

The following Practice Direction/Notice has been approved in principle by the Court of Queen’s Bench Statutory Rules Committee. It is anticipated that any enabling Queen’s Bench Rule changes will be passed in early Fall 2019, thus permitting the implementation of this project effective September 3, 2019.

PRACTICE DIRECTION/NOTICE

COURT OF QUEEN’S BENCH OF MANITOBA

**RE: THE “ONE JUDGE MODEL”
EFFECTIVE SEPTEMBER 3, 2019**

Summary

On September 3, 2019, the Court of Queen’s Bench will be introducing in civil actions the “one judge model”. Under this new model, once the action proceeds to a pre-trial or case management conference, the same judge will:

- handle all procedural steps;
- hear any motions, including summary judgment motions;
- hear any appeals from masters’ decisions; and
- preside over the trial.

Background

The one judge model is intended to build upon the comprehensive amendments to the Court of Queen’s Bench Rules that came into force on January 1, 2018, which have as their overriding objectives, timely and affordable access to justice. These earlier rule amendments, and now the one judge model, are informed by the principle of proportionality.

It is anticipated that through the one judge model, there will be increased judicial involvement in managing cases, which will further ensure that the identified objectives associated with a more timely and affordable access to justice and the principle of proportionality are consistently and meaningfully achieved.

A significant inspiration for the 2018 rule amendments was the American College of Trial Lawyers paper ***Working Smarter But Not Harder in Canada: The Development***

of a Unified Approach to Case Management in Civil Litigation (2016). Based on research and experience in both Canada and the United States, as detailed in this paper, the following observations have been made about the one judge model (pages 20-28):

- The use of a single judge assigned to a case from beginning to end provides the parties with a sense of continuity.
- With respect to discovery issues and disputes, the same judge who handles the pre-trial and trial matters is in a better position to resolve discovery matters because of his or her familiarity with the issues, the parties, the history of the case and the relationship between the parties.
- For cases that go to trial, the judge who handled all pre-trial and discovery matters is in a better position to try the case, based on a familiarity with the issues, the parties and the history of the case.
- The one judge model has the added benefit of providing a stronger incentive for judges to invest time and effort in the matter in the pre-trial phase. Increased time spent with the matter at the outset may ensure that the case proceeds more efficiently and effectively.
- Litigants no longer have the right, and should not expect, to have their cases decided at trial by judges who have had no involvement whatsoever with the matter in question prior to trial. Proceeding in such a fashion is usually not necessary.
- Concerns of actual or perceived bias are important, but should not result in the wholesale rejection of an innovative judicial model that carries with it the significant and much needed benefits referred to above. Judges in Canada benefit from a “presumption in integrity”, which acknowledges that they are bound by their oaths and will carry out their duties in accordance with their legal responsibilities.
- As the Supreme Court made clear in ***Hryniak v. Mauldin***, 2014 SCC 7, meaningful and innovative reforms are essential if the goal of ensuring timely and affordable access to justice is to be achieved. The adoption of the one judge model, on the basis described above, might well assist in achieving this important objective.

Highlights of Rule Amendments and Related Scheduling

The necessary rule amendments will be undertaken to reflect and accord with the one judge model. Highlights of these rule changes and related scheduling issues are as follows:

Operating Principles

- I. A presumption that the pre-trial judge¹ will be the trial judge².
- II. This judge will continue to deal with all procedural motions, as is presently the case, and will, in addition, deal with any dispositive motions, including summary judgment motions and appeals from masters' decisions.

Implications for Summary Judgment Motions

- III. The existing rule provides a distinct forum, the summary judgment conference, in which the presiding judge considers the proportionality of the proposed motion process in light of the relevant considerations in Rule 20.03. The one judge model will eliminate what was the summary judgment conference. As will be seen, however, the functions of the summary judgment conference will now be performed at the first pre-trial conference.
- IV. The pre-trial conference process will have the added benefit of incorporating the known potential trial date in the proportionality assessment that had been part of the summary judgment conference. Summary judgment motions will remain as one more available procedural tool where appropriate. To repeat, a summary judgment conference will no longer be a stand-alone process. Rather, **where a party wants to proceed with a summary judgment motion, it will be a requirement to first proceed with a pre-trial conference.** The parties' positions regarding the proposed summary judgment motion will be included in their pre-trial conference briefs.
- V. In addition to what should be the usual, but rigorous identification of other procedural, evidentiary and substantive pre-trial and trial issues, now, with the one judge model, the discussion at the pre-trial conference (which discussion should be anticipated and addressed in the pre-trial conference briefs) will involve the following choices, determinations and requirements:
 - Will there be a summary judgment or other dispositive motion?
 - If so, what evidence will be required? Will there be *viva voce* evidence?

¹ The reference to a pre-trial conference and pre-trial judge applies with the necessary changes to an action that is subject to case management under Rule 50.1.

² An example of when the pre-trial judge is not the trial judge is when the pre-trial judge's schedule would unduly delay the trial date.

- Having regard to the proportionality of the proposed motion process and any trial delay³ resulting from this motion, is the better option the setting of a trial date?⁴
 - If the motion is proceeding, the date for this motion will be set at the first pre-trial conference, along with related filing deadlines.
 - If there is a concern by an opposing party that the motion will unduly delay the trial, should the trial date also be set at the first pre-trial conference?
- VI. Trial dates will continue to be set at the first pre-trial conference, except where, as discussed, there is to be an otherwise potentially dispositive motion, such as a motion for summary judgment (to be heard by the pre-trial judge), in which case the hearing date of this potentially dispositive motion will be set at the first pre-trial conference. Even then, where the issue of delay is raised by an opposing party, it is open to the pre-trial judge to set both the dates for the potentially dispositive motion and the trial.
- VII. Should the potentially dispositive motion ultimately not be dispositive, the judge who presided over this motion will remain as the pre-trial and trial judge and tailor the procedure for the purpose of the trial (as is the case in the current process for summary judgment motions). The trial date would necessarily be set once the decision is made on the dispositive motion.

Scheduling

- VIII. It is anticipated that potentially dispositive motion dates will be set for a date relatively proximate to the first pre-trial conference. While the court may need to further adjust the scheduling of trials based on its experience with the one judge model, **the court will initially aim to set trial dates within 20 months from the first pre-trial conference or following the decision on an unsuccessful dispositive motion.**

Implications for Settlement

- IX. Judicially Assisted Dispute Resolution (JADR) will remain an available option. As well, it is understood that as part of settlement efforts, the pre-trial judge may continue to comment on the strengths and weaknesses of the case. Where in the course of settlement discussions, with all of the attendant compromises and accommodations, the focus turns to the necessary “give and take” of financial negotiations, another judge may be

³ It should be understood that if a trial date is not set at the first pre-trial conference, a consequential delay in any eventual trial should be expected.

⁴ A party who is proposing a potentially dispositive motion will be put to an “election” to either proceed with this summary judgment motion or schedule the trial. That election will be made mindful of and informed by the related delay in the trial date that would be caused by the scheduling of this motion.

made available to undertake that more specific settlement conference aimed at the financial side of the resolution.

Province-wide

- X. The one judge model will apply to all judicial centres in the Province, with some adjustments for local resources and practices.

Transition

The one judge model will be fully implemented commencing September 3, 2019, and for the purposes of transition, the following should be understood:

- Where there has already been a pre-trial conference (prior to September 3, 2019), the pre-trial judge will not be the trial judge unless the parties and the pre-trial judge agree and the rota is able to reasonably accommodate the assignment of the pre-trial judge as the trial judge for the scheduling of a trial date in accordance with the court's scheduling timelines.
- Where any dispositive motion (summary judgment or otherwise) or an appeal from a master's decision is already scheduled to proceed, there will be no change from the existing practice. Where a summary judgment conference has already been held or was scheduled to be held (prior to September 3, 2019), the motion will be subject to the summary judgment conference and related processes in effect prior to September 3, 2019.

Coming into effect

This Practice Direction/Notice comes into effect immediately.

ISSUED BY:

"Original signed by Chief Justice Joyal"

**The Honourable Chief Justice Glenn D. Joyal
Court of Queen's Bench (Manitoba)**

DATE: August 6, 2019