



The Supreme Court of the Northwest Territories

NOTICE TO THE PROFESSION

CASE MANAGEMENT GUIDELINES (NO.2)

On June 4, 1996, this Court issued a Notice to the Profession entitled "Case Management Procedures - General Guidelines". Its purpose was to provide an outline of the procedures and options contemplated by the introduction of Part 19 of the Rules of Court. Now that the Bar has had a few years' experience with this new Part, members of the Civil Bench & Bar Committee thought it would be appropriate for the Court to issue a further Notice dealing specifically with what is expected on an application for case management.

The 1996 Notice contained the following advice respecting the appointment of a "conference judge":

Part 19 envisages the appointment of a "conference judge" for case management of a particular case. The parties may apply to have a conference judge appointed or the court could do so on its own motion. The expectation is that in the normal course the appointment would be made at the request of the parties since they are the ones most familiar with the requirements of the case. The request may be made by formal motion or by a joint request directed to the Senior Judge of the court. The appointment of a specific judge, however, is by the court and not the parties. The court may seek the advice of counsel in this regard but is not bound by such advice.

...

There may be any number of reasons why a particular case would be made subject to case management: complexity of issues, multiplicity of parties, anticipated length of trial, encouraging prospect of settlement. Case management may also be viewed by the court as a

necessary step to define issues, procedures, and schedules, so that a case may be brought to trial expeditiously. As a general guide, in any case where management may be helpful, a conference judge will be appointed.

The operative phrase, in the extract above, is “in any case where management may be helpful”. This assumes an obligation on counsel to delineate how, and what type of, case management may be helpful. As noted above, there may be a variety of reasons why a particular case may be suitable for case management. But they all have two over-arching aims: (1) to ensure that the action proceeds to trial in an orderly, focused and expeditious manner; and (2) to provide a potential vehicle for court-assisted resolution of the action.

There are three ways in which an action may become subject to case management:

1. A judge may decide to place an action that comes before him or her into case management. This should be a rare occurrence and would most likely be motivated by serious concerns as to the form or progress of the action.
2. The parties, if they have agreed to case management, can submit a joint request to the Senior Judge outlining the nature of the case and why they consider case management to be helpful or necessary.
3. One of the parties, in case of no agreement, may bring a motion, pursuant to Rule 283, to designate a conference judge for case management. The motion, like any other application, will have to be supported by an affidavit and heard, on notice, in regular chambers.

In both of the latter instances (whether the Senior Judge grants the joint request or a chambers judge issues the order sought by notice of motion), the Senior Judge will designate the case management judge. Even in the first instance, the decision as to who will be the conference judge is subject to the administrative direction of the Senior Judge.

In formulating a request for case management, whether by agreement or by contested motion, counsel must be prepared to articulate why management is necessary and what they envisage management accomplishing. If, for example, counsel think that the case may be amenable to settlement and that a mini-trial or a settlement-oriented conference would be a helpful step toward that objective, then they should specify that. If, on the other hand, counsel think that the case is of a type that will require on-going management, then they should identify

the relevant factors; e.g., multiplicity of parties and issues, a number of interlocutory matters to be resolved, etc. In this instance, counsel should be ready to propose a plan of management.

What case management is not meant to do is to replace the normal operation of the Rules of Court. For example, several decisions have been issued by this Court rejecting requests for case management where it was apparent that the only reason for the request was that litigants were not co-operating or abiding by the rules or one side was unduly delaying the progress of the action. There are mechanisms in the Rules to address non-compliance or dilatory actions.

Once a case management judge is designated, an initial meeting with counsel will be held at which time counsel will be expected to outline in further detail the issues to be addressed and their proposals as to the steps to be taken.

What must be kept in mind is that case management (in the general sense contemplated by Part 19 of the Rules) is a very flexible concept. There is no set procedure for all cases or any particular case. It is left to the parties and the case management judge to adopt those procedures most appropriate to the case. And, just as the procedures may vary from case to case, they may also vary from time to time within any one case. But this flexibility does not relieve counsel of their responsibility to specify and outline the reasons for putting an action into case management in the first place.

Dated this 22nd day of December, 1999, and issued by direction of the judges of the Supreme Court.

Justice J.E. Richard
Justice J.Z. Vertes
Justice V.A. Schuler