

Practice Note DC (Civil) No. 3

Case Management in the Construction List

This practice note is issued under sections 56 and 57 of the Civil Procedure Act 2005.

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 The Court will fix the case for directions when the statement of claim is filed or when it is transferred to the Construction List.
- 1.3 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, unless there are special circumstances, the Court will dismiss actions or strike out defences or cross claims if orders are not complied with and that the Court will make costs orders against parties who fail to adhere to timetables.

2. Timetable

- 2.1 On the first return date the Court will make orders in accordance with a timetable proposed by the parties to progress the case toward trial within the shortest practical timeframe. The timetable must include

steps that the parties will need to take to prepare the matter for trial and the date for completion of each step.

2.2 Legal practitioners should communicate with each other before each directions hearing in an attempt to agree on the directions they seek.

2.2 The steps in the timetable will become orders of the court that must be strictly complied with. Failure to comply with those orders will be treated seriously and will lead to costs orders.

3. Directions Hearings

3.1 Representation

3.1.1 A legal practitioner with full knowledge of the proceedings must represent each party at the directions hearing. That legal practitioner must have sufficient instructions to enable the Court to make all appropriate orders and directions.

3.1.2 It is therefore generally inappropriate for parties to be represented by agents or clerks. Parties should anticipate that costs orders may be made against them if they are not adequately represented at the directions hearing.

3.3 At the directions hearing, the Court will make appropriate directions and orders and examine the timetables proposed by the parties. Disputes between the parties will be resolved or a trial date fixed for a motion.

4. Evidence

4.1 The Court will generally order that evidence in chief be given by way of affidavits or statements.

5. Subpoenas

- 5.1 The parties must issue subpoenas as early as possible so that documents can be produced and inspected and are available for the proper preparation of the case, including submission to experts.
- 5.2 A return date will be fixed at the first appropriate directions hearing if the parties have not already issued subpoenas.

6. Alternative Dispute Resolution

- 6.1 All appropriate cases will be referred for mediation under part 4 of the Civil Procedure Act 2005.
- 6.2 Cases involving technical questions will be referred to a referee under rule 20.13 to 20.24 of the Uniform Civil Procedure rules. Generally, the Court will not refer the matter to a referee until the evidence is complete and will order that the reference proceed on the affidavits, statements and reports filed in Court.
- 6.3 The order for reference will include the date on which the reference will commence and the expected duration of the reference.

7. Long Trial Dates

- 7.1 The Court will allocate long trial dates, in cases estimated to take 5 days or more, from a directions hearing when a case is ready for trial.
- 7.2 When a long case is fixed for trial, the Court will make every effort to ensure that it proceeds. For that reason, the Court will not adjourn long cases unless there are exceptional circumstances.

- 7.3 Cases with an estimated trial time of 2 weeks or more will be listed for case management directions before the Court. Each party should be represented by counsel briefed on the trial or the solicitor with conduct of the case to enable all proper directions to be made.

8. Shoe Cause Hearings

- 8.2 In cases of serious or repeated non-compliance with Court orders, a case may be listed for

- (a) the plaintiff to show cause why the action should not be dismissed for want of prosecution
- (b) the defendant to show cause why the defence should not be struck out and/or any cross claim dismissed for want of prosecution

The party ordered to show cause should expect to pay the costs of the show cause hearing.

- 8.3 At least 5 days before the show cause hearing, the legal practitioner for the party in default (or the party, if self-represented) must file and serve an affidavit setting out the reasons why he or she has not complied with the timetable and/or this practice note. In addition, any other party who wishes the Court to consider any submissions must put those submissions in writing and file and serve them at least 5 days before the directions hearing.

- 8.4 Where a legal practitioner is on record for a party, a practitioner familiar with the case must represent each party at the show cause hearing and have instructions sufficient to assist the Court to make all appropriate orders and directions.

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