

PROPOSED

RULE 77 CIVIL CASE MANAGEMENT

PURPOSE AND GENERAL PRINCIPLES

Purpose

77.01 (1) The purpose of this Rule is to establish a case management system throughout Ontario that provides case management only of those proceedings for which a need for the court's intervention is demonstrated and only to the degree that is appropriate, as determined in reliance on the criteria set out in this Rule.

General Principles

(2) This Rule shall be construed in accordance with the following principles:

1. Despite the application of case management under this Rule to a proceeding, the greater share of the responsibility for managing the proceeding and moving it expeditiously to a trial, hearing or other resolution remains with the parties.
2. The nature and extent of the case management provided by a judge or case management master under this Rule in respect of a proceeding shall be informed by any relevant practices, traditions, customs or judicial resource issues that apply locally in the region in which the proceeding is commenced or to which it is transferred.

APPLICATION

Order for Management

77.02 (1) This Rule applies to an action or application that is assigned for case management by an order under these rules.

Conflict with Other Rules

(2) In the event of a conflict between a provision in this Rule and a provision in any other Rule, the provision in this Rule prevails.

DEFINITIONS

77.03 In this Rule,

“defence” includes a notice of intent to defend, a statement of defence, a notice of appearance and a notice of motion in response to a proceeding; (“défense”)

“defendant” includes a respondent; (“défendeur”)

“plaintiff” includes an applicant. (“demandeur”)

CASE MANAGEMENT POWERS

77.04 (1) A judge or case management master may,

- (a) extend or abridge a time prescribed by an order or the rules;
- (b) adjourn a case conference;
- (c) set aside an order made by the registrar;
- (d) establish or amend a timetable; or
- (e) make orders, impose terms, give directions and award costs as necessary to carry out the purpose of this Rule.

(2) A judge or case management master may, on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any matter arising in connection with case management, including a failure to comply with the rules.

(3) For greater certainty, the powers set out in subrules (1) and (2) are in addition to any other powers set out in this Rule.

ASSIGNMENT FOR CASE MANAGEMENT

On Consent of Parties

77.05 (1) A regional senior judge or, subject to the direction of a regional senior judge, any judge or case management master may, with the consent of all parties, assign a proceeding for case management under this Rule.

On Motion — Action

(2) In an action, at any time on or after the earlier of the filing of the last defence and 60 days after the filing of the first defence in the action, a regional senior judge or, subject to the direction of a regional senior judge, any judge or case management master may, on his or her own initiative or on a party’s motion, assign the action for case management under this Rule.

On Motion — Application

(3) In an application, at any time on or after the filing of the first notice of appearance, a regional senior judge or, subject to the direction of a regional senior judge, any judge or case management master may, on his or her own initiative or on a party's motion, assign the application for case management under this Rule.

Multiple Proceedings

(4) Two or more proceedings may be assigned under subrule (1), (2) or (3) for case management together.

Criteria

(5) In considering whether to assign a proceeding for case management, the regional senior judge, other judge or case management master shall have regard to all the relevant circumstances, including,

- (a) the purpose set out in subrule 77.01 (1);
- (b) the complexity of the issues of fact or law;
- (c) the importance to the public of the issues of fact or law;
- (d) the number and type of parties or prospective parties, and whether they are represented;
- (e) the number of proceedings involving the same or similar parties or causes of action;
- (f) the amount of intervention by the court that the proceeding is likely to require;
- (g) the time required for discovery, if applicable, and for preparation for trial or hearing;
- (h) in an action, the number of expert witnesses and other witnesses;
- (i) the time required for the trial or hearing; and
- (j) whether there has been substantial delay in the conduct of the proceeding.

ASSIGNMENT TO INDIVIDUAL MANAGEMENT BY A JUDGE

Assignment to Particular Judge

77.06 (1) The Chief Justice or Associate Chief Justice of the Superior Court of Justice, a regional senior judge, or a judge designated by any of them may direct that all steps in a proceeding that is assigned for case management under this Rule be heard and conducted by a particular judge.

Limitation

(2) A judge who is directed under subrule (1) to hear all steps in a proceeding shall not preside at the trial of the action or the hearing of the application, except with the written consent of all parties.

MOTIONS

To Whom Made

77.07 (1) A motion may be made only to a judge or case management master.

Same, Particular Judge

(2) If a direction is made under subrule 77.06 (1) for all steps in a proceeding to be heard by a particular judge, then any motions in the proceeding shall be made to that judge.

Referral by Particular Judge

(3) A judge who is directed under subrule 77.06 (1) to hear all steps in a proceeding may refer to a case management master any motion within the jurisdiction of a master under subrule 37.02 (2), unless the judge who made the direction directs otherwise.

Procedure

(4) Depending on the practical requirements of the situation, the motion may be made,

- (a) with or without supporting material or a motion record; and
- (b) by attendance, in writing, by fax or under rule 1.08 (telephone and video conferences).

Costs on Motion

(5) The judge or case management master shall, at the conclusion of each motion, address the issue of costs and, where appropriate, fix the costs and order them payable forthwith.

Formal Order Not Required

(6) The judge or case management master may provide that no formal order need be prepared, signed or entered if the order has been recorded in writing, unless an appeal of the disposition of the motion or a motion for leave to appeal is made to a judge or an appellate court.

CASE CONFERENCE

How Convened

77.08 (1) A judge or case management master may convene a case conference at any time, on his or her own initiative or at a party's request.

Attendance

(2) The judge or case management master may direct that the parties, or a representative of the parties responsible for making decisions regarding the proceeding and instructing the lawyer, attend the conference personally or be available by telephone.

Matters to be Dealt With

- (3) At the conference, the judge or case management master may,
- (a) identify the issues and note those that are contested and those that are not;
 - (b) explore methods to resolve the contested issues;
 - (c) if possible, secure the parties' agreement on a specific schedule of events in the proceeding;
 - (d) establish a timetable for the proceeding; and
 - (e) review and, if necessary, amend an existing timetable.

Lawyers

(4) The lawyers attending the conference shall have the authority to deal with the matters referred to in subrule (3) and shall be fully acquainted with the facts and legal issues in the proceeding.

Powers

(5) At the conference, the judge or case management master may, if notice has been given and it is appropriate to do so or on consent of the parties,

- (a) make a procedural order;
- (b) convene a pre-trial conference;
- (c) convene a trial management conference;
- (d) give directions; and
- (e) in the case of a judge,
 - (i) make an order for interlocutory relief, or
 - (ii) convene a hearing.

TRIAL MANAGEMENT CONFERENCE

When Conference to be Held

77.09 (1) A trial management conference may be held on or following the fixing of a trial date, at a party's request or on the initiative of the trial judge or other judge or of a case management master.

Filing of Form

(2) A trial management conference form (Form 77A) shall be filed by the plaintiff and by each defendant no later than 14 days before the trial or four days before the trial management conference, whichever is earlier.

Powers of Judge, Case Management Master

(3) At the trial management conference, the judge or case management master may,

- (a) canvass the names of the witnesses intended to be called and the substance of their evidence;

- (b) explore whether admissions can be made that will facilitate proof of non-contentious matters;
- (c) explore alternative methods of presentation of evidence, such as the filing of affidavits or reports;
- (d) explore expeditious means for the presentation of evidence; and
- (e) give directions that will facilitate the orderly and expeditious conduct of the trial.

TIMETABLE

Amendment

77.10 (1) Parties may, by written agreement, amend a timetable established by order of a judge or case management master, unless the order expressly prohibits amendment by the parties.

Same

(2) Parties may, by written agreement, amend a timetable established by written agreement of the parties and amended by the order of a judge or case management master, unless the order expressly prohibits amendment by the parties.

Limitation

(3) An agreement to amend a timetable shall not amend the date before which the action shall be set down for trial.

Non-Compliance

(4) If a party fails to comply with a timetable, a judge or case management master may, on any other party's motion,

- (a) stay the party's proceeding;
- (b) dismiss the party's proceeding or strike out the party's defence; or
- (c) make such other order as is just.

TRANSITION

Definition

77.11 (1) In this rule,

“former case management rules” means one or more of rule 37.15, Rule 77 and Rule 78, as they read immediately before July 1, 2009.

Proceedings Under Former Case Management Rules

(2) Despite anything to the contrary in this Rule, every proceeding to which the former case management rules applied immediately before July 1, 2009 shall, on and after that day, continue under this Rule.

Power to Make Orders, Give Directions

(3) A judge or case management master may make orders or give directions that are necessary to address any procedural issues that arise in a proceeding as a result of the transition from the application of the former case management rules to the proceeding to the application of this Rule.

Existing Orders, Directions, Timetables

(4) All orders, directions and timetables in a proceeding described in subrule (2) that are in force immediately before July 1, 2009 shall remain in force on and after that day, unless a judge or case management master orders otherwise.