CASE MANAGEMENT AND LISTING UPDATES
INSTITUTIONAL LIABILITY LIST

May 2024

In response to the substantial and sustained growth experienced in the Supreme Court's injury-based lists over the past two years, the Court is modifying its case-management and listing practices. The changes described below are intended to enable the Court to manage larger numbers of proceedings than has previously been required, while also allowing proceedings to reach trial faster than has more recently been possible.

Trial dates

The Court has a target of having all cases in the Institutional Liability List reach trial within 14-16 months of an appearance first being filed. To support this, the Court is increasing the number of trials that it can list each week, and is taking steps to eliminate certain categories of administrative work involved in the early stages of claims.

Parties to existing proceedings that have trial dates outside the Court's target range will be contacted in due course to allocate earlier trial dates.

Timetables

Interlocutory timetables will no longer be sought from the parties by the Court at the outset of a proceeding. Instead, upon the filing of a notice of appearance in a proceeding, the Court will issue a timetable (including a trial date and post-mediation directions hearing date) to the parties using a standardised timetable that will apply to all cases initiated in the Institutional Liability List.

Parties remain free to extend or abridge dates in this timetable that occur prior to the post-mediation directions hearing by agreement without seeking orders from the Court, consistent with existing practices. Parties also have the option of requesting that a first directions hearing be listed to discuss any issues specific to a particular case. First directions hearings will not be listed as a matter of course for all proceedings, however.

The standard timetable for Institutional Liability List proceedings will involve the following timeframes:

- Defences and any replies are to be filed in accordance with the Rules.
- Requests for further and better particulars are to be made within 28 days of service of another party's pleading, and any responses are to be served within 28 days of receipt of such a request.
- Third-party notices and notices of contribution are to be issued within 3 and 6 months, respectively, of the initial timetabling orders being made.
- Discovery is to be completed 4 months after the initial timetabling orders, and any interrogatories are to be served 1 month later.

- All parties' medical/expert reports, and the plaintiff's particulars of special damages, are to be exchanged 4 months after the date for service of any interrogatories
- Mediation is to occur two months after the exchange of expert materials and the plaintiff's particulars of special damages, and a post-mediation directions hearing will be listed approximately 2-3 weeks later.
- The proceeding will be allocated a trial date approximately 2-3 months after the post-mediation directions hearing.

Transfers of proceedings

The Court will consider any issues relating to transfers of proceedings to the County Court as needed over the course of the litigation, rather than primarily at the commencement of a claim as is currently the case. Where a case has been identified as being potentially appropriate to be transferred, the parties will be informed and given an opportunity to address this issue, consistent with the current practice.

This change does not constrain any party's ability to apply for orders transferring a proceeding under the *Courts (Case Transfer) Act 1991*at any time.

Any issues that may arise concerning the hearing of Institutional Liability List trials in a regional circuit, where appropriate, will be discussed at the post-mediation directions hearing.

Finalisation of proceedings

Parties are expected to notify the Court promptly when a proceeding resolves ahead of trial.

Upon receipt of such notice, the Court will no longer vacate existing hearing dates and list administrative mentions some months into the future, but instead will list a mention before a judge several weeks later. Parties will be expected to have submitted consent minutes to dismiss the proceeding by that stage, or else appear at that mention if they wish to submit that the proceeding should not be dismissed.

Conduct of parties and practitioners

These changes will require some modifications to the manner in which practitioners conduct proceedings. In particular:

- By the time they serve a writ, practitioners should expect to be ready to participate in a mediation no later than 12 months later, and ready to proceed to trial within approximately 3 months thereafter. This may require practitioners to make arrangements in relation to expert bookings or other investigations earlier than is presently the case.
- The Court expects practitioners, including counsel briefed on an application, to confer before the hearing of any application to resolve or narrow the issues in dispute. Failure to meet this expectation may be relevant to orders made on an application, including as to costs.
- Substantive applications requiring their own timetables, such as applications to set aside prior judgments/deeds, will be required to be issued earlier in a proceeding's timetable than is currently often the case. Such applications will not necessarily need to be heard and determined early in a proceeding, however they will be expected to be issued relatively soon after the close of pleadings,

once it is known that the relevant issue is contested. This is intended to reduce the number of trial dates being vacated as a result of late applications. In most cases, a directions hearing will be listed after such an application is issued, for the purposes of discussing an appropriate timetable.

- Applications concerning pleadings, discovery, interrogatories or subpoenas are expected to be made in sufficient time to enable them to be determined before the mediation. If a party considers that such an application is required, it should not be left until after the mediation unless there are exceptional circumstances.

- Adjournments of directions hearing dates will not routinely be allowed more than once, and will not be granted for periods of more than one month in the absence of an application. It is the Court's expectation that mediation will be held prior to the post-mediation directions hearing. The post-mediation directions hearing will not be adjourned to any later than two months before the trial date, regardless of whether mediation has been held.

- There is only limited scope for parties to seek leave to serve new expert evidence after a mediation has occurred. Practitioners should prepare cases on the assumption that they will be expected to have served all expert reports on which they intend to rely prior to the mediation, and applications to rely on new expert material after the conclusion of a mediation should generally be confined to areas or topics that relate to new developments which could not have been anticipated in advance. A desire to save costs by not commencing the preparation of expert material until after a mediation will generally not be considered an acceptable reason.

None of the above is intended to discourage parties from conducting informal settlement conferences or early mediations prior to the court-ordered mediation, if the parties consider this desirable or appropriate in order to reduce costs.