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Civil Justice Project:
The Use of Time Limits and Notification in Civil Case Management

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1.0 INTRODUCTION

This document is an examination of the present use of two case management tools in the Canadian civil courts: time limits and formal notification requirements. Time limits refer to the established time periods outlined for the conclusion of critical steps in the litigation process. These address individual case movement in the court system. Formal notification requirements relate to an obligation by the parties to notify the court when an action has terminated. These requirements serve to inform overall case disposition irrespective of any target disposition dates that may be in effect.

Case management has been defined as a system that manages the timing and events of a lawsuit as it passes through the justice system, from the initiation of a case until it is resolved through withdrawal, settlement, trial or other disposition. Historically in Canada, case management has not been employed in the civil courts and case management has been limited. However, as the volume of civil filings has increased, some Canadian courts have begun to experience caseflow management problems. Consequently, the need to take active control of civil filings is now being acknowledged by court administrators in Canada.

Recently, most Canadian jurisdictions have expressed an interest and are pursuing different forms of case management as a means of controlling the progress of cases through the courts. Effective case management requires information about the movement of cases through the system. This type of caseflow information enables court administrators to manage the operation of their courts.

The formal notification of case termination is important in civil justice because so many cases are settled or abandoned. In this situation, court administrators have a great deal of difficulty in estimating the real magnitude of their inventory of unresolved cases. Lack of case closure information means that the disposition status remains unknown for a large part of a court's case inventory. Without a requirement for notification of case closure, court staff cannot calculate case attrition, elapsed times, delay, or pending case inventory on a significant sub-set of cases. The introduction of time limits and the requirements for formal court notification of case completion by parties or their counsel, therefore, can contribute to expeditious case processing.

Active case management in the civil court context can promote early settlement, decrease the number of trials, shorten trial time, and increase the court's ability to set early and firm trial dates. Case management, at its optimum, represents a fundamental shift in the control of litigation away from the parties into the hands of the court administration. This control can include enforcement - the right to secure conformity with rules of notification and time restrictions for various stages of civil case processing. In 1996, the Canadian Bar Association stressed the importance of enforcement stating: "One of the most significant difficulties is that the time requirements imposed by existing rules of procedure are often honoured more in the breach than in the observance. It was suggested to the Task Force by many that stricter enforcement by the courts and lawyers of existing procedural rules would go a long way to reducing delays" (*Report of the Task Force on Systems of Civil Justice*, 1996, p. 13).

The current study examines the situation in Canadian provinces and territories with respect to the existence and observance of time limits and formal notification requirements. This examination is timely because a number of jurisdictions are presently engaged in building or modifying automated case management systems. As well, many jurisdictions are re-examining case management in an attempt to increase the speed of case processing and lessen backlog in the courts.

This document includes a discussion of the following components of case management in each province/territory as they existed as of January 1998:

1) documentation of the extent to which:
    a) case processing incorporates time limits as a guideline for case management;
    b) whether or not enforcement mechanisms are in place; and

2) a discussion of:
    a) the extent to which formal notification to the court of settlement or abandonment is required;
    b) the kinds of requirements that have been established for enforcement; and
    c) whether or not enforcement occurs on a regular basis.

2.0 CASE MANAGEMENT AND TIME LIMITS BY REGION

2.1 Newfoundland

In 1995, case management was introduced in the Newfoundland Superior Courts (*Supreme Court and Unified Family Court*) and includes ten milestones:

1) Filing Certificate of Readiness – these are promptly reviewed by the Registrar or designate to ensure completeness.

2) Assessment of Certificates by Registrar – within seven days of assessment, trial ready cases are placed on the pre-trial list, and the certificate filed and docketed. Non-trial ready cases are rejected and counsel is notified.

3) Alternative Filing – this replaces steps 1) and 2) where parties cannot agree on a joint certificate or where the first filing is rejected.

4) Placement on Pre-trial List – separate and distinct from the trial list, cases are placed in order of filing and the current list is published monthly.

5) Assigning Pre-trial Dates – on the first of each month, the Registrar publishes a list setting down dates and times for the number of pre-trial conferences that can be accommodated for the month. Time allotted to each conference will determine the number of dates assigned and will be worked out by the pre-trial coordinator and the judge responsible for pre-trial that month.

6) Filing Pre-trial Briefs – pre-trial briefs must be filed two days prior to the pre-trial conference.

7) Pre-trial Conference – on some occasions, a record will be made of the proceedings.

8) Dispositions – in addition to discussing the progress of the case, the pre-trial conference judge will have to make determinations surrounding the utility of holding a trial by jury, settlement conference, mini-trial, summary trial, expedited trial, and whether the case should be placed in the general trial list or fixed date list. The Registry must identify and implement all decisions coming out of a pre-trial conference.

9) Trial List System – trial lists will be published on the first day of the month.

10) Consequences of Setting Down for Trial – once on the trial list, as a general rule, parties may no longer engage in pre-trial activities.

Time limits are in place and relate to a requirement for Notification of Settlement once a Certificate of Readiness is filed or when the matter is placed on the Trial List by Order of the Court.

Rule 39.06 (*Rules of the Supreme Court, 1986*) states that: "If a proceeding is settled at or following a pre-trial conference, settlement conference, or mini-trial or at any time prior to trial, the parties shall file a Memorandum of Settlement containing

(a) a statement that the matter has been settled;
(b) a request to discontinue the proceeding;
(c) the form of any consent orders required;
(d) agreements, if any, as to costs."

These limits relate specifically to settlement of designated trial cases and are enforced by virtue of Rule 40.07(3) (Amendment) which states that: "If within thirty days of conclusion of a settlement conference or mini-trial or such longer time as all parties may agree in writing filed in the Registry, the parties have not filed a Memorandum of Settlement pursuant to Rule 39.06, the Registrar shall place the case on the General List without prejudice to the right of any party to apply for a fixed trial date."

More generally, Notification of Abandonment is required in Appeal Court.

Time limits prescribed by statute are in effect in Small Claims Court. A plaintiff has a ten day waiting period after filing a statement of claim and prior to filing a default judgment. The defendant has one year from the date of issue before filing an application to re-open a default judgment.

2.2 Prince Edward Island

Since 1990, case management has been in effect in Prince Edward Island for civil cases and contested matters in the Supreme Court – Trial Division. It is not in effect for Small Claims cases.

Case management in a civil case takes effect at the time a statement of defence is filed. A case management conference is conducted by telephone between counsel and the Deputy Registrar within a month of the date of filing of the defence. At this conference, deadlines are set for settlement (if one is possible) and if a settlement is not expected, deadlines are established for the exchange of affidavit of documents and discovery dates. Each counsel is asked if they anticipate any motions to be made before the Court and when they plan to make these motions. Time limits are usually set for bringing the motions forward.

Case management in family matters is triggered by the filing of an answer to a statement of claim or a petition for divorce. A Judge of the Supreme Court conducts case management conferences in family matters.

The *P.E.I. Rules of Court* state that an affidavit of documents is to be exchanged within ten days after the close of pleadings. At the time of the case management conference, typically the documents have not yet been exchanged. However, at this time counsel agree to time limits regarding the exchange of documents that are reasonable and that can be met. It can take several

months for documents to be obtained; for example, medical reports from out of province. For the most part, documents are exchanged within a month following the case management conference. There are no enforceable limits on discovery, but in most cases it is conducted within six months from the filing of the defence.

Case management conferences are conducted twice a month. There are no formal notification requirements as a part of case management, only a telephone call made by court staff to find out when a convenient time can be arranged between counsel.

Follow-up telephone calls are made, usually with the plaintiff's counsel, to confirm that there has been compliance with the dates agreed to during the case management conference. These telephone calls are triggered by a "bring forward" system. When discovery is completed, a pre-trial conference date is set. Sometimes there are several pre-trial conferences before a trial date is set.

For all court levels, there is a requirement in effect that litigants formally notify the court when they have settled or abandoned a case. This is enforced to the extent that if there is no activity on a case for one year, a status conference must take place. *P.E.I. Rules of Court* state that where a statement of defence has been filed and the action has not been placed on a trial list or terminated by any means within one year after the statement of defence has been filed, a status notice shall be served on the parties. Ninety days notice is given prior to a status hearing. Counsel are required to give their clients a copy of the notice. All parties are called in and held accountable for the delay. A conference date form is filled out and the parties are urged to settle. At the hearing, counsel for each party explains to a Supreme Court Judge why the case has not proceeded. If the file is progressing, the Court will direct new time deadlines for undertakings to be completed. A minimal number of cases are dismissed at status hearings.

Discretion is used in relation to certain types of cases; for example, a personal injury claim or other cases where expert reports etc. are required are not put on a list for a status hearing if the Court is assured that the case is progressing well.

2.3 Nova Scotia

On January 1, 1996, the caseflow management tracking system was initiated in the Supreme Court as a pilot project, and provides for the classification of files as fast track, standard, complex, or holding (Rule 68, *Halifax Civil Case Management Rules*). Generally, if a case has no contentious issues and is straightforward, the case is flagged as "fast track" (e.g., debt collection matters). If a case has slightly more complex legal issues or facts, it is deemed "standard" (e.g., tort/damages). And if a case has multiple litigants with a high number of legal issues, it is classified as "complex." If the plaintiff fails to select a track when the originating notice is filed, the action is placed on standard track (Rule 68.05(3)). There is opportunity for the plaintiff to change the track and for the defendant to dispute the track. "Holding" is a mechanism where a litigant, in order to meet the filing deadline for initiating an action, can file the Notice of Action but hold off serving notification to the defendant. This occurs in two types of situations: 1) injury claims in which the extent of the injury and therefore of the damages has

not yet been determined, and the action is filed within the statute of limitations but a holding action is implemented; and 2) claims that are started during a negotiating process – an action is filed but put on a holding track. Cases are in the holding track for six months; an extension of a further six months is not difficult to obtain on review.

The procedural steps attached to each track are laid out in accordance with prescribed time limits for completion. Changes to time limits are permitted, as requested by the parties or a supervising judge. Judicial powers for non-compliance include dismissing the action, striking the defence, or awarding costs (Rule 68.08 (c)). Under the rules, provision is made for a case management conference or a settlement conference to be held at any time. There is, however, no requirement for the parties to notify the court of an out-of-court settlement.

In the Fall of 1999, based on an evaluation being conducted currently, a decision will be made to formally implement case management for all civil actions (except family) initiated in the Nova Scotia Supreme Court. Under this system, filed applications will be tracked according to the precise nature of the initiated action. Review points in the progress of a case will include filing a defence, default judgment, settlement conference, discovery hearing, and trial. When time limits are not adhered to, the automated system will notify staff of the need for follow-up. Mechanisms for this will include providing specific prompts, collecting required information, or notifying parties that a case will not be treated as trial ready without further preparation. Formal notification will take the form of automated notification on the expiry of the time limit. There will be no onus on the parties to notify the court if a case is abandoned or settled. The court will monitor the progress of cases and, therefore, it is likely that notice will not be needed.

Generally, in the Supreme Court and the Family Court (except for caseflow management cases), parties must notify the court when a case has been settled or abandoned. There is a requirement that an order be taken out by the plaintiff if the case is discontinued, but there is no accompanying enforcement provision.

In Small Claims Court, the day of the action is the deadline for filing a response. If the defendant fails to appear on that day, the plaintiff is entitled to obtain a default order. The plaintiff is not required to appear to obtain an unenforceable default order, but must be present and make the claim in front of an adjudicator to get an enforceable order.

2.4 New Brunswick

There is no case management in effect in New Brunswick at this time, but provisions for time limits and formal notification are in effect in the Court of Queen's Bench (except Small Claims). They apply only in cases commenced by Notice of Action, not by application. The provisions are laid out in the *New Brunswick Rules of Court*. Rule 26.05 imposes certain time limits and applies one year after a Statement of Defence is filed. Time limits may also be imposed at a status hearing. The consequences of exceeding the time limits may vary according to the discretion of the status hearing judge.

The process does not always allow court staff to follow the procedures for enforcing time limits set down in Rule 26.05(8), which states that the court may:

(a) order the action to be set down for trial within a specified time,
(b) adjourn the status hearing to a fixed date, or
(c) make such other order as may be just.

Rule 26.05(9) and (10) states that unless the action is set down for trial or terminated within the time so ordered, the Clerk shall dismiss the action for delay (with costs unless the court orders otherwise) and shall notify all parties of the dismissal.

Under Rule 47.12, parties setting down for trial an action in the Court of Queen's Bench are required to notify the court when they have settled a dispute. Enforcement of the formal notification provisions, either as a matter of process or through an attached sanction, is not in effect.

The *New Brunswick Small Claims Act*, establishing the Small Claims Court, came into effect on January 1, 1999. This Act includes provisions regarding time limits. Except where specifically provided, a small claim must be served within one year after the date of filing. After service, there are time limits of 30 days to file a statement of response, a counter-claim, a third party claim, or a request for a judgement. Depending on the nature of the small claim, the Clerk may enter a default judgement or set a date for an adjudicator to hear the claim.

2.5 Quebec

Quebec has had a stream lined case management system in place since January 1997, as well as a court proceedings management process developed in accordance with Section 766 of the Code de procédure civile (C.p.c.) added in 1994. These procedures are described below:

The simplified proceedings, made easier by the rules on time limits given to the parties (i.e. 90 days to file a defence and 180 days to set down for inquiry and hearing), allow for the monitoring of the process as a whole. The rate at which a case must follow its course within the system is established by law, and thus constitutes the rules of the case management system.

Section 766 C.p.c. also includes a proceedings management mechanism, which can be efficient in ensuring both case management and trial management. This provision allows the Court:

- to identify ways to simplify proceedings and shorten the hearing;
- to order, when appropriate, that the claim be disputed in writing and pursuant to the terms and conditions determined by the Court;
- to establish a procedure and time limits to serve affidavits and other exhibits;
- to make any order required to protect the rights of the parties;
- to schedule the hearing on the same day or to order that the claim be placed in the general trial list of motions.

The application of this provision in all judicial districts, where the Superior Court's ad hoc registrars are closely involved in the process, clearly shows the potential of the Superior Court. In their first trial before the Practice Court, these motions are directed to the ad hoc registrar. If they are not opposed and if they are ready to be heard, they are brought before the Court for a hearing on the same day, unless the ad hoc registrar, if he has jurisdiction in this matter, disposes of them immediately.

When a motion is opposed, the ad hoc registrar invites the parties to file for time limits regarding the process of the case or to come to an agreement in this matter. In more than half the cases, we can speak of "self-management", as long as counsels have already consulted one another and have agreed on an inventory of proceedings to be used, as well as specific time limits. Upon consideration, the ad hoc registrar ratifies the progression agreed upon by the parties. When this document has not yet been prepared, the parties request an adjournment and start writing it immediately. The parties then take the document to the ad hoc registrar for ratification. If the parties cannot come to an agreement, they are directed to the Court, which then determines the progression of the case. Once this is done, the motion is scheduled pro forma to a later date, pursuant to the proposed time lines, and eventually returns to the ad hoc registrar.

During this second appearance before the ad hoc registrar, the latter verifies whether the cases are ready to proceed. According to the information received, in the large majority of cases, the parties respected the process and the time limits ordered by the Court or ratified by the ad hoc registrar, who also examines the various elements that may affect the duration of the hearing. If the expected duration is under two hours, the case is transferred to the Court for immediate hearing. Otherwise, it is sent to the trial master, who schedules a hearing for a later date.

Using the information collected in several judicial districts, a similar application is done, mainly in Montréal's appeal division, again through ad hoc registrars. In Québec City's appeal division, judges ensure the application of this rule.

2.6 Ontario

Following a number of pilot projects, case management rules came into effect in phases over the past several years in various Ontario locations, such as Toronto in 1991 and Ottawa in 1997. The following provides a history and overview of Toronto Civil Case Management as one example of civil case management currently used in Ontario.

Case Management was implemented in Toronto in the fall of 1991 as a pilot project with its own rules for reducing unnecessary cost and delay in civil litigation. These rules facilitated early and fair settlement while bringing proceedings expeditiously to a just determination and allowing sufficient time for the conduct of the proceeding. Initially, 10% of all civil cases were randomly selected by the Registrar and were assigned to a specific judicial team (comprised now of 13 judges and 6 case management Masters) for the hearing of all interim motions, case conferences, settlement conferences and trials.

In February 1997, Rule 77 of the *Ontario Annual Practice* replaced the Toronto Case Management pilot project rules. Random selection was expanded to include 25% of all civil cases in Toronto, with the exception of simplified rules, family law, commercial list, estates, construction lien, bankruptcy and insolvency, or class proceedings matters. When a statement of claim is issued, a case management number is randomly assigned to 25% of civil cases. A notice of commencement is completed at the time of issuance and a copy is filed with the court. Counsel must select a track (standard or fast) on the notice of commencement having regard to the complexity of the issues and expense. Time standards are different depending on the track selected. Case management cases become case managed only after a defence or motion by a party adverse in interest is filed.

The notice of commencement and statement of claim are served on the defendants. Time for service and delivery of pleadings is the same in case managed and non-case managed actions, however, actual copies of pleadings are not filed with the court in case management proceedings unless they are being relied upon at a hearing (trial or motion) or unless they are requested by one of the parties (i.e. a notice of defence is filed with the court rather than a statement of defence). Rule 77 allows for the dismissal of an undefended action on either track if the plaintiff does not obtain final order or judgment within 180 days from the date of commencement of the action.

Rule 24.1 (Mandatory Mediation) also came into force on January 4, 1999. It requires counsel to select a mediator within 30 days of the filing of the first defence. The mediation must be held within 90 days of the filing of the defence. Fast track actions are required to have a settlement conference within 150 days of the first defence being filed. At the settlement conference, a trial date is set. Discoveries and any motions must be completed prior to the settlement conference. The plaintiff's settlement conference brief must be delivered no later than 10 days prior to the settlement conference. The defendant's settlement conference brief must be delivered no later than 5 days before the settlement conference. The trial record must be filed no later than 7 days before the trial date. In standard track cases, a trial scheduling court appearance is held 200 days after the first defence is filed. At trial scheduling court, a trial date and settlement conference date are set. The settlement conference must be held within 240 days of the first defence being filed and 6-8 weeks prior to the trial date.

Rule 77 confers authority on the Registrar to grant certain specified relief, unlike non-case managed cases where the authority to grant relief rests with the masters and judges. Appointments for case management motions must be pre-booked with the case management unit unlike non-case managed civil motions.

Rule 76 (Simplified Rules) has been amended to allow the Registrar to dismiss undefended simplified rules cases after 180 days from the date of issuance or to dismiss any defended simplified rules case not set down for trial or summary trial and where the action has not been disposed of by final order or judgment 150 days after the filing of the first defence. This amendment, which came into force January 4th, 1999, will effectively increase case management to approximately 43% of all civil cases in Toronto.

A steering committee comprised of members of the Judiciary, administration and the Bar has been struck by the Regional Senior Justice to discuss possible expansion of case management to 100% of all civil cases in Toronto in the year 2000. Discussions at this committee addressed Rules requirements, technology requirements, staffing requirements (including the addition of additional Case Management Masters), province-wide implications, Integrated Justice recommendations and other issues.

2.7 Manitoba

Currently, Manitoba has a case conferencing system in the Court of Queen's Bench, and the features are described in Rule 20A (*Court of Queen's Bench Rules*) regarding expedited actions. Considerations about the nature of the action, the amount at issue, the complexity of the issues involved, and the likely expense to the parties to pursue the action are involved in the judge's decision to expedite an action. At the close of pleadings, a case conference date is set to occur within 30 days. This forum is used for the judge to explore the possibility of settlement with the parties involved. At a case conference, the case conference judge may make an order he considers appropriate to ensure a just, expeditious, and cost-effective determination of the action including the fixing of time limits around the completion of various procedures. Should an adjournment of the first case conference occur pursuant to the Expedited Actions Rule 20A, the adjournment must be made through the Trial Coordinator to a fixed date within 120 days after the date of the close of the pleadings. If an adjournment date of more than 120 days is requested or if the parties do not consent to the 120 day adjournment, a first case conference date can be set more than 120 days from the close of pleadings, only if a case conference judge consents to it. Should more than one case conference occur, to the extent possible, it must be presided over by the same judge who presided over the first one. This is the case also with any motions heard during the life of the case.

A case management system came into effect in Manitoba in the fall of 1998. As well, an ongoing pilot project conducted in the Family Division since 1996, was completed in the summer of 1998.

Time limits apply to case conference actions only as ordered by the conference judge. The Court of Queen's Bench of Manitoba does not have time limits or require notification pursuant to its rules respecting settlement or abandonment of a case. The court views this as a matter of ethical responsibility on the part of counsel – to inform the court on a timely basis of the settlement or abandonment of a case.

The *Queen's Bench Rules* concerning Small Claims actions requires a defendant who intends to dispute a claim or request time for payment of a claim, to file a Notice of Intention to Appear no later than the seventh day before the date fixed for the hearing of the claim. The failure of a defendant to do so does not result in a default judgment where the defendant appears at the hearing; rather, the defendant is entitled to be heard.

2.8 Saskatchewan

Generally, Saskatchewan does not employ a case management system. A management judge may be appointed to a Queen's Bench action to ensure consistency in pre-trial rulings and to reduce the number of times a motions judge has to read a file and counsel has to explain the nature of the proceedings to a motions judge. Any case in the Court of Queen's Bench may have a case management judge assigned to it. In practice, the request is usually made for a matter where it is anticipated that there will be a significant number of pre-trial applications and/or that the issues involved will be complex and/or that the trial will be lengthy. The process is fairly informal and is done as a convenience to the judiciary, counsel, and the clients. The management judge does not set any schedule or time limits for the parties and is not responsible for ensuring adherence to any schedule.

Saskatchewan does not employ any time limits for Superior Court civil case processing. There are no requirements in Saskatchewan's civil procedure rules (*The Queen's Bench Rules of Saskatchewan*) requiring litigants to provide formal notification of settlement or abandonment unless the defendant makes a request that the plaintiff file a Memorandum of Satisfaction when the claim has been settled.

The rule relating to the Memorandum of Satisfaction is as follows:

"When a judgment has been satisfied, the judgment creditor shall, at the request of the judgment debtor, execute a consent to entry of satisfaction and the execution of such memorandum shall be verified by affidavit of the attesting witness."

When parties settle a proceeding prior to judgment, they will often file on the court file a document known as a Notice of Discontinuance, although they are not required by the Rules of Court to do so. Unless a pre-trial or trial had already been scheduled at the time the Notice of Discontinuance is filed, the judges would not be notified of its filing.

The initiating document for Small Claims actions in Saskatchewan is a summons which is returnable to a specific date and time. If the defendant does not appear on the return date, upon proof of service of the summons on the defendant, judgment may be granted against the defendant in the amount claimed by the plaintiff without the leading of any evidence by the plaintiff.

2.9 Alberta

Case management has been in place in the Court of Queen's Bench for civil matters since September 1, 1995. *Practice Note 7* describes the basic features of mandatory case management for trials likely to take 25 days of trial time:

1) Parties to very long trial actions will be required to advise the Chief Justice or Associate Chief Justice that such an action has commenced shortly after the close of proceedings so

that the court may determine when and whether it should be case managed pursuant to this Practice Note.

2) Each case will be governed by a timetable which may only be changed by an order of the case management judge.

3) Each case is assigned early in the proceedings to a case management judge who hears all aspects of the case down to the trial; that judge may raise matters on his or her own initiative to facilitate efficient pre-trial management and make resulting orders, after hearing from each party.

4) A trial start date will be established at the initial case management conference but the case will later be entered for trial and the scheduled duration of the trial set by the case management judge, after receiving disclosure of witness's evidence summaries and early disclosure of expert evidence.

For these cases, within two weeks from filing of the first Statement of Defence, counsel for the plaintiff shall write to the Chief Justice or the Associate Chief Justice of the Court of Queen's Bench to advise that a very long trial action has commenced, and to request the appointment of a case management judge to manage the action. The judge shall hold a case management conference within 30 days of being assigned during which a determination will be made as to which portions of the Practice Note will apply to the management of the action. Also within 30 days of assignment of a case management judge, the plaintiff's counsel will contact the judge and all counsel to arrange a scheduling conference, the purpose of which is to determine a coherent plan to process the action in a timely and reasonable fashion (a case timetable), and to deal with any matters of a procedural nature which should be addressed at an early stage.

For regular Court of Queen's Bench cases, there are no time limits at any stage of civil case processing, which when exceeded would formally remove the case from the court's active pending inventory. Regarding formal notification by litigants when they have settled or abandoned a case, if a Court of Queen's Bench civil matter is set down for trial, and the matter is settled prior to the trial hearing, formal notification is required. However, if the matter has not been set down for trial, under the rules, notification is not required if the matter is settled. With respect to enforcement, Rule 225(5) allows for an action to be discontinued, with consent of all parties, without leave of the court at any time before trial by filing with the clerk a written consent to the action being discontinued that is signed by all parties.

Without consent, they are bound by Rule 225(3) which requires leave of the court to discontinue. As the discontinuance is filed with the Clerk's office, it has also become the practice and a requirement for the filing party to phone the Civil Trial Coordinator and advise of settlement, and follow-up correspondence as confirmation is requested.

Practice Note 3 came into effect April 1, 1998. It directs that for civil matters in the Court of Queen's Bench, a pre-trial conference is required for any trial set for 3 days or longer duration, and for all matters to be tried by civil jury or if directed by the Rules of Court or Order of the Court. Compliance with these directions is necessary to obtain or retain trial dates.

Time limits are in place in Provincial Court civil cases; this includes Family Court and Small Claims Court (Civil Claims Court) matters. If the defendant does not satisfy a claim or file a Dispute Note within 20 days after being served with a civil claim, in certain cases judgment can be obtained against the defendant without a hearing, at which time a Certificate of Judgment is mailed to all parties. For example, if the civil suit specifies an amount agreed to in a contract, a request can be made to the Clerk to enter judgment against the defendant. Upon request and proof of service of the initiated action and Dispute Note on the defendant, the Clerk will enter a default judgment and mail a Certificate of Judgment to all parties. These time limits are enforceable and are strictly enforced.

If the defendant does not pay the plaintiff's claim or file a Dispute Note within 20 days after being served with a Civil Claim, in certain cases, the plaintiff can obtain Judgment against the defendant without having a hearing. For example, if the plaintiff is suing for an amount agreed to in a contract, the plaintiff can ask the Clerk to enter Judgment against the defendant. Upon the plaintiff's request and proof of service of the Civil Claim and Dispute Note on the defendant, the Clerk will enter a Default Judgment and mail a Certificate of Judgment to all parties. It is the plaintiff's responsibility to contact the Clerk in writing to request Judgment.

2.10 British Columbia

British Columbia does not employ a true case management system at this time. There are, however, a number of piloted initiatives in place that will shape future case management programs, should their effectiveness be established. Some of these are currently being evaluated.

Throughout the province, a semi-mandatory mediation project for motor vehicle cases is being piloted and evaluated in the Supreme Court. This project provides that one party can file a Notice to Mediate on the other. A professional mediator is jointly chosen, and although a judge must verify if the parties do not settle at mediation, case progress is party driven.

There is also a "fast track" program being tested in the Supreme Court whereby trial cases that are expected to last for two days or less are scheduled to be heard within four months. Parties have to satisfy certain criteria to get on this track: timely disclosure of documents, restrictions on length of discovery, filing of a trial agenda, and limits on litigant costs.

The British Columbia piloted initiatives mentioned above employ an individual assignment system. In this way, judges in a multi-judge court operate independently in managing caseload, become familiar with each case, have responsibility for dispositions, and can be held accountable for the size and age of their pending caseload. Within the initiatives, there are no specific provisions that force litigants to notify the court when a case has been settled or abandoned.

In Small Claims Court, settlement conferences have been invoked province-wide for several years as a way of moving cases forward. Mandatory mediation (either court appointed or private) is operating as a pilot project in Small Claims Court in two locations in British Columbia – Robson Square and Surrey, in relation to construction lien certificates.

Replies to filings in Small Claims must be filed within 14 clear days or claimant may request a default hearing and obtain a default judgment.

Other than in the Court of Appeal, time limits are not employed for civil matters. However, in the Supreme Court, formal notification is required when a case has been settled or abandoned. Since there is no strict enforcement around this requirement, it is difficult to produce reliable information on civil case attrition, pending case inventory, and backlog.
In Family Court, mandatory mediation and judicial case conferencing is currently employed for child apprehension cases. In custody, access, and support cases that are dealt with under the *Family Relations Act*, a "triage" process is being piloted whereby parties (with certain exclusions) are seen by family justice counsellors and sent for mediation/education programs prior to being allowed to pursue their disputes in court. As well, judges run case conferences and may refer cases back to Family Court for mediation. Litigants who reach a settlement outside of court are not required to notify the court.

2.11 Yukon

Yukon does not employ a case management system. However, in the Supreme Court and the Court of Appeal, enforced time limits apply to trial dates once they are set down on the trial calendar. If there is non-compliance, parties lose their trial date. However, they are not barred from receiving a subsequent trial date. Notification that a case has been settled is required only for cases that have been placed on the trial list. Other litigants are not required to notify the court in the event of settlement or abandonment.

Time limits that apply to filing times can be extended at the discretion of the Trial Coordinator.

The requirement for notification of settlement for trial cases is enforced through the following mechanism: if counsel fails to advise the Trial Coordinator of settlement, they are required to appear before the court on the date scheduled.

The ability of the court to assign firm trial dates is enhanced somewhat by the time limits and formal notification requirements as they apply to trial cases. Time limits that apply to filing times can be extended at the discretion of the Trial Coordinator, and apply to the following documents: Notice of Trial must be filed within two weeks of request for court time, Proof of Completion of Examinations for Discovery must be filed within 60 days of a trial date, and Trial Record and Trial Certificate must be filed within 14 days of a trial date (*British Columbia Supreme Court Rules, 1990*).

Time limits are in effect in Small Claims Court. They relate to filing a response within a specified period of time, and are enforceable by the entering of a default judgment. A defendant who wishes to reply to a claim may file a reply within 20 days of service of the claim. If there is no default judgment on file, the reply may be filed, even after the 20 or 30 days have passed. Where the defendant fails to file a reply with the clerk of the court within the prescribed time, the clerk may, on request of the plaintiff and upon proof that the claim was served, sign a default judgment (*Small Claims Court Regulations, 1995*).

2.12 Northwest Territories

Since April 1, 1996, under Rule 281 (*Supreme Court Rules*), case management conferences are presided over by a judge (not the judge who will hear the case) on the court's initiative or on application. A conference can be called at any stage to assist in disposing of the case and managing pre-trial issues. A conference judge can set a schedule, direct a mini-trial, order the preparation of briefs, etc. There are no rules governing time limits, which are set at the discretion of the conference judge. There are no notification requirements in the event of a settlement or abandonment in case managed or non-managed cases.

There is a "5 year failure to take the next step" rule. A party may at any time apply to the Court, where for 5 years or more no step has been taken that materially advances an action or proceeding, for a determination that there has been a delay on the part of another party. The Court, at this point, can dismiss the action or proceeding as it relates to the applicant (Rule 327(b)).

Regarding Small Claims, *Territorial Civil Claims Rules* direct that:

"11(1) A defendant who wishes to dispute a claim is required to file with the Clerk of the Court within 25 days of service of the claim served upon him;
16 Where a defendant fails to file a defence within 25 days of service, the Clerk may, upon proof of filing that the claim was served, note the default of the defendant;
17(a) On noting of default, the Clerk may enter a default judgment against the defendant."

3.0 CONCLUSION

Different forms of case management are being pursued in most Canadian jurisdictions as a means of gaining more active control of case processing in the civil courts. As a result, early judicial intervention, dispute resolution, time limits, and enforcement mechanisms are beginning to emerge as useful case management tools.

It appears that time limits are still more commonplace than enforceable sanctions. In 1996 in its *Report of the Task Force on Systems of Civil Justice*, the Canadian Bar Association stressed the importance of setting time limits for various stages in an action. The report states: "[Time] limits should also be incorporated in the rules of court, enforced by the court and subject to sanctions for non-compliance" (p. 38).

Requirements for serving and filing documents within the specified time periods direct the civil litigation process. Now, the notion of enforcing time limits that address the overall disposition of cases is beginning to take hold. Less frequently used is a requirement for formal notification when a non-trial case has been settled or abandoned. The kind of close monitoring that case management can provide probably replaces this requirement in some instances. In any event, knowing when a file is closed will be facilitated by computerized systems that are structured to enhance the management of cases from filing to final disposition.

While individual jurisdictions currently test a variety of management tools on different case types, the value of active court control of civil filings is being established. It is reasonable to expect that this expansion of the use of case management tools will contribute to a better understanding of case inventory, backlog, and court workload.

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