Civil Litigation, Revised 4th Ed Update

March 2022

# Background

In January 2022, O Reg 18/22 was filed, which amended the *Rules of Civil Procedure*. The amendments come into force on **March 31, 2022**.

The regulation amends service of experts’ reports, the scheduling of pre-trial conferences, the test for leave to admit evidence at trial, among other things. See more on the [Government of Ontario website](https://www.ontariocanada.com/registry/view_posting.jsp;jsessionid=Wnuw3lr4ob29_W6sMi_GsCB).

# Amendments to Text

Chapter 14:

* Page 332, under the heading “Rules that Relate to Discover,” add the following sentence to the end of item three in the numbered list:
	+ “If not properly disclosed according to the Rules, the reports cannot be introduced into evidence without leave of the trial judge pursuant to the test set out in Rule 53.08(1).”

Chapter 16:

* Page 393, under the heading “Setting the Action Down for Trial: Rules 48.01 and 48.02,” add the following at the end of the second paragraph:
	+ “Reflecting the increasing importance of the pre-trial conference to narrow issues and clarify matters for the trial judge, as of March 2022, the trial record must now include the pre-trial conference report and any order made at the pre-trial conference under Rule 50.07.”
* Page 395, under the heading “Placing the Act on the Trial List: Rules 48.05 to 48.13,” add the following at the end of the first sentence in the first paragraph:
	+ “Rule 48.05 now specifically requires the registrar to take into account any pre-trial conference scheduling requirements.”
* Page 397, in footnote 6, line (c), remove “or” after “50.07” and replace it with “and any,” so the text for line (c) reads:
	+ “(c) any order under rule 50.07 and any pre-trial conference report under rule 50.08; and”
* Page 398, third and fourth full paragraphs from the top of the page should be replaced with the following two paragraphs:
	+ “The pre-trial conference in actions is mandatory in every case and must be held no more than 120 days and no fewer than 30 days before the date that the trial is scheduled to begin, or on the first day of the sitting during which the trial is expected to be held.”
	+ “In the event that the parties fail to schedule a conference with the 120-day time requirement, the registrar will schedule a conference and give all the parties notice.”
* Page 398, at the end of the first new paragraph above, add a footnote:
	+ “Rule 50.02(2.1).”
* Page 398, after the bulleted list near the bottom of the page, add:
	+ “At the conclusion of the pre-trial conference, the judge or associate judge presiding under Rule 50.03.1 is required to prepare and produce a pre-trial conference report in every case, whether there are issues concerning scheduling the trial or not. Further, if a pre-trial conference is unproductive due to a party’s conduct, Rule 50.12 permits the judge or associate judge presiding over the pre-trial conference to order costs to be paid immediately to the other party or parties.”
* Page 398, remove the third last bullet point: “The advisability of fixing a date for the trial or hearing.”
* Page 399, in the numbered list, add at the end of the third item:
	+ “Rule 50.03.1 now requires every party to an action to certify whether they intend to rely on expert evidence at trial, and if so, whether they have served their experts’ reports within the time for serving them under the Rules.”

Chapter 17:

* Page 420, under the heading “Expert Witnesses,” add the following sentence to the last paragraph:
	+ “Although the times set out for service of an expert report or supplementary report may be extended or abridged by the judge or by the written consent of the parties (Rule 53.03(4)).”

Chapter 24:

* Page 561, under the heading “Trial Management Plan,” the second paragraph should be replaced with:
	+ “The pre-trial judge or associate judge shall do the following:”
* Page 561, under the heading “Trial Management Plan,” in the bulleted list, remove “and” at the end of the second bullet and add it to the end of the third bullet. Replace period in third bullet with a semicolon. Then add a fourth bullet point reading as follows:
	+ “makes any other order they consider necessary or advisable in relation to how the proceeding will be conducted.”
* Page 561, under the heading “Trial Management Plan,” in the seventh paragraph, remove the entire first sentence—"Immediately after the pre-trial conference, the registrar will place the action on the appropriate trial list.”
	+ Add the following footnote at the end of the amended paragraph above:
		- “Rule 76.11(1) provides that any action set down for simplified trial before March 31, 2022 continues under the old subrule.”