



What's New in HR Law

Ontario's Civil Rules Committee Proposes Significant Amendments to Rules for Oral Examinations Outside of Court

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Overview of Proposed Amendments to Rule 34

The Ontario Courts' Civil Rules Committee is considering significant amendments to Rule 34 of the *Rules of Civil Procedure*, which sets out the procedure for conducting oral examinations out of court. Many of the amendments aim to better facilitate the use of remote and virtual examinations, which have become more common since the onset of the COVID-19 pandemic.

The proposed amendments to Rule 34 involve:

- Adding a new rule, Rule 34.01.1, to give greater prominence to the consent mechanism that already exists under Rule 34.06, whereby parties may consent to the time, place, and method of the examination, along with what type of notice of examination (if any) will be required.
- Amending Rule 34.02 to focus on expectations for how the particulars of an examination are to be determined, but also extending its application to oral examinations held outside of Ontario.

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- Amending Rule 34.03 [i.e., the requirement for examinations be held in the county in which the person being examined (or “examinee”) lives] so that it applies to only in-person examinations. This amendment would reflect the new reality of virtual examinations.
- Limiting the application of Rule 34.04 (i.e., attendance requirements) to examinees who reside in Ontario. All references to examinees outside Ontario would be removed.
- Amending Rule 34.05 to extend the period for giving notice of the time and place of the examination.¹
- Moving the objection procedure for examinations of Ontario residents from Rule 34.02 to a new Rule 34.06. This new rule would incorporate objections to the method of attendance, thereby carving this issue out of Rule 1.08(8). Objections under this new rule are proposed to be dealt with via case conference, rather than by motion.
- Transforming Rule 34.07 into the single point of reference for arranging examinations of individuals who reside outside of Ontario (currently, the relevant procedures are divided between Rules 34.04(7) and 34.07). The new Rule 34.07 would also distinguish between examinations that are outside of Ontario but within Canada, and examinations that are outside of Canada.
- Amending Rule 34.08 (i.e., requirements for swearing examinees) so that the procedures for oaths and affirmations are based on the location of the examiner. This approach is intended to create certainty in the case of remote examinations taking place across borders.
- Amending Rule 34.10 to address the production of documents for remote examinations. If the examination is going to be conducted by telephone or video conference, the parties and the examinee may make alternative arrangements for the inspection of documents.
- Amending Rule 34.15 (i.e., sanctions for default or misconduct by examinees) to incorporate reference to the method of attendance and to recognize that arrangements for examination may be ordered by the court.

Proposed Amendments to Remaining Rules and Tariffs

The proposed amendments to Rule 34 will have a necessary effect on the remaining Rules and Tariffs in the *Rules of Civil Procedure*. Accordingly, the Committee has proposed the following housekeeping amendments to Rules 1.08, 50.13, and 53.05 and Tariff A in order to support the changes to Rule 34:

- Amending Rule 1.08 to carve out the procedure for objecting to the method of attendance for Rule 34 examinations. As mentioned above, these will be moved to the new Rule 34.06.

¹The Consultation Paper by the Rule 34 Subcommittee states that the notice period will be extended from two days to seven days. However, the sample amendment language drafted by the Subcommittee refers to “fourteen days”.

- Amending Rule 50.13 (i.e., rules regarding case conferences for actions and applications) to recognize that a case conference may arise in ways other than by a judge’s direction. This amendment will support the case conference mechanism proposed under Rules 34.06 and 34.07.
- Amending Rule 53.05 (i.e., rules for compelling attendance of witnesses outside of Ontario) so that it applies both inside and outside of Canada and to remote appearances or examinations outside of Ontario. The Rule would also be amended to address attendance money, in order to support Rule 34.04(7), and to distinguish between contexts in which the *Interprovincial Summonses Act* (which does not apply to extra-territorial witnesses) does and do not apply.
- Amending Tariff A to entitle witnesses and/or examinees to an attendance allowance regardless of whether they attend an examination in person or by other means.

Check the Box

If enacted, the proposed amendments will significantly streamline the litigation process for civil claims in Ontario. This may be a welcome change, as the continued use of virtual and remote examinations will lead to time and cost savings for litigants.

Feedback about the proposed amendments can be submitted to the Rule 34 Subcommittee via email to crc.secretary@ontario.ca by September 2, 2022. A copy of the Rule 34 Subcommittee’s Consultation Paper can be found on [the website of the Court of Appeal for Ontario](#).

Need More Information?

For more information regarding the proposed amendments to the *Rules of Civil Procedure* or assistance with employment-related litigation, contact [Hayley Smith](#) at hsmith@filion.on.ca or your regular lawyer at the firm.



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