



Global Review of the Federal Courts Rules

The Rules Committee of the Federal Courts has established a subcommittee to conduct a global review of the Federal Courts Rules. In this message, we invite you to participate and to provide input.

Why a global review?

In 1998, the Federal Courts Rules came into being. They made many significant changes to the previous rules. Many of those changes implemented certain broad policies aimed at furthering fairness and efficiency in the management and governance of litigation.

But much has happened in the last 13 years. Over that time, and partly in response to the changing nature of litigation, many piecemeal amendments to the rules have been made. To some extent, the rules are now like a quilt on which many patches have been sown.

Now is the time to conduct a global review of the rules, examining whether they still further their purposes. In other words, now is the time to look at the entire quilt and assess it.

What has happened so far?

The Rules Committee is the body that considers and approves changes to the Federal Courts Rules. It is a committee comprised of representatives of the Federal Courts, the Bar, and the academic community. Recently, that Committee decided that a global review of the rules should be conducted. The original vision of the framers of the rules was that such a review should take place roughly once a decade.

As a result, a subcommittee on global review has been established. The subcommittee is to study the matter, consult widely with the Federal Courts' various stakeholders, and report back to the Rules Committee. The subcommittee has begun its study.

What might change as a result of the global review?

Upon receipt of the subcommittee's report, the Rules Committee will discuss the matter and reach certain conclusions about particular policies that need to be adopted and implemented in the rules. The global review process is a policy review and policy adoption process, not a consideration of particular rule changes.

However, if new policies are adopted in the global review process, the Rules Committee will consider how those policies should be implemented in the rules. Specific proposals for amendments to the rules may then be made.

The global review process is now under way. Now is the time for you to have your say on the policy matters that could result in important amendments to the rules.

Some of the policies being discussed right now

The subcommittee on global review has identified several policy issues for discussion and consideration. In identifying these issues, the subcommittee does not express any opinion at this time on the significance or the merits of these issues.

Professor Janet Walker has prepared a discussion paper on these issues (<http://www.fct-cf.gc.ca/content/assets/pdf/base/Discussion%20Paper%20Global%20Revision%20ENG.pdf>).

To summarize, the policy issues are as follows:

1. The involvement of the courts in proceedings. At present, with the exception of case-managed proceedings, the rules largely permit parties to manage their own proceedings, with little input from the courts. Should the Federal Courts seek to engage more actively in the management of proceedings, and, if so, in what sort of proceedings, and how should management take place? Should litigation plans be required from the parties and assessed by the court, and, if so, in what sort of proceedings and on what basis should the assessment proceed? Does the existing system of case management work well? Do cases with self-represented litigants raise special considerations? Should the courts be empowered to impose sanctions for abuse of procedures and, if so, in what circumstances, and what sort of sanctions?
2. Judicial determination vs. alternative disposition (e.g., settlements)? Currently the rules are aimed primarily at getting matters ready for a judicial determination on their merits. For example, rule 3 provides that “these Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits. Can the rules do more to promote settlements? Should they? How might they do so?
3. Proportionality. Should the extensiveness of court procedures vary according to the magnitude of the dispute? What procedures might be attenuated, and in what sorts of cases? If proportionality is to be implemented as a policy, is this best done under rule 3, or under specific rules concerning particular procedures?
4. Practice directions. These allow for minor procedural matters to be addressed quickly and flexibly. However, they are not the product of wide consultation and counsel and self-represented litigants are often unaware of them. Are too many matters being regulated by practice direction? Should any existing practice directions be promoted to rules or vice versa? What can be done to ensure greater compliance with practice directions? Can practice directions be better publicized? How?

5. One size fits all procedures vs. specialized procedures. For the most part, the rules adopt a one size fits all approach - virtually all of the rules apply to virtually all proceedings. Should there be specialized procedures for specialized areas, e.g., intellectual property, immigration, or does the one size fits all approach work well even for specialized areas?
6. The architecture of the rules. Is the current structure, ordering, numbering and indexing of the rules user-friendly? In this regard, it should be remembered that some users are self-represented litigants. Might user-friendliness be accomplished in other ways, such as through the use of information technology, and, if so, what ways?
7. Other issues. We invite you to suggest other policy issues that should be discussed and considered, and to offer your views on those issues.

Please note that another subcommittee is examining issues relating to the rules and whether they pose an obstacle to the use of information technology. Those issues are not within the mandate of this subcommittee. Ultimately, the work of both subcommittees will be considered together by the Rules Committee, and specific reforms may be proposed.

We invite you to participate

You can participate in two ways. First, you can provide written comments directly to the subcommittee. Second, this autumn, there will be an opportunity to meet and discuss these issues with members of the subcommittee.

To make written comments, please email or write by February 17, 2012 to:

Ms Chantelle Bowers,
Executive Assistant to the Chief Justice,
Federal Court of Appeal,
90 Sparks Street,
Ottawa, ON K1A 0H9
chantelle.bowers@fca-caf.gc.ca

Dates and locations for the meetings will be announced in the new year.

Please feel free to circulate this document to others who may be able to assist the subcommittee in its task. All input is welcome.

We sincerely thank you for your assistance.

The Subcommittee on Global Review
Chantelle Bowers (Secretary to the Federal Courts Rules Committee)
Nathalie Daigle (Executive Officer to the Chief Justice of the Federal Court)
Professeur Denis Ferland (Université Laval)
Justice Johanne Gauthier (F.C.)
Justice Roger Hughes (F.C.) (Chair of the Rules Committee)
Robert MacKinnon (Department of Justice)
Justice Donald Rennie (F.C.)
Justice David Stratas (F.C.A.) (Chair of the Subcommittee on Global Review)
Cecily Strickland (Stewart, McKelvey)
Prothonotary Mireille Tabib (F.C.)
Professor Janet Walker (Osgoode Hall)