

Self-Represented Litigants

Ontario Small Claims Court

O.Reg. 258/98: Rules of the Small Claims Court

RULE 1 GENERAL

General Principle

1.03 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits in accordance with section 25 of the *Courts of Justice Act*. O. Reg. 258/98, r. 1.03 (1).

O.Reg. 258/98: Rules of the Small Claims Court

RULE 2 NON-COMPLIANCE WITH THE RULES

Effect of Non-Compliance

2.01 A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute. O. Reg. 258/98, r. 2.01.

Court May Dispense With Compliance

2.02 If necessary in the interest of justice, the court may dispense with compliance with any rule at any time. O. Reg. 258/98, r. 2.02.

Services to assist Self-Represented Litigants

- Pro Bono Law Office at the Toronto Small Claims Court
- Student mediators with coaches
- Clear, simple instructions available online
- Forms available online

Improving Access to Ontario Small Claims Court

- Paralegals
- Fee waivers

Ontario Small Claims Court -- Process

Mandatory settlement conferences

RULE 13 SETTLEMENT CONFERENCES

Settlement Conference Required in Defended Action

13.01 (1) A settlement conference shall be held in every defended action. O. Reg. 78/06, s. 27.

Case Law

College of Optometrists of Ontario v. SHS Optical Ltd.,
2008 ONCA 685 (CanLII)

- Did the self-represented litigant get a fair hearing?
- Were the proceedings conducted fairly?
- Presiding judge must not assume or appear to assume the role of counsel for the self-represented litigant
- Trial judge must respect rights of the opposing party

Case Law

- *Girao v. Cunningham* 2020 ONCA 260 (CanLII)
- From *Pintea v. Johns*, 2017 SCC 23 (CanLII) [2017] 1 SCR 470

The Supreme Court of Canada adopted the Statement of Principles on Self-Represented Litigants and Accused Persons

Case Law

From *Pintea v. Johns*, 2017 SCC 23, [2017] 1 S.C.R. 470

...

1. Judges and court administrators should do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons.
2. Self-represented persons should not be denied relief on the basis of a minor or easily rectified deficiency in their case.
3. Where appropriate, a judge should consider engaging in such case management activities as are required to protect the rights and interests of self-represented persons. Such case management should begin as early in the court process as possible.

Case Law

- From *Pintea v. Johns*, 2017 SCC 23, [2017] 1 S.C.R. 470

...

4. When one or both parties are proceeding without representation, non-prejudicial and engaged case and courtroom management may be needed to protect the litigants' equal right to be heard. Depending on the circumstances and nature of the case, the presiding judge may:

- a. explain the process;
- b. inquire whether both parties understand the process and the procedure;
- c. make referrals to agencies able to assist the litigant in the preparation of the case;
- d. provide information about the law and evidentiary requirements;
- e. modify the traditional order of taking evidence; and
- f. question witnesses

Case Law

774161 Canada Ltd. v. Ford (2023 ONSC 2145)

- Divisional Court found that the trial judge did not provide enough assistance to the self-represented Defendant

Ontario Court of Appeal:

Where parties are self-represented, a trial judge has a special duty to acquaint parties with courtroom procedures and the rules of evidence. They must accommodate self-represented parties who are unfamiliar with trial processes and help them present their case

Dujardin v. Dujardin Estate, [2018] O.J. No. 3545, [2018 ONCA 597](#), 423 D.L.R. (4th) 731, at para. [37](#); *Gionet v. Pingue*, [2018] O.J. No. 6661, [2018 ONCA 1040](#), 22 R.F.L. (8th) 55, at para. [30](#); *Davids v. Davids*, [1999 CanLII 9289](#) (ON CA), [1999] O.J. No. 3930, 125 O.A.C. 375 at para. [36](#).; *Manitoba (Director of Child and Family Services) v. A. (J.)*, [2006] M.J. No. 171, [2006 MBCA 44](#), at paras. [19-20](#).

Case Law

Rassouli-Rashti v. Tayefi, 2023 ONCA 315 (CanLII)

[19]

- absent error in principle or unreasonable exercise of judge's trial management powers, deference is owed on appeal to trial management decisions
- erroneous evidentiary rulings and trial unfairness cannot be justified under trial management
- No deference to trial management decision that is an unreasonable exercise of discretion, error in principle, or renders a trial unfair
- Appellate review of trial management decisions requires a contextual approach

Conclusion

- Did the self-represented litigant get a fair hearing?
- Self-represented litigant is expected to prepare their case and familiarize themselves with the relevant legal practices and procedures pertaining to it
- Balance between assisting the self-represented litigant to present their case and providing too much assistance