

# Practice Note DC (Civil) No. 2

## Case Management in the Commercial List

This practice note is issued under sections 56 and 57 of the Civil Procedure Act.

### **1. Commencing Proceedings**

- 1.1 A plaintiff must not commence proceedings until they are ready to comply with the requirements of the Uniform Civil Procedure Rules and this practice note for preparation and trial. This means that, except in special circumstances, the plaintiff's preparation for trial should be well advanced before filing the statement of claim.
- 1.2 Before commencing an action or filing a defence, legal practitioners must give their clients notice in writing about the requirements of this practice note and the Court's insistence on compliance with its orders. That notice must state that the Court may dismiss actions or cross claims or strike out defences if orders are not complied with and that the Court may make costs orders against parties who fail to adhere to timetables.

### **2. Entry into the Commercial List**

- 2.1 Proceedings may be entered in the Commercial List by:
  - (a) The plaintiff or the defendant endorsing the Statement of Claim or the Notice of Grounds of Defence "Commercial List".
  - (b) The filing of a Consent Order to that effect.
  - (c) Order of the Court on Notice of Motion.
  - (d) Order of the Court on its own motion.
- 2.2 An action commenced on the basis of a common money count pleading cannot be entered in the Commercial List without the leave of the Court.

- 2.3 An action in which the plaintiff's claim, either liquidated or unliquidated, is for less than \$75,000 cannot be entered in the Commercial List without the leave of the Court.

### **3 Removal from the Commercial List**

- 3.1 (a) Upon an order being made removing proceedings from the List, subject to sub-paragraph (b), this Practice Note shall not apply to the proceedings from that date.
- (b) The Court may direct that this Practice Note shall continue to apply to the proceedings to the extent stated in the direction.
- (c) The making of an order removing proceedings from the List shall not affect any orders made or directions given prior to such removal.

### **4 Pleadings**

- 4.1 The Court's expectation is that a plaintiff will plead the cause of action sued upon with precision and clarity such that the defendant knows from the beginning what the cause of action relied on is and the case the defendant has to meet. Where possible, the Court's aim is to obviate the necessity for particulars being sought of the pleaded cause of action.
- 4.2 Any defence filed should avoid formality, admit or deny the facts upon which the plaintiff relies and should state the facts upon which the defendant relies so that it will not be necessary for the plaintiff to seek particulars.
- 4.3 All parties to the proceedings must ensure that the issues are clearly spelt out in the pleadings to avoid new issues arising at the trial.
- 4.4 The provisions of this Practice Note, with such changes as the case requires, otherwise shall apply to cross claims.

## **5 Directions Hearings**

5.1 The proceedings shall be before the Court for directions on the listing date provided when the statement of claim or notice of grounds of defence is filed or as the Court may otherwise direct.

5.2 Directions hearings usually will be appointed for 9.30 am on each Friday during term. Proceedings may be listed at different times on each Friday and the daily list should be consulted. Where a public holiday falls on a Friday the Thursday preceding will usually be the day in that week for directions.

5.3 At the first directions hearing the Court expects:

(a) The defendant to inform the Court what, if any, the defence will be; and whether or not cross claims are to be filed and, if so, what is the substance of such cross claims.

(b) All parties should be in a position to inform the Court whether they consider that the dispute is or will be suitable for reference out to a referee for enquiry or for mediation or other alternative dispute resolution procedure and whether they consent to a referral for such purpose.

5.4 At the first directions hearing practitioners are expected to have in legible written form a draft of the orders they will ask the court to make. Such orders or directions will usually relate to:

- (a) the filing of defences and cross claims, including defences thereto;
- (b) if essential, the provision of particulars;
- (d) discovery with respect to specific categories of documents;
- (e) the service of affidavits or statements of evidence;
- (f) exchange of experts' reports;
- (g) a return date for subpoenas.

- 5.5 Consistent with the Court's view concerning the provision of particulars, so, too, orders for general discovery and the administration of interrogatories will be made only upon demonstrated need being established in a particular case.

## **6 Attendance of Legal Representatives**

- 6.1 Each party not appearing in person shall be represented at any directions hearing by a barrister or a solicitor familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.
- 6.2 Practitioners should have communicated with each other prior to each directions hearing with a view to agreement on directions being sought from the Court.

## **7 Interlocutory Disputes**

- 7.1 The Court will endeavour to deal with interlocutory disputes expeditiously and to that end will not necessarily require the filing of a notice of motion.
- 7.2 Before bringing an interlocutory dispute before the Court, the legal representatives of the parties should confer with a view to resolving the dispute or, at least, narrowing its compass. If convenient to the Court, it may wish to resolve an interlocutory dispute at a directions hearing. The parties should be prepared for such an eventuality. Where, however, it is apparent that the issue is one of some complexity the Court will require a formal notice of motion.
- 7.3 Where it will be necessary to resolve an interlocutory dispute by notice of motion the Court should be informed of any party's intention to file such a notice of motion beforehand so that a timetable can be put in place to ensure that the motion is ready to be heard on the allocated date.

## **8 Subpoenas**

- 8.1 Subpoenas should be issued at an early time so that the gathering of documents does not delay the progress of a case.
- 8.2 A return date for subpoenas can be given at a directions hearing, preferably the first such hearing. Return dates for subpoenas are generally appointed for 11am on each Monday before the Registrar.

## **9 Liberty to Apply**

- 9.1 At any stage a case can be listed for directions before the Commercial List Judge or the Judicial Registrar. The party seeking to relist a matter shall do so by sending a written request to the Associate to the Judge having the control of the Commercial List. Copies of such a request are to be served on all other parties to the proceedings.

## **10 Listing for trial**

- 10.1 A date for trial may be fixed prior to completion of interlocutory steps. In this regard the parties should inform the Court at the earliest possible date when they become aware that the case is a long matter, that is, likely to be heard over a period exceeding 5 days.
- 10.2 The fixing of a date for trial will usually occur at a directions hearing. Upon fixing a date for hearing the Court will normally direct that the usual order for hearing set out in the Schedule shall apply, with or without modification.

## **11 Experts**

- 11.1 The Court will make orders in accordance with Part 31 Division 2 of the Uniform Civil Procedure Rules 2005.

11.2 In particular, the Court may direct, where appropriate, that the parties comply with Rule 31.25 relating to conference between expert witnesses.

## **12 Alternative Dispute Resolution**

12.1 All appropriate cases will be referred for mediation under Part 4 of the Civil Procedure Act 2005 or arbitration under Part 5.

## **13 Adjournments**

13.1 It is the responsibility of the parties' legal advisers to ascertain the availability of their clients and witnesses before a trial date is allocated. Trial dates will not be vacated and cases will not be adjourned except for a very good reason.

13.2 If there is to be an application for the vacation of a trial date or adjournment it must be made by notice of motion with affidavit evidence in support. Such application should be made to the Judge who has the control of the Commercial List at the earliest possible opportunity in advance of the day of trial.

13.3 If a case is not ready to proceed on the allocated trial date, the party in default may be called upon to show cause why the statement of claim, cross claim or defence should not be dismissed or struck out.

13.4 Where appropriate, costs orders will be made in a sum of money payable within a specified time. Legal practitioners may be required to show cause as to why they should not be required to pay personally the amount required to satisfy the costs order.

The Hon. Justice R.O. Blanch A.M.  
Chief Judge  
9 August 2005

## Schedule

### Usual Order For Hearing

1. Where directions have been given for the service of experts' reports, and any party intends to rely on the evidence of an expert witness:
  - (a) at least 14 days before the date fixed for hearing each party shall, by notice in writing to each other party, state whether the party proposes to object to the whole or any part of any report which has been served and the ground for the objection;
  - (b) if the report is not tendered by the party who served it and the expert is not called as a witness, no other party may put the report in evidence without the leave of the Court;
  - (c) if an expert is called as a witness, the party calling the expert may not lead evidence from the expert the substance of which is not included in a report already served in accordance with this paragraph, without the leave of the Court;
  - (d) whether or not the report or any part of it is used in evidence by the party calling the expert, if the expert is called as a witness, any other party may use the report or any part of it in cross examination of the expert unless the Court otherwise orders; and
  - (e) nothing in this order shall otherwise deprive any party of any proper objection to the admissibility of evidence.
  
2. Other than in the case of experts' reports, where directions have been given for the service of affidavits or statements of evidence:
  - (a) a party who fails to comply with an order made for the service of affidavits or statements of evidence may not adduce evidence to which the order applies without the leave of the Court;

- (b) at least 14 days before the date fixed for hearing each party shall, by notice in writing to each other party, state whether that party proposes to object to the whole or any part of any affidavit or statement of evidence specifying the part or parts and the grounds for the objections;
  - (c) the Court may, on such terms as it thinks fit, direct that the affidavit or statement of evidence served, or part of it, stand as the evidence in chief of the witness, or as part of such evidence;
  - (d) if the affidavit is not read or the maker of a statement of evidence is not called as a witness, no other party may put the affidavit or statement in evidence without the leave of the Court;
  - (e) if an affidavit is read or the maker of a statement is called as a witness, then save in relation to new matters which have arisen in the course of the trial, the party serving the affidavit or statement may not lead evidence from the deponent or the maker of the statement, the substance of which is not included in the affidavit or statement of evidence served, without the leave of the Court;
  - (f) whether or not the affidavit or statement of evidence or any part of it is used in evidence by the party calling the witness, if the deponent or the maker of the statement of evidence is called as a witness any other party may use the affidavit or statement of evidence or any part of it in cross examination of the witness unless the court otherwise orders;
  - (g) nothing in this order shall otherwise deprive any party of any proper objection to the admissibility of evidence.
3. (a) At least 14 days before the date fixed for hearing each party shall, by notice in writing to each other party, specify what documents it

proposes to tender at the hearing and, in the event that there has not been inspection, where the documents may be inspected.

(b) Within 7 working days thereafter, each party shall notify each other party in writing:

(i) which of the specified documents may be tendered by consent;

(ii) whether the authenticity of any of the remaining documents, and if so which, is disputed; and

(iii) in so far as any document may not be tendered by consent, the grounds for the objection to its tender.

(c) Each party other than the plaintiff shall, not later than 5.00 pm on the fourth last working day prior to the date fixed for hearing, deliver to the plaintiff's solicitor two copies of all documents intended to be tendered by such party at the hearing which have not been specified in the plaintiff's notice referred to in sub-paragraph (a). The plaintiff shall prepare for the Court by midday on the last working day prior to the date fixed for hearing, duly paginated and indexed, two copies of the bundle of the documents intended to be tendered at the hearing by any party. The index of documents should identify documents the tender of which is agreed and, in relation to the documents as to which there is no agreement, which documents they are and which party proposes tendering them.

4. (a) If any party intends to tender an original document that party shall, at least 7 days before the date fixed for hearing, give notice of that intention to all other parties.

(b) If any party requires another party to tender an original document that party shall at the time of notification in accordance with sub-paragraph 3(b) give notice of that requirement to the other party.

- (c) The party in possession of any document the subject of a notice in accordance with sub-paragraph (a) or (b) shall make the document available for inspection prior to the date of hearing at the chambers of the barrister or office of the solicitor for that party giving the notice.
  
- 5. Where an order has been made for the service of verified lists of documents:
  - (a) until the conclusion of the hearing each party shall be under a continuing obligation to disclose any document relevant to any matter in issue with respect to the matters specified in the original order;
  - (b) in the event that a party becomes aware that documents which have been in its possession have not been included in its list of documents, whether by reason of oversight or otherwise, that party shall forthwith include, and clearly identify, particulars of those additional documents in a supplementary list and serve an affidavit verifying that list and explaining the reason for the failure to disclose the documents in the original list.
  
- 6 No later than 4.30 pm on the last working day before the hearing:
  - (a) counsel for the plaintiff shall cause to be served on counsel for the other parties a statement of agreed issues, a chronology of relevant events and, where appropriate, a list of persons relevant to the issues in dispute;
  - (b) in the event that there is no agreement, counsel for each of the parties shall serve on counsel for the other parties a statement of the issues which he or she perceives are likely to arise;
  - (c) counsel for each of the parties shall cause to be served on counsel for the other parties a list of topics to be covered by

submissions, in the order in which they will be taken, and a list of propositions of law relied upon together with the authorities to be cited in support;

- (d) counsel for any party other than the plaintiff may serve a chronology of relevant events and a list of persons relevant to the issues in dispute.

In the event that a party will be represented at the hearing by a solicitor, this order shall apply to that solicitor.