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CHIEF JUSTICE

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THE SUPREME COURT
OF BRITISH COLUMBIA

THE LAW COURTS
800 SMITHE STREET
VANCOUVER, B. C.
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NOTICE TO THE PROFESSION

Re: Rule 68, Expedited Litigation Project Rule

On September 1, 2005, Rule 68 will come into force. Rule 68 is a pilot project which is intended to streamline procedures for cases under \$100,000 in order to reduce the time and cost required to dispose of these cases in court. The pilot project will run until September 1, 2007.

The following registries will be participating in the pilot:

Vancouver
Victoria
Prince George
Nelson

Rule 68 will apply to any action commenced in these registries after September 1, 2005 where the total of the monetary claims amount to \$100,000 or less, exclusive of interest and costs. The participating registries were chosen to allow for an evaluation of the rule in large, medium sized and smaller registries. Family law proceedings and those commenced under the *Class Proceedings Act* are excluded from the rule. Jury trials are not permitted in actions subject to Rule 68.

The guiding principle of Rule 68 is proportionality and when asked to make an order under the Rule 68, the court must consider whether the proposed step or request is reasonable in relation to the amount at issue in the action (see subrule 68(13)).

Actions falling within the rule will be streamlined by putting new limitations on both pre-trial procedures and on the evidence that can be called at trial. These limitations are as follows:

- The scope of documents each party is entitled to have produced as of right is more limited than what has been traditionally available under Rule 26 (see subrules 68(15) to (22)).

- Examinations for discovery will only be allowed where both parties consent or the court orders. There will also be a two hour limit on discoveries, unless the parties agree or the court otherwise orders (see subrules 68(27) to (30)).
- A party may not bring on a contested interlocutory application without first attending a case management conference at which a judge or master may make a variety of orders aimed at narrowing the issues in dispute and readying the case for trial (see subrule 68(10) to (12)).
- Orders may be made at a case management conference on the basis of oral submissions without the need to file affidavits (see subrule 68(42)).
- Parties are limited to calling one expert witness at trial and may only call an additional expert to respond to the expert evidence of an opposing party where the first expert called does not have the expertise to provide the required response (see subrule 68(33)).

Rule 68 also introduces new obligations on parties to engage in an early and more comprehensive exchange of information. It is hoped that these measures will lead to earlier settlements or, where settlements are not possible, more focused and efficient trials.

- Parties are required to exchange lists of witnesses and a written summary of the evidence to be given by each witness at trial within 60 days after the pleadings are closed, or 60 days after the action becomes subject to Rule 68, whichever is later (see subrules 68(31) and (32)).
- Parties may agree to or be ordered to retain a jointly instructed expert (see subrules 68(41)(j) and (43)).
- Parties are required to prepare and exchange comprehensive trial briefs prior to trial that summarize the position of the party on the matters at issue and the evidence to be called (see subrules 68(53) and (54)).

Finally, Rule 68 mandates that a trial management conference be held between 15 and 30 days before trial (see subrules 68(55) to (56)). This conference must be conducted by a judge who may make orders aimed at streamlining the conduct of the trial including:

- directing that some witnesses present evidence by affidavit;
- imposing time limits for the direct and cross-examination of witness as well as opening statements and final submissions;

- requiring parties to make admissions of facts and/or documents;
- requiring parties to prepare common books of documents and/or enter into document agreements; and
- requiring parties to present opening statements and final submissions in writing.

The full text of the Rule is available on the court's website at:

www.courts.gov.bc.ca/sc

on the Supreme Court Rules Page.

March 30, 2005



**Donald I. Brenner,
Chief Justice**