

PRACTICE DIRECTION

COURT OF QUEEN'S BENCH OF MANITOBA

RE: CIVIL TRIAL SCHEDULING CONFLICTS

As discussed in the Practice Direction dated November 7, 2017 (regarding comprehensive amendments to the Court of Queen's Bench Rules (Civil)), in order to permit scheduling of trials within the required timeframe, the court, for its part, will be booking multiple trials relative to the number of judges available. For their part, counsel are generally expected to book more than one trial in a given time period. To address a situation where counsel has booked more than one trial for the same time period, the November 7, 2017 Practice Direction provides:

Where counsel has booked more than one trial for the same time period and as the trial date approaches, it is apparent to counsel that more than one of these trials is in fact proceeding, counsel must make a motion before the Chief Justice (to be heard by the Chief Justice or his or her designate) at least one week prior to the scheduled trial dates to adjourn a conflicting trial date.

To reflect counsel's professional obligation owed to his or her clients while also maintaining the objectives of timely and affordable access to justice by litigants, the foregoing direction is now **modified** as follows:

Where counsel has booked more than one trial for the same time period, and as the trial dates approach, it is apparent to counsel that more than one of these trials is in fact proceeding, counsel must make an appointment with the Chief Justice or his designate (as directed by the Trial Coordinator at the time that the appointment is made) at least one week prior the scheduled trial dates to identify the fact that more than one of these trials is in fact proceeding. This appointment should include all counsel involved in these trials. The appointment will take place by telephone conference, unless otherwise directed by the judge. While the latest that this appointment should take place is one week prior to the scheduled trial dates, it may be scheduled as early as the circumstances reasonably dictate. The determination of which trial will proceed and the adjournment date of the trial that is not proceeding will be determined by the Chief Justice or his designate, based in part on inquiries made of counsel and specifically having regard to the background and nature of the actions and the impact of additional delay. For the sake of predictability and consistency, a determination of which trial will proceed

and the adjournment date of the trial that is not proceeding will be made, like any discretionary determination, based on such considerations and factors that are relevant and which will include:

- Generally, priority will be given to those trials that were scheduled prior to January 1, 2018, given that those actions would not have benefitted from the new scheduling model (in effect as of January 1, 2018) when initially set down.
- Availability of alternative trial dates.
- Trial length.
- Prejudice to the parties if the trial is delayed. For example:
 - What is the importance of the issues being determined?
 - Does the case involve a claim for damages or is other relief sought, such as a permanent injunction or other forms of relief that may require interlocutory orders being amended or continued?
 - What are the legal costs incurred and potentially thrown away if the trial is adjourned?
 - How soon before the trial date did counsel who is double-booked make an appointment to address the issue in light of the desirability of minimizing unnecessary trial preparation costs incurred by opposing counsel?
- Impact of delay on the quality of the evidence. For example:
 - Is the anticipated salient evidence largely based on records and documents or based on witness memories?
 - Are there aging witnesses?
- Impact of delay on the witnesses. For example:
 - How many witnesses are being subpoenaed?
 - What is the availability of the witnesses if the trial is rescheduled?
 - Are there expert witnesses?

- Are any witnesses from out of town?
 - Have they made travel arrangements?
- Impact of delay on counsel. For example:
 - How many counsel are involved?
 - Is counsel from out of town?
 - What is counsel's availability for alternative trial dates?

Similar considerations will be relevant when the court has advised counsel that it does not expect to have a sufficient number of judges available to hear all the trials scheduled to proceed and the court is determining which trial(s) will be adjourned.

In the foregoing situations, it is expected that counsel will provide the background and information relevant to these considerations.

It should be understood that, as it relates to the above considerations and factors governing determinations respecting adjournments or adjournment dates, a body of jurisprudence and/or institutional experience is expected to evolve to bring future clarity.

Coming into effect

This Practice Direction 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: March 14, 2018