

Minutes

CIVIL PRACTICE COMMITTEE TOWN HALL MEETING

Thursday, November 12, 2015

Courtroom #317 - 12:30 p.m.

Justice Nielsen chaired meeting

He welcomed members of the Bar, his judicial colleagues and Court staff, and informed everyone in attendance that a parallel meeting is being held in Calgary.

1. Chambers

a) Morning

Review of Chambers practice throughout the Province

- An Ad Hoc Committee has prepared a report reviewing Chambers practices throughout the Province. The report has been brought to the Civil and Family Law Committees, following which, issues will be identified for bringing forward to the Executive Board.
- The report identifies a number of Chambers issues, including:
 - Complaints about long wait times, adjournments, large numbers of applications without notice, fiats which take up too much time, unnecessary applications, appeals, matters which should be special matters or brought to Masters in Chambers, Counsel being unprepared and providing inaccurate time estimates, Court administration issues(including late filings and files not being up to date) etc.
- Feedback is invited on changes that are being considered, including:
 - Allowing 2 adjournments, then adjourning a matter *sine die* before it can be brought back into Chambers.
 - Scheduling telephone applications to be heard outside of Chambers.
 - Changing the time to phone in Chambers adjournments to 3:30pm the previous day (as opposed to 9:30am the same day), providing Clerks more time to pull files that are going ahead.
 - Reducing or strictly enforcing caps on the Chambers list.
 - An amended duty grid.
 - Striking matters where no one appears, resulting in fees to re-file.
- Counsel are encouraged to discuss matters with each other in advance of appearing in Chambers. At the very least, during long Chambers applications, Counsel are encouraged to go outside and discuss their matters.

b) Special

- Lead times – currently booking into April, 2016 for Justice Chambers and July, 2016 for Masters Chambers. Lead times are a function of lack of judicial resources.

- Lead times for Special Chambers are resulting in long morning Chambers lists.
- Matters with complex legal issues require a hearing in Special Chambers. Matters may be heard in morning Chambers provided there are no complex legal issues and Counsel take the judiciary through the chronology of events. For other matters, given the lengthy lead times, Counsel may speak to the Supervising Justice or write to the ACJ seeking an earlier Special Chambers date, providing an explanation as to why the matter cannot wait and cannot be heard in regular Chambers. Urgent lengthy matters may be heard at the end of the list in regular Chambers.
- Counsel should immediately advise when a settlement has been reached – do not wait until the morning of Special Chambers or regular Chambers. A dedicated email address may be established to notify Court Coordinators or Clerks of settlements.

Discussion

- Rule 10.49 (penalty for contravening rules) allows the Court to impose a penalty on Counsel for failing to provide notice to the Court that a matter has settled. The downside of using the Rule in this manner is it may discourage settlement. Perhaps Counsel could be asked why they should not have costs imposed upon them. While Counsel would like to be reminded of upcoming applications, the Court does not have the resources to do so.
- Discussion about Calgary Chambers practices ensued, including hearing *ex parte* applications from 9:30-10:00am prior to morning Chambers.
- Consider the materials required in Special Chambers – many cases do not require a full brief. In Family matters there are now provisions for a concise letter instead of a brief.
- Counsel finds themselves acting as an apologist to clients because of lengthy lead times for Special Chambers. Counsel are encouraged to write to their MPs and MLAs seeking additional judicial resources.

2. Form 37

- Form 37 (setting a matter down for trial) was amended in August to require only the estimated number of witnesses (the names of the witnesses are no longer required). Rule 8.8 was also amended requiring the plaintiff to provide to the Court a list of the names of witnesses 30 days before trial, and the other parties to provide to the Court a list of the names of witnesses 20 days before trial.
- Court Coordinator, Bonnie Mitchell indicated that no reminders will be sent to Counsel to monitor compliance with Form 37 – that responsibility lies with Counsel. If Counsel fail to comply with Rule 8.8 and a disqualification arises, the matter may need to be rescheduled as it is difficult to find another Justice to sit at the last moment.
- No tentative bookings will be made by the Court Coordinators without Form 37 having first been filed, unless otherwise directed by the Court.
- The new Form 37 is available on the Court website.

3. Streamlining Trials

- Counsel are encouraged, wherever possible, to make trials run as efficiently as possible through the use of agreed statements of fact, agreed exhibit books, agreed issues, etc. When agreed exhibit books are being utilized, Counsel are encouraged to consider whether agreement pertains only to the documents having been exchanged, or whether there is agreement respecting the truth of the contents of the exhibits, so that witnesses need not be called for exhibits that are not contested.

4. Rules of Court

- Justice Graesser, the Queen's Bench representative on the Rules of Court Committee was not present. As a result, Justice Slatter spoke to this agenda item.
- The Rules of Court Committee made recommendations to amend Schedule C (costs), the drop dead rule, and other administrative amendments, however with the change in government, no further action has materialized.
- Counsel are encouraged to write to Justice Slatter or Justice Graesser providing their suggestions for Rules amendments.

Discussion

- Discussion about the ability (or lack thereof) for non-lawyers to represent numbered companies ensued in light of Rule 106 of the *Legal Profession Act* (authorized practice of law) and conflicting decisions. It is hoped that a case will come up to the Court of Appeal for clarification of the law. In the interim, dialogue on this issue continues with the Law Society and the government.
- A JDR rule amendment to allow documents to be admitted in Court proceedings to prove a settlement has been reached and the terms of the settlement was mentioned.
- There is a controversial proposal to allow Justices to order JDR. The Law Reform Institute has recommended that Justices not be allowed to do so.

5. QB Amicus Project

- The QB Amicus Project, a Chambers initiative (co-led by Pro Bono Law Alberta, the Ministry and the Court – Justice Goss in Edmonton) that provides a lawyer amicus in Justice and Masters Chambers on Wednesday mornings to assist self-represented litigants, was discussed. The Court encourages more lawyers to become volunteers by contacting Pro Bono Law Alberta, as the limited number of volunteers is threatening the viability of the project and will limit any expansion of the initiative.

Discussion

- Justices and Masters shared positive feedback respecting how the project has expedited the hearing of self-represented matters in Court.

6. Matters from the Court Coordinators

- Peggy Lewis seeks increased compliance with Rule 6.14(4) (appeal from a Masters' decision). An appeal from a Masters' decision is on the record of proceedings before the Master, and any additional relevant and material evidence as directed by the Justice. The Rules specify the record of proceedings. Counsel are reminded to ensure the record of proceedings and other documents are completely put together in advance of the appeal proceedings.

7. Issues from the Bench

- Master Schulz reminds Counsel to ensure the action number appears on every page of an Order, or at the very least, that the signature page includes substantive content so that Masters and Justices are not being asked to sign a blank (signature) page.
- Reminder of the recent (November 10) Notice to the Profession regarding Edmonton Summer Trial Sittings in Queen's Bench. The Coordinators are currently booking summer trials in the following priority: Criminal (accused in custody, serious delay, etc.); Family (child-related issues requiring decision before September); Civil (urgent issues). Approval of the ACJ or QBAC Justice is required for Criminal trials; approval of the ACJ or his designate is required for Civil trials.
- Notice to Profession about Masters Jurisdiction – service of applications under the *Matrimonial Property Act* can be dealt with by Masters in Edmonton; *Minor's Property Act* matters cannot.

8. Issues from the Bar

- Telephone Lists for Judicial Assistants are located at the 6th floor information desk.
- Fax filing numbers will be posted on the Court website.

Meeting adjourned.

Please provide any comments or concerns to Rebecca Royan at Rebecca.Royan@albertacourts.ca.