

PRACTICE ADVISORY

CIVIL REVIEW PROJECT – EXECUTIVE SUMMARY

IMPORTANT NOTICE

On **Monday, November 10, 2014**, certain changes will be made which will affect the practice in Motion Scheduling Court. After that date, it will be known as ***Civil Practice Court***. The initial changes are outlined in this Practice Advisory. In due course, it is expected that these changes will be formally incorporated into

- At the request of Chief Justice Smith, Regional Senior Justice Morawetz has been leading a Judicial Working Group to identify and implement scheduling changes. The Judicial Working Group met regularly with a Task Force comprised of bar representatives (Advocates' Society, OBA and the Ontario Trial Lawyers' Association) to find ways to improve these scheduling matters.
- The Judicial Working Group is comprised of Justice Baltman (Brampton), Justice D. Brown (Toronto), Justice Edwards (Newmarket), Justice Firestone (Toronto), Justice Frank (Toronto), Justice McEwen (Toronto), and Justice D. Wilson (Toronto), Justice Archibald (Team Leader – Civil Long Trials), Justice Low (Team Leader – Civil) and Administrative Master Glustein.

Summary

- **“Phase One”** – Initial recommendations from “Phase One” of this review were identified in September 2013 and were implemented in November 2013:
 1. Additional long motions were scheduled, recognizing that there was capacity to schedule more; and
 2. Estate matters were heard by Commercial List judges. This internal scheduling adjustment had the immediate effect of making one additional judge available to hear civil long motions each week. The scheduling adjustment required changes to the booking system, and meetings were held with administrative staff to implement them.
 3. “Placeholder” application and motion hearing dates were eliminated. Parties were scheduling dates without filing any material. On November 23, 2013, the profession

was advised that a Notice of Motion/Application must be filed within 10 days of scheduling a hearing, failing which, the date would be vacated.

- **“Phase Two” – Strategic Review.** In recognition of the court’s limited resources (fixed number of judges, no additional administrative support can be expected), the Review sought out strategies to increase efficiency and effectiveness. In this respect, three general areas of recommendations were made:

1. **Importance and Scope of Active Case Management:** Timely resolution can only be realized through active judicial case management, but not necessarily in all cases. The objective is to case manage only those proceedings in which a need for the court’s intervention is demonstrated. Therefore, the goal is to develop specific recommendations that further this objective, recognizing that:

- There is a motions culture in Toronto;
- The type of case management will vary depending upon the type of case;
- Criteria should be developed to determine which cases should be targeted for case management and what case management will look like in those cases;
- Not every case requires case management; certain “markers” might identify whether case management is required and what level of management is required;
- Too much case management at the wrong time may be counterproductive. Previous case management in Toronto was not successful and the reasons why it did not work should be understood.

2. **Implementing Case Management through a Rebranded Civil Practice Court (formerly Motion Scheduling Court):** An enhanced Civil Practice Court (“CPC”) can serve several purposes, bring a new culture of litigation in Toronto and be the entry point for case management.

- **The judge** in CPC will identify cases, at any stage, which require a degree of case management. Expected that case management will be invoked only in complex cases or where long motions are involved. Judges, other than those presiding in CPC, will be engaged in case management as assigned by the Civil Team Leader. Flexibility in scheduling case conferences by these judges is required.

- **Case Management for Summary Judgment Motions:** A system is to be instituted where case conferences are conducted well in advance of the summary judgment motions (wherever motions are longer than 2 hours) in case managed proceedings. Will consider the option of directing long summary judgment motions to the trial list.

- **Changes to Civil Practice Court:** By November 10, 2014, the following changes are expected to be implemented:
 - Motions Scheduling Court will be rebranded “Civil Practice Court”;
 - It will commence no later than 9:30 a.m.;
 - There will be 3 or 4 courts sitting simultaneously, with one dedicated to self-represented litigants.
 - Gowning will not be required;
 - Computer scheduling program will be enhanced to permit the court to easily and consistently identify the next available time slot for the motion. Computers in each courtroom will be required;
 - Motions will only be booked if the parties can confirm their availability to have them heard in the next 100 days (14 weeks), otherwise they will not be scheduled. Absent exceptional circumstances, the Court will schedule a hearing date within 100 days. In order to effectively implement this policy, it will be necessary to adopt a “no adjournment within 2 days of the scheduling hearing” policy, in the absence of extenuating circumstances.

3 Miscellaneous Changes:

- Combining the long civil/short civil team for organizational purposes.

- Request chronology and compendium, thereby reducing time spent by the judge preparing the motion and increasing the likelihood that counsel will have focussed in on issues earlier.

- Adopt the Commercial List e-Delivery of Documents Project, which ensures that electronic files are properly organized, factums and authorities are hyperlinked and that the judge can easily work on the file from anywhere.
- Parties will be encouraged to make greater use of in-writing motions, as currently permitted for non-complex matters under r. 37.12.1, particularly for default judgments, Norwich orders, non-party production or substituted service. There will be others. A Practice Direction concerning which motions ought to be heard in-writing will be considered.
- Require that cost outlines, as required under r. 57.01(6) at the conclusion of the hearing, rather than after release of the decision and receipt of written costs submissions. It would expedite the process if r. 57.01(6) were strictly enforced.
- Consistent approach at the pre-trial conference (trial management component and a settlement component).
- Separate time-sensitive matters in Civil Practice Court and dedicate a judge to deal with real time-sensitive issues.
- Fast track – on a pilot project basis, establish a roster of judges available to fix schedules and fast track procedural issues, only in those cases where parties consent to fast tracking procedural issues at Civil Practice Court to make “fast-track” procedural orders.

Date: October 14, 2014



RSJ, G.B. Morawetz