

# COURT OF QUEEN'S BENCH OF ALBERTA

## Q. B. CIVIL PRACTICE NOTE NO. 1

### CASE MANAGEMENT PRACTICE NOTE

EFFECTIVE SEPTEMBER 1, 2001

**Note: This Practice Note replaces Guidelines for Case Management (April, 2001) and Practice Note 7 - Very Long Trial. This Practice Note applies to all case management ordered after September 1, 2001 and, by the amendment, after November 19, 2004, (including case management in very long trials), and to any case management in place before that date where ordered by the case management judge. See sections 57 and 58.**

#### *Definitions:*

1. In this Practice Note:
  - a. "case management judge" means any judge assigned to the pre-trial management of any action as provided in this Practice Note.
  - b. "case timetable" means a schedule for the completion of any steps required to advance toward the efficient resolution of the action.
  - c. "Chief Justice" means the Chief Justice of the Court of Queen's Bench of Alberta or an Associate Chief Justice of the Court of Queen's Bench of Alberta or a judge of the Court of Queen's Bench of Alberta designated by either the Chief Justice or an Associate Chief Justice to perform the functions of the Chief Justice under this Practice Note.
  - d. "efficient resolution of the action" means the resolution of the action in a reasonable time, at a reasonable cost to the parties, making reasonable use of court resources, and without any compromise of justice.
  - e. "open chambers", means a court room, open to the public, with a clerk present and where the proceedings are recorded.
  - f. "trial coordinator", means the civil trial coordinator for the judicial district in which the trial of an action subject to this Practice Note is to be held.
  - g. "very long trial action", means an action which will or is likely to require more than 25 trial days.

***Appointment of Case Management Judge***

2. The parties, or any part, shall apply for the appointment of a case management judge for any action:
  - a. that has been ordered to be tried by a civil jury,
  - b. that appears to be a very long trial action,
  - c. commenced or continued under the *Class Proceedings Act*, S.A. 2003, c. C-16.5,
  - d. when directed to do so by the Court.
3. Any party may apply for, or a judge on his or her own initiative may recommend to the Chief Justice, case management of any other type of action where that would promote the efficient resolution of the action.
4. An application for case management may be made on notice by Notice of Motion returnable before, or letter addressed to the Chief Justice.
5. Where an application is made for case management, the Chief Justice may decline to order that the action be subject to this Practice Note and direct that a pretrial conference pursuant to Rule 219 be held.
6. An order made under this Practice Note may be varied or rescinded at any time on application or on the Court's own initiative.
7. (Repealed November 19, 2004.)
8. (Repealed November 19, 2004.)
9. (Repealed November 19, 2004.)
10. (Repealed November 19, 2004.)
11. (Repealed November 19, 2004.)

***Function of the Case Management Judge***

12. Subject to section 13, the case management judge may, on application of any party to the action, or on his or her own initiative, make any order which the case management judge determines will likely promote the efficient resolution of the action.
13. The case management judge may encourage the parties to participate in mediation or other alternative dispute resolution processes, including judicial dispute resolution, but shall not order the parties to do so unless all parties consent to participate.

14. Without limiting the generality of section 12, the case management judge may:
  - a. order steps be taken by the parties to identify or clarify the issues in the action,
  - b. establish a case timetable and order the parties conform to it,
  - c. make directions to facilitate any interlocutory application, discovery, or other pre-trial step,
  - d. make directions to promote the efficient resolution of the action by trial,
  - e. facilitate efforts the parties may be willing to take towards the efficient resolution of the action or any issue in the action through settlement.
15. A party who determines that they may or will be unable to comply with an order or direction made pursuant to s. 14 shall make application to the case management judge, on notice or by consent, for an amendment to the order or direction before the party is in default of the order or direction.
16. The case management judge shall determine all interlocutory motions in the action except:
  - a. when the case management judge or the Chief Justice deems it appropriate for any reason that any application be heard by some other judge or by a master,
  - b. when the applicant establishes to the satisfaction of a judge other than the case management judge that there is an emergency which justifies bringing the application before a judge other than the case management judge,
  - c. as otherwise provided in Rule 387.1 in respect of an application under that Rule,
  - d. when s. 19 or s. 20 applies.
17. A party seeking to make an interlocutory motion in an action subject to this Practice Note may request the case management judge or the Trial coordinator to set a date for the hearing of the application by the case management judge.
18. Subject to s.19, unless otherwise agreed by the party seeking to make the application, a date shall be set under s. 17 shall be within 30 days of the request made under s. 17.
19. Where it is not possible to comply with s. 18 the case management judge or the trial coordinator shall so certify and the party seeking to make the application may then make the application to any judge according to the procedure that would apply if the action were not subject to this practice note.

20. An application for an order that an action subject to this Practice Note be tried by a jury shall be made to the Chief Justice, unless the case management judge has been designated by the Chief Justice to hear such an application.

### ***Case Management Conferences***

21. The case management judge, on his or her own initiative, or on the request of any party to the action, may convene a case management conference at any time prior to the commencement of the trial of the action.
22. The case management judge may, on the request of the trial judge, at any time, convene a case management meeting for any purpose that the trial judge may specify.
23. The case management judge shall ensure that the first case management conference is held within 60 days of the appointment of the judge as the case management judge under section 9.
24. A request by any party to an action to the case management judge to convene a case management conference shall be made by letter, copied to all the other parties, stating the reason for the proposed conference.
25. The case management judge may direct any party to the action to give notice to all parties of the date and time of any case management conference the case management judge convenes, or may cause notice of the conference to be given to all parties by some other means.
26. The case management judge, when convening a case management conference, or at any other time, may direct any or all parties to file and serve on all other parties a letter briefly setting out any or all of the following information:
  - a. a summary of the facts giving rise to the action, the causes of action raised, and the relief claimed,
  - b. the issues in the action,
  - c. the steps required to be taken before the action can be set for trial,
  - d. the matters which the party believes should be addressed at a case management conference.
27. A party may, with leave of the case management judge, make an interlocutory motion in the action at a case management conference.
28. A case management conference may be held in the case management judge's private chambers except:
  - a. when any of the parties to the action is not represented by counsel,

- b. when any of the parties requests otherwise,
- c. when the case management judge directs otherwise,

in all of which cases the case management conference shall be held in open chambers.

- 29. The case management judge may permit any party to attend the case management conference by telephone or video-conference.
- 30. The case management judge shall ensure that a party, the clerk or some other person is directed to prepare:
  - a. minutes of the discussion and decisions made at a case management meetings,
  - b. a formal order setting out the decisions or directions made at a case management conference, or
  - c. both,

and to cause such record to be circulated to all parties for comment as to its accuracy.

- 31. In addition to the requirements of Part 23 of the Rules and Practice Note 4 regarding entry for trial, an action subject to this Practice Note shall not be entered for trial until the case management judge, after holding a Pre-Trial Conference, so directs.
- 32. The case management judge may give a direction under section 31, when reasonably satisfied that:
  - a. the matter is ready for trial,
  - b. any step required to be completed before trial will be completed before trial, or
  - c. it will be possible to monitor the readiness of the action for trial and, if it appears the action will not be ready for trial on the assigned date, to cancel the assigned trial date sufficiently far in advance of the trial date that no significant inconvenience will have been caused to any party or the court,

and where a direction under section 31 is given in the circumstances described in paragraphs b. or c., the case management judge shall, direct the parties to prepare and file a Conditional Certificate of Readiness under Practice Note 4 in which the steps required to be completed before trial and a schedule for their completion are set out.

***The Trial***

33. The case management judge shall prepare a Pre Trial Conference Report for the trial judge but the report shall not be given to the trial judge before all parties have been given the opportunity to review it and to object to any of its contents and the case management judge has ruled on any such objection.
34. The case management judge shall not preside at the trial of the action unless all parties and the case management judge consent in writing.
35. No information concerning the discussions or decision at a case management conference, other than the Pre-Trial Conference Report prepared pursuant to section 33, and in particular, no minutes or orders created pursuant to section 30, shall be provided or otherwise communicated to the trial judge without the consent of all parties to the action.
36. The case management judge may direct that the record of any case management conference or any portion of such record be sealed by the clerk of the court.
37. Unless otherwise ordered, where a sealing of the record of a case management conference is directed pursuant to section 36, the clerk shall provide access to the sealed materials to counsel for a party to the action on request, according to the ordinary procedures of the clerk, despite the sealing direction, without further order.
38. The case management judge is not a compellable or competent witness at the trial.
39. Any order or direction made by the case management judge affecting the procedure at trial may be modified by the trial judge if the trial judge considers it necessary to do so to prevent injustice.

***Very Long Trial Actions***

40. Sections 41 to 51, shall be applied in the case management of a very long trial action but may be applied in, or adapted for, the management of any action subject to this Practice Note if the case management judge considers it appropriate in the circumstances.
41. The case management judge appointed for a very long trial action shall convene two case management conferences:
  - a. the scheduling conference, and
  - b. the duration conference,in addition to any other case management conferences required in the action.

***The Scheduling Conference***

42. The scheduling conference shall be held within 60 days of the appointment of the case management judge for the purpose of addressing the efficient resolution of the action and establishing a case timetable.
43. The following matters shall be addressed at the scheduling conference:
  - a. the state of the pleadings and the need for amendments to them,
  - b. the possibility of the addition of other parties,
  - c. the identification and simplification of the issues,
  - d. the state of the pre-trial discovery process and the schedule for its completion,
  - e. the requirement for interlocutory motions and their scheduling,
  - f. the parties' intentions regarding expert evidence at trial,
  - g. compliance with the requirements of Part 15.1 of the Rules of Court, Very Long Trial Actions, and any applications contemplated under that Part,
  - h. the date upon which the action could reasonably be ready for trial,
  - i. the estimated duration of the trial,
  - j. the state of settlement discussions and steps that might be taken to facilitate them,
  - k. the purpose and scheduling of subsequent case management conferences.
44. No later than 10 days before the scheduling conference, counsel for the Plaintiff shall prepare, file with the case management judge and serve on all other parties, a draft case timetable.
45. At or after the scheduling conference, the case management judge shall, by order, establish a case timetable scheduling all steps in the action that the case management judge determines should be expressly scheduled, and, in any event, including:
  - a. the date of the duration conference,
  - b. the date for the deliver by each party of an Experts Document as required by Rule 218.6 (1), which shall be at least 90 days before the date of the duration conference,

- c. the date for the deliver by each party of a Reply to Experts Document as required by Rule 218.6 (3) which shall be within 60 days of the date established under paragraph b.
- d. a date for the commencement of the trial which date:
  - i. shall be at least 9 months after the duration conference, and
  - ii. shall be established in consultation with the trial coordinator.

### ***The Duration Conference***

- 46. The purpose of the duration conference shall be to determine the number of trial days required for the trial of the action.
- 47. At least 30 days prior to the duration conference, each party shall file a Duration Conference Memorandum in the Form A, and serve each other party to the action.
- 48. Each party shall file the party's Experts Document and Reply to Experts Document, previously served pursuant to Rule 218.6, with the Duration Conference Memorandum.
- 49. Within 10 days of being served with a Duration Conference Memorandum, each party shall file a Reply to Duration Conference Memorandum in Form B and serve each other party to the action.
- 50. At or after the conclusion of the duration conference, the case management judge shall complete a Duration Report in Form C and shall cause a copy to be provided to the trial coordinator and each party.
- 51. Upon the filing of the Duration Report, the action shall be entered for trial for the number of days stated in the Duration Report commencing on the date for trial set out in the case timetable.

### ***Time***

- 52. The computation of all time periods referred to in this Practice Note excludes Saturdays, Sundays, and holidays, but includes the long vacation and the Christmas vacation.
- 53. Where the deadline for holding the first case management meeting established under sections 23 or 42, falls during the long vacation or the Christmas vacation, the deadline shall be extended to expire on the 10<sup>th</sup> day of the sittings commencing at the end of the vacation.
- 54. The case management judge may enlarge or abridge the time appointed by this Practice Note for doing any act required by this Practice Note.

### ***Sanctions***

55. When satisfied that a party or a party's counsel:
- a. has used case management to cause delay in the progress of the action;
  - b. has made unreasonable or unnecessary applications in the case management;
  - c. has failed to comply with the requirements of this Practice Note;
  - d. has failed to obey an order or direction of a case management judge;
  - e. has failed to appear at a case management conference;
  - f. has been substantially unprepared to participate in the case management conference;
  - g. has acted in bad faith;
  - h. has otherwise abused the case management process; or
  - i. has caused a trial to exceed 25 days in length, (whether or not it is set to take less than this time), though no request was made for the appointment of a case management judge pursuant section 4,
- the case management judge, the trial judge or any other judge, upon application or on his or her own initiative, may:
- j. make any of the orders provided in Rules 599.1 or 704(1)(d),
  - k. require the party or counsel representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this Practice Note, including counsel's fees,
  - l. make any other appropriate order.
56. Where, in the opinion of the case management judge, the conduct of one or more of the parties prior to trial has significantly and unnecessarily affected the length of time needed for trial, or has created significant avoidable delay between the close of pleadings and the start of the trial, that judge may so advise the parties and trial judge by written memorandum to be read by them only at the conclusion of the trial but prior to the setting of costs.

### ***Transition***

57. This Practice Note shall come into force on September 1, 2001, as amended November 19, 2004, and shall replace Practice Note No 7, Practice Note on the Very Long Trial, dated September 1, 1995 and Guidelines for Case Management dated October 7, 1997 and amended April 1, 2001.

58. Notwithstanding s.57 and the adoption of this Practice Note, an action subject to Practice Note No. 7, Practice Note on the Very Long Trial dated September 1, 1995 shall continue to be governed by that Practice Note unless the case management judge for the action grants an order, on the consent of the parties to the action, on application, or on the initiative of the case management judge, that the action be subject to this Practice Note.

Dated this 19<sup>th</sup> day of November, 2004.

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Allan H. J. Wachowich  
Chief Justice

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Allen B. Sulatycky  
Associate Chief Justice

**FORM A (Section 47)  
DURATION CONFERENCE MEMORANDUM**

Style of Cause:

Action Number:

Party Filing this Duration Conference Memorandum:

Counsel Filing this Duration Conference Memorandum:

***Trial Time Required by this Party:***

***Ordinary Witnesses:***

The party filing this memorandum expects to call the following witnesses (including rebuttal witnesses but excluding expert witnesses) to give the following evidence:

1. Name of witness:

General nature of evidence:

Estimate of Time Required for Examination in Chief of this Witness:

*(and so on for each anticipated witness)*

***Expert Witnesses:***

The party filing this memorandum expects to call the following expert witnesses (including expert witnesses which may be called in rebuttal) to give the following evidence:

1. Name of expert witness:

General nature of evidence:

Estimate of time required for Examination in Chief of this expert witness:

*(and so on for each anticipated expert witness)*

The Experts Document and Replies to Experts Documents delivered by any party pursuant to Rule 218.6 in respect of all expert witnesses listed above are attached to this Duration Conference Memorandum.

**Summary of Time Requirement:**

The amount of time this party anticipates requiring to:

make preliminary application  
prior to the presentation of its case: \_\_\_\_\_  
lead its evidence in chief: \_\_\_\_\_  
lead its rebuttal evidence: \_\_\_\_\_  
present its argument: \_\_\_\_\_

**Total time required by this party:** \_\_\_\_\_

Other matters relevant to the trial time needed, or to the conduct of the trial which have not been covered above are as follows:

Dated: \_\_\_\_\_  
Signature of Counsel

**FORM B (Section 49)**  
**REPLY TO DURATION CONFERENCE MEMORANDUM**

Style of Cause:

Action Number:

Party Filing this Reply to Duration Conference Memorandum:

Counsel Filing this Reply to Duration Conference Memorandum:

The party filing this Reply to Duration Conference Memorandum estimates the time it will require to cross-examine the witnesses listed in the Duration Conference Memorandum as follows:

1. Witness:

Party on whose Duration Conference Memorandum the Witness is listed:

Time Required for cross-examination of this witness:

*(and so on for each of the witnesses listed on each of the Duration Conference Memorandum filed)*

Dated:

\_\_\_\_\_  
Signature of Counsel

**FORM C (Section 50)  
DURATION REPORT**

(to be completed by the Case Management Judge)

Style of Cause:

Action Number:

Description of Action: *(cause of action, issues, relief claimed)*

The Case Management Judge's estimate of the total time needed to examine and cross-examine each anticipated witness is as follows:

1. Party:

***Ordinary Witnesses***

- a. Witness:  
Time required for:  
Evidence in Chief  
Cross Examination

*(and so on for each ordinary witness anticipated by the party)*

***Expert Witnesses***

- a. Expert Witness:  
Time required for:  
Evidence in Chief  
Cross Examination

*(and so on for each expert witness anticipated by the party)*

***Argument***

Time required for submissions in argument:

*(and so on for each party to the action)*

The Case Management Judge's estimate of time required for any other aspects of the trial not included in the above estimates (including preliminary applications):

**[Note: These time estimates are to be determined by the Case Management Judge after review of the Experts Documents filed, taking into account Counsel's estimates of time.]**

Other matters relevant to the trial time needed, or to the conduct of the trial which have not been covered above are as follows:

**Total Estimated Time Required for Trial:**

Dated:

\_\_\_\_\_  
*Signature of Case Management Judge*