

**BEST PRACTICES GUIDE
FOR CASE MANAGEMENT OF CLASS ACTIONS IN ONTARIO**

- The purpose of this Best Practices Guide is to assist counsel by providing guidance on the use of case management in class proceedings.

- Early case management is essential to address initial steps in the proceeding such as setting the timetable for the certification motion and any other anticipated motions, dealing with carriage issues or other issues which affect the timely advancement of the matter.

- As soon as possible after the commencement of the claim, the parties should consult with one another about the issues described below. Counsel for the parties are to make best efforts to resolve all issues on their own, in particular those relating to scheduling and timetabling, before seeking the assistance of the case management judge. Where agreement cannot be reached, the party seeking to schedule a case management conference should write to the case management judge or trial co-ordinator as applicable, to schedule a case conference. With respect to scheduling and timetabling issues, where agreement is reached, counsel should provide the timetable to the case management judge and seek the court's endorsement.

- Counsel are expected to keep the court apprised of major developments in the case, including if there is to be a suspension of the timetable.

- In advance of case management conferences (prior to, and post-certification), a brief summary of the status of the case, issues in dispute and respective positions of the parties should be prepared and provided to the case management judge. This agenda and information should be provided to the case management judge at least 2 days prior to the case conference. It should be sent electronically to the case management judge, through the case management judge's assistant, or as otherwise directed by the court.

- **Early Case Management:** The checklist below provides guidance on the issues counsel should consider in preparation for case management conferences prior to and following certification. To the extent possible, counsel should advise the court of the position on the issues described in paragraphs 1-14 below, prior to the first case conference. A sample timetable for certification or other motions is also provided.

**CHECKLIST OF ITEMS TO CONSIDER
IN PREPARATION FOR CASE MANAGEMENT CONFERENCES**

Case Management prior to the Certification Motion

- **Status of the proceeding, pleadings, third party claims**
- Have all parties been served with the originating process?
- If not, when will that be completed?
- Have any of the Defendants delivered a Statement of Defence?
- Do any of the Defendants seek to postpone delivery of their Defence until after certification?
- If so, is that opposed by the Plaintiff(s)?
- Have any Third Party Claims been made by any of the Defendants (or are any contemplated)?

If so:

- Have the Third Parties been served?
- Have any of the Third Parties delivered a defence to the Third Party action or the main action? What is the intention regarding timing of Defences and the positions of the parties?
- Will the Third Party actions be held in abeyance until after the determination of the common issues or some other step in the class action? and

- Will there be any involvement by the Third Parties in the class action?
If so, to what extent?
- Are any amendments to pleadings presently contemplated?

If so:

- What is the nature of the proposed amendments?
 - Is leave of the court required?
 - By what date will any anticipated amendments be completed?
 - Do any of the anticipated amendments necessitate material changes to the pleadings of the other affected parties?
- **Related proceedings**
 - Are there any other class proceedings in Canada with respect to the same matters in issue in this proposed class proceeding?

If so:

- In which jurisdictions?
- If the other proceeding(s) have been commenced in Ontario;
 - have counsel in the other proceedings been given notice of this proceeding?
 - what is the status of the other proceeding(s) (eg. pre-certification, certification motion scheduled but not yet heard, certified, settled pending court approval etc.)?
 - has a different case management judge(s) already been assigned to the other proceeding(s)?
 - is a carriage motion necessary? If so, when will it be brought and has a timetable been fixed for the exchange of material and other steps leading up to the carriage motion?

- If the other proceeding(s) were commenced in other provinces;
 - what is the extent of the overlap if any, in the proposed classes in each proceeding?
 - what is the status of the other proceeding(s) (eg. pre-certification, certification motion scheduled but not yet heard, certified, settled pending court approval etc.)?
 - has a case management judge(s) been assigned in the other proceeding(s)?
 - has it been agreed or determined that the proceeding in one province is to be the lead proceeding, with the others to await the outcome in that province?
 - are stay motions, or carriage motions contemplated in other jurisdictions?

- **Certification motion**
 - Is certification opposed? If so, for each Defendant, which certification criteria are disputed?
 - Can the number of disputed issues be reduced or any facts agreed to?
 - What is the agreed upon or proposed length of the certification motion?
 - Has a timetable for the exchange of material and other steps leading to the certification schedule been agreed upon? (see sample timetable below)

Sample timetable for certification (or other motions)

	Date proposed by Plaintiff	Date proposed by defendant(s) if different	Date fixed by the Court
Plaintiff to serve motion materials			

Defendant to serve responding materials			
Plaintiff to serve reply materials, if any			
Cross- Examinations			
Motions arising from cross-examinations			
Plaintiff to serve factum			
Defendant(s) to serve factum(s)			
Plaintiff to serve reply, if any			
Hearing Date(s)			

- Should there be page limits for certification motion facta? If so, what are the page limits?

D) Other motions to be heard together with, or prior to, the certification motion

- As early as possible, the parties should advise if there are any other motions which are contemplated which the party seeks to have determined prior to or at the same time as the certification motion.

If so;

- What motions are contemplated?
- Do any of the issues overlap with any aspect of the certification test, or would the court in deciding the motion benefit from the evidence being filed as part of the certification motion?

- Has the issue of the sequencing of the other motion(s) been agreed upon (prior to, together with, or following the certification motion)?

Case Management Post-Certification

- As the case progresses beyond certification, case management is useful to facilitate the resolution of interlocutory disputes, sometimes without a formal motion. For example, the following steps should be considered and addressed:
 - Notice of certification;
 - Opt out protocol and timelines;
 - Discovery;
 - has a comprehensive discovery plan been agreed to setting out the scope of the issues and documents to be produced, from which custodians, and timelines for delivery?
 - has an electronic discovery protocol been reached?
 - oral discovery – have the persons to be examined for discovery been identified and agreed upon, and have the timelines and amount of time reserved for examinations been agreed upon?
 - what discovery motions are likely or contemplated?

- Expert report delivery timeline and any proposed consultation as between the experts;
- Mediation (prior to, or following discovery, or both);
- Pre-trial(s); and
- After the action has been set down for trial, consideration of the assignment of a trial judge well in advance of trial, who can address pre-trial issues which arise in complex and large class actions relating to document admission and trial protocol and any amendment(s) to the common issues, as well as other issues.