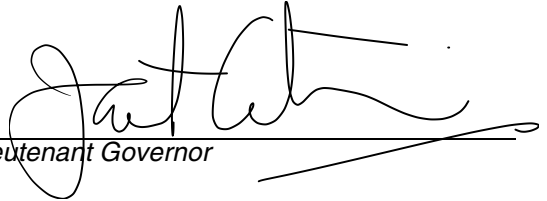


PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 040

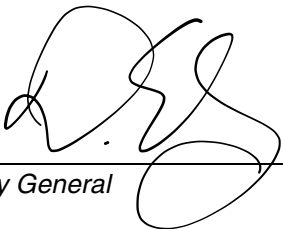

, Approved and Ordered February 11, 2019

  
Lieutenant Governor

**Executive Council Chambers, Victoria**

On the recommendation of the undersigned, made after consultation with the Chief Justice of the Supreme Court, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the Supreme Court Civil Rules, B.C. Reg. 168/2009, are amended

- (a) as set out in the attached Schedule 1, and
- (b) effective February 1, 2020, as set out in the attached Schedule 2.

  
\_\_\_\_\_  
Attorney General  
\_\_\_\_\_  
Presiding Member of the Executive Council

*(This part is for administrative purposes only and is not part of the Order.)*

**Authority under which Order is made:**

Act and section: Court Rules Act, R.S.B.C. 1996, c. 80, s. 1

Other: O.C. 302/2009

R10280661

## SCHEDULE 1

- 1** *Rule 9-7 of the Supreme Court Civil Rules, B.C. Reg. 168/2009, is amended by adding the following subrule:*

### **Application of Rule 11-8**

- (7.1) Rule 11-8 applies to a summary trial application in relation to a vehicle action referred to in that rule.

- 2** *Rule 11-3 (1) is amended by adding “or 11-8 (5) (a) (i)” after “Rule 5-3 (1) (k)”.*

- 3** *Rule 11-7 (6) is amended by striking out “one or more of the requirements of this Part” and substituting “one or more of the requirements of this rule or Rules 11-1 to 11-6”.*

- 4** *The following rule is added:*

## **RULE 11-8 – EXPERTS IN VEHICLE ACTIONS**

### **Definition**

- (1) In this rule, “**vehicle action**” means an action that includes a claim for damages for personal injury, or death, that arises out of the use or operation of a vehicle as defined in the *Motor Vehicle Act*.

### **Conflict**

- (2) This rule applies in the event of a conflict between this rule and another rule of these Supreme Court Civil Rules, other than Rule 15-1.

### **Limitation on expert opinion evidence**

- (3) Except as provided under this rule, a party to a vehicle action may tender, at trial, only the following as expert opinion evidence on the issue of damages arising from personal injury or death:
- (a) expert opinion evidence of up to 3 experts;
  - (b) one report from each expert referred to in paragraph (a).

### **Additional experts and reports by consent**

- (4) If all the parties to a vehicle action consent,
- (a) the parties may tender expert opinion evidence of one or more additional joint experts, appointed in accordance with Rule 11-3, in excess of the limit set out in subrule (3) (a), or
  - (b) a party may tender as evidence one or more additional reports from an expert referred to in subrule (3) (a), in excess of the limit set out in subrule (3) (b).

**Additional experts and reports by application**

- (5) On application by a party to a vehicle action, the court may do any of the following if the court is satisfied that it would further the object of these Supreme Court Civil Rules:
- (a) provide for expert opinion evidence of one or more additional experts, in excess of the limit set out in subrule (3) (a), by
    - (i) ordering the parties to appoint a joint expert in accordance with Rule 11-3, or
    - (ii) appointing an expert under Rule 11-5;
  - (b) allow the party to tender as evidence one or more additional reports from an expert referred to in subrule (3) (a), in excess of the limit set out in subrule (3) (b).

**Allowable responding reports**

- (6) The limits set out in subrule (3) do not apply to an expert or expert's report, if a party serves the expert's report under Rule 11-6 (4) to respond to a report that was served on the party within 126 days before the scheduled trial date.

**Allowable supplementary reports**

- (7) The limit set out in subrule (3) (b) does not apply to a supplementary report required under Rule 11-6 (5) or (6).

**Limitation on disbursements for expert evidence**

- (8) In a vehicle action, only the following amounts may be allowed or awarded to a party as disbursements for expert opinion evidence on the issue of damages arising from personal injury or death:
- (a) the amount incurred by the party for up to 3 expert reports, whether or not the reports were tendered at trial, provided that each report was
    - (i) served in accordance with these Supreme Court Civil Rules, and
    - (ii) prepared by a different expert;
  - (b) the amount incurred by the party for
    - (i) a report allowed under subrule (4) or (5),
    - (ii) a report referred to in subrule (6) or (7), or
    - (iii) a report prepared by an expert appointed by the court under Rule 11-5 (1);
  - (c) the amount incurred by the party for an expert to give testimony at trial in relation to a report, referred to in paragraph (a) or (b), that was prepared by the expert.

**Appointment of experts on initiative of the court**

- (9) Nothing in this rule prevents the court from appointing an expert on its own initiative under Rule 11-5 (1).

**Transition – application of rule**

- (10) Subject to subrule (11), this rule applies to all vehicle actions, whether or not a notice of claim for the vehicle action was filed before the coming into force of this rule.

**Transition – exceptions for existing vehicle actions**

- (11) The following exceptions apply in relation to a vehicle action for which a notice of claim was filed before the coming into force of this subrule:
- (a) the limits set out in subrule (3) do not apply to any report of an expert that was served in accordance with these Supreme Court Civil Rules before the coming into force of this subrule;
  - (b) the limits set out in subrule (8) do not apply to amounts that were necessarily or properly incurred for expert opinion evidence before the coming into force of this subrule.

**5 Rule 15-1 is amended by adding the following subrule:**

**Application of Rule 11-8**

- (12.1) In a fast track action,
- (a) Rule 11-8 (3) (a) is to be read as if the reference to “3 experts” were a reference to “one expert”, and
  - (b) Rule 11-8 (8) (a) is to be read as follows:
    - (a) the amount incurred by the party for one expert report, whether or not the report was tendered at trial, provided that the report was served in accordance with these Supreme Court Civil Rules; .

**SCHEDULE 2**

**1 Rule 9-7 (7.1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009, is amended by striking out “in relation to a vehicle action referred to in that rule”.**

**2 The heading to Rule 11-8 is repealed and the following substituted:**

**RULE 11-8 – EXPERT OPINION EVIDENCE ON DAMAGES FOR PERSONAL INJURY OR DEATH .**

**3 Rule 11-8 (3) is amended by striking out “to a vehicle action” and substituting “in an action”.**

**4 Rule 11-8 (4) is amended by striking out “to a vehicle action”.**

**5 Rule 11-8 (5) is amended by striking out “to a vehicle action”.**

**6** *Rule 11-8 (8) is amended by striking out “In a vehicle action” and substituting “In an action”.*

**7** *Rule 11-8 (10) is repealed and the following substituted:*

**Transition – application of rule**

- (10) Subject to subrules (11) and (12), this rule applies to all actions, whether or not a notice of claim for the action was filed before the coming into force of this rule.

**8** *Rule 11-8 is amended by adding the following subrule:*

**Transition – exceptions for existing actions, other than vehicle actions**

- (12) The following exceptions apply in relation to an action, other than a vehicle action, for which a notice of claim was filed before February 1, 2020:
- (a) the limits set out in subrule (3) do not apply to any report of an expert that was served in accordance with these Supreme Court Civil Rules before February 1, 2020;
  - (b) the limits set out in subrule (8) do not apply to amounts that were necessarily or properly incurred for expert opinion evidence before February 1, 2020.