliance with this requirement.

The Defendant brought a motion to force the Plaintiff to provide this evidence. The Plaintiff opposed arguing that she no longer needs to exchange these statements because the trial will proceed under the new rules. Mr. Justice Voith sided with the Defendants and ordered that the Plaintiff provide summaries of evidence as required under the old rules. In reaching this conclusion the Court had the first opportunity that I'm aware of to consider section 24 of the New Rules of Court (*the section dealing with parties obligations in lawsuits started under the old rules but that are ongoing after the New Rules came into force*). Mr. Justice Voith provided the following interpretation of this section:

[4] Rule 24-1(14) of the New Rules provides:

(14) *If a step in a proceeding is taken before July 1, 2010, the former Supreme Court Rules apply to any right or obligation arising out of or relating to that step if and to the extent that that right or obligation is to have effect before September 1, 2010.*

[5] *The interpretation of Rule 24-1(14) turns on both the meaning of "step in a proceeding" as well as the time period that is book-ended by the two dates within the provision...*

[13] *Based on the foregoing authorities, within the "Rules context", a "step" means a formal step expressly permitted or required by the Rules.*

[14] *Rule 24-1(14) specifically focuses on a narrow window of time. It addresses instances where a step undertaken prior to July 1, 2010 gives rise to an obligation that is required to be satisfied prior to September 1, 2010. By way of example, the "step" of delivering a demand for discovery of documents created a right on the part of the initiating party and a concomitant obligation on the part of the recipient of the demand to comply with the time frames and substantive requirements of the former Rules. So long as the time frame for that obligation ends before September 1, 2010 the response or action is governed under the former Rules.*

[15] *In this case Rule 24-1(14) is not engaged.*

[16] *Rule 68(31) of the former Rules provided:*

Witnesses

(31) *Within 90 days after the close of pleadings or within 90 days after the action becomes an expedited action, whichever is later, each party to an expedited action must deliver to each other party*

(a) *a list, in Form 141, of the witnesses that the party delivering the list proposes to call at the trial of the expedited action, which list must*

(i) *include the party delivering the list, if that party intends to give evidence at trial, and*

(ii) *exclude any expert witnesses referred to in subrule (33), and*

(b) *for each of the witnesses included in the list, a written summary of the evidence that the party believes that witness will give at trial.*

[17] *In each of the three actions commenced by Ms. Easton, the 90 day period provided for by the former Rule 68(31), as well as the obligation or formal step created by that Rule, had expired well before July 1, 2010. The application of Rule 24-1(14) simply does not come into play. The fact that the ultimate trial of these various actions will post-date September 1, 2010, is of no moment and does not detract from the obligation to adhere to the formal requirements established by the earlier Rules...*

[21] *The plaintiff is directed to provide proper witness statements to counsel for the defendants within 21 days of the date that these Reasons for Judgment are issued.*

In addition to the usual variety of topics I cover on this blog I will continue to post about the new Rules of Court. If anyone is aware of any recent cases worth noting here please don't hesitate to contact me.