

Civil Procedure
Fall Term 2024

Lecture Notes No. 1

I. INTRODUCTION

Rules 1.04 (1), 1.04(1.1)

1.04

(1) These rules shall be liberally construed to secure the **just, most expeditious** and **least expensive** determination of every civil proceeding on its merits.

(1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

- The importance of the adversarial principle cannot be overstated. It colours the entirety of the field of litigation. As a matter of principle, adversarial proceedings may well be a very useful approach to dispute resolution. For the litigants, it is brutal. The Rules control the contest.
- In normal circumstances the contest is fought by adversaries before a judge who acts as neutral umpire respecting the rules of the contest and its ultimate result. Whichever side convinces the trier of fact (judge or jury) on a 'balance of probabilities' wins.
- While the Court is neutral, the realities of economic disparities and resources challenge the judge to ensure that the weaker party is not denied justice. Judges may have to provide some guidance to an unrepresented party just to keep the matter on track and allow other cases to be heard before the end of time.
- **Procedures should be proportional to what is at stake.** Lawyers should bear in mind what things cost and how long procedures take and should then mould them to suit the nature of the dispute and how much money is at stake – i.e. use some common sense (an underrated quality, much prized in practice).

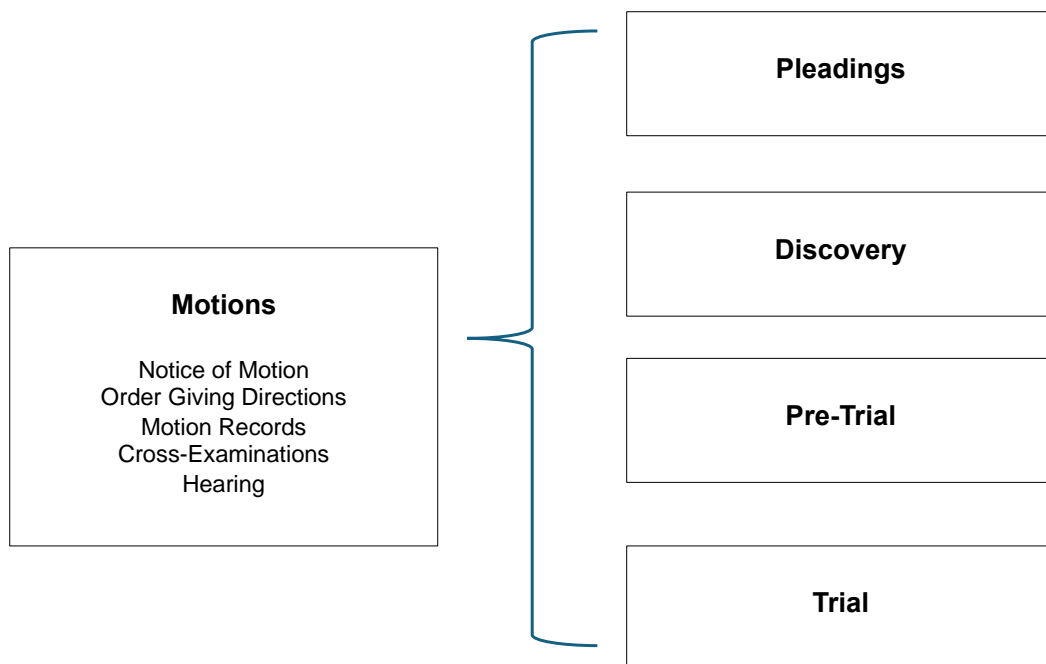
What exactly are 'The Rules'?

There are various types and sources of procedural rules:

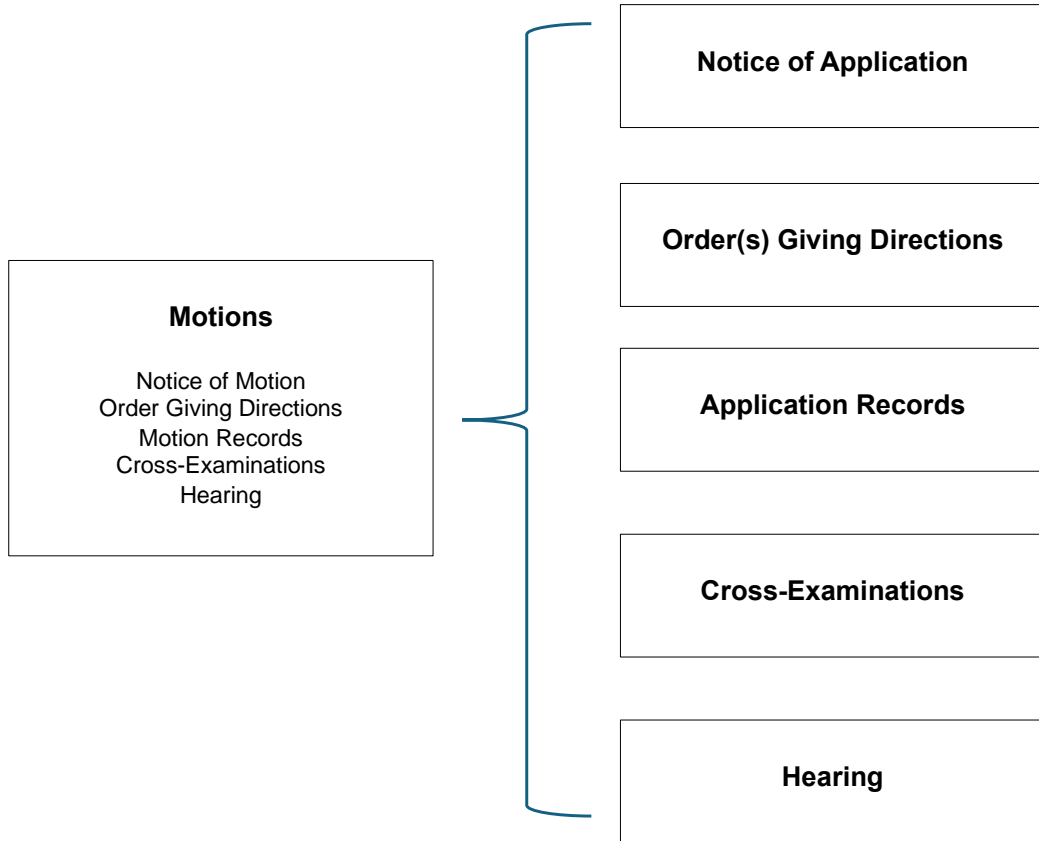
- There are regulations under the statutes that create the court in question which we refer to as “rules or procedure” or “rules of practice”. We will be dealing primarily with the “Rules of Civil Procedure” that are created under the *Courts of Justice Act*, Section 66, for proceedings in the Superior Court and the Court of Appeal. We may touch on the intersection between the Rules of Civil Procedure and the [Family Law Rules](#).
- Superior Courts (and some inferior courts) have an inherent jurisdiction to deal with procedural points.
- '[Practice Directions](#)' issued by courts provide procedures in a given region for particular kinds of litigation.

Types of Proceedings & Stages

ACTIONS



APPLICATIONS



In either type of proceeding, costs are argued following the disposition of the litigation.