
Discovery reform - Rule 31.05.19(1) Time Limit: Thoughts on time well spent

By Kim Neeson, *Neeson & Associates Court Reporting and Captioning Inc*

As of January 1, 2010 the Ontario *Rules of Civil Procedure* will contain a time limit rule for examinations for discovery, as follows:

Time Limit: Not to Exceed Seven Hours

31.05.1(1) No party shall, in conducting oral examinations for discovery, exceed a total of seven hours of examination, regardless of the number of parties or other persons to be examined, except with the consent of the parties or with leave of the court."

This rule essentially mirrors the United States *Federal Rules of Civil Procedure*, Rule 30(d)(1), as follows:

Duration: Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours...

As a court reporter and firm owner who has reported dozens of Rule 30(b)(6) depositions that hold to the seven-hour rule, those conducting an examination for discovery should consider the following "time issues":



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- 1. Breaks, including lunch and off-the-record discussions:** These are always deducted from the total time taken. On occasion, conducting a seven-hour deposition can actually take up to 10 hours when all of these items are deducted from the time count.
- 2. Time-stamping:** Shorthand reporters are able to use their computer-aided transcription software to add time-stamps to every line of the transcript. If a witness were to consider every question asked for at least one or two minutes, her answer would be recorded with the accompanying time code so that this could be attested to impartially. Objections or intercessions by other counsel would also be recorded in time used. Time-stamping may be an invaluable resource in arguing for additional time over and above the seven-hour limit in front of the court due to inordinate use of "your time" by other counsel or the witness. A trained shorthand reporter can produce transcripts with the time-stamping included or excluded at your direction.
- 3. Tracking time on and off the record:** Since almost all U.S. depositions are videotaped, the videographer is usually charged with the task of keeping track of the time used to the minute. Court reporters are able to time-keep to a large degree, but not to the same minuteness as a videographer who is not tasked with creating the written record. Ensure that before you start your examination you task someone (your court reporter or perhaps other counsel) with the timekeeping function.
- 4. Objections:** In U.S. depositions, only the briefest of objections are allowed. They consist of phrases such as "Objection, vague and ambiguous," "Objection, asked and answered," and "Objection, form." When attorneys begin to expound their comments to more than these speaking objections, the taking attorney always admonishes them to not "use my time on the record." It is conceivable that a lawyer could spend more time on the record in the seven hours -- objecting, clarifying and "making speeches" -- than the witness actually spends testifying.
- 5. Reading of documents:** I have seen many counsel object to the reading of documents by a witness or an attorney "on my time." Many have suggested that the reading should be done off the record; however, counsel for the witness will usually indicate that if the question posed requires the reading of a document, then that counts as part of the seven-hour time limit.
- 6. Videotaping:** Almost every U.S. deposition we take is videotaped. One of the purposes of videotaping is to record the witnesses' demeanor when they answer questions. Do they hesitate too long? Do they seem to require questions to be repeated over and over again? Do they seem to be trying to use up time as much as possible? Videotaping is an enhancement that goes along with a transcript (it is usually synced so that the video plays in conjunction with the transcript in a separate viewing box) and can be used to show that either the witness or opposing counsel is trying to frustrate the proper use of the seven-hour allotment.
- 7. Witness instruction:** It appears from time to time that the witness has been instructed to read every document pertaining to a question before answering, to consider a question before answering -- to pause -- and to ask that questions either be read back or

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repeated by counsel. This is another tactic that can be deployed to use up time allotted to the seven-hour deposition.

The Ontario rules provide one important advantage over the U.S. federal rules: seven-hour depositions must be completed within one day, whereas Ontario does not limit the number of days - presumably two at most - within which the seven hours must be completed. One marathon the writer participated in resulted in a sitting day of 9:00 a.m. to 8:00 p.m. in order to complete the seven hours, with a page count of over 450, the equivalent of almost two "regular" reporting days. One might question whether the rule actually saves much money in court reporting costs; if counsel decide to speak twice as fast, the page count probably won't change and overtime hourly rates may apply, thereby reducing any anticipated savings the rule may have envisaged.

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Time: Are you addicted to ~~love~~ work?

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"Time is but the stream I go a-fishing in."

Henry David Thoreau, *Walden*



We often hear that lawyers do not have enough time for life, family and work. Do you find yourself saying or thinking, "I don't have time for that"? With the pressure to achieve and to always do more, to meet deadlines and manage clients and court dates, lawyers often lose their sense of time. This leads to stress, frustration and dissatisfaction. The most important key to good health in a world that is achievement-driven is to understand the barriers, distractions and facades we build to modulate our experience of time. Take a moment to calculate the number of hours required to complete the tasks at hand and the number of hours available. Start with the hours required for your personal life. Do not leave yourself and your family out of the schedule.

Lawyers are busy people, "connected" by phones, faxes, e-mail, instant messaging, Twitter, Facebook and much more. Our sense of time and boundaries is being eroded by the connections that translate to more work all of the time. We live with the false impression that by being accessible all of the time we are more productive and making better use of time.

There are dangers to be alert to. If unattended, our pressures can lead to difficulties such as stress and anxiety, and result in workaholism and/or communication addiction. Workaholism is an addiction the same as alcoholism, drug addiction, sex addiction, internet addiction, gambling addiction, etc. in that the behaviour adversely affects your life physically, emotionally and spiritually, leading to isolation from family and others and a loss of self.

According to Don Carroll in his book *A Lawyer's Guide to Healing*, many lawyers have personality traits that could be described as those of the "natural philosopher." The natural philosopher needs to control by understanding and a natural curiosity. Most lawyers possess the inherent yearning to understand, but in order to do so there needs to be time to analyze and reflect -- something that busy lawyers often say they do not have time for. Lawyers often say they do not get an opportunity to simply sit and think -- even about work. With today's ever-changing technology there is not the space that was once provided by fax and phone communication.

It is a generally part of the legal culture to work long hours and to be proud of excessive billable hours. This is often met with admiration or awe rather than concern about how it is affecting your personal life, or if you have a personal life.

Lawyers are at risk of becoming workaholics because it is acceptable, even respectable, in their profession to work without balance. There is a difference between a person who works hard and passionately but for whom work is just a part of life, and one who needs approval through work and works without boundaries. Unhealthy work is about power, perfection and control. According to Barbara Killinger, in her book *Workaholics, The Respectable Addicts*, a workaholic is a person who gradually becomes emotionally addicted to control and power in a compulsive drive to gain approval and success.

Some things to watch out for on the road to unhealthy work:

1. Do you drive yourself and have high levels of energy and stamina?

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