CASE-FLOW MANAGEMENT & THE FUTURE of E-TRIALS IN PERSONAL INJURIES LITIGATION

Thank you for inviting me to deliver the Plenary Address at the Annual Personal Injuries Conference of the Queensland Law Society. The Society and its many committees do a wonderful job in informing its members of the latest developments and best practice in substantive and procedural law.

This morning I have been asked to speak to you about e-Litigation and Case-Flow Management. While in many respects these two topics are not related, they in fact share the same fundamental objectives. The case-management system and the rationale of e-Litigation reflect the philosophy in rule 5 of the *Uniform Civil Procedure Rules* 1999. Both aim to assist the timely resolution of claims with minimal impact on the resources of the court and the parties or, to put it in the way the rules put it: "to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense."

I am responsible for the case-flow management system in the Supreme Court at Brisbane. I hope to provide you with a comprehensive explanation of the system, and some practical examples and handy hints to take with you and

apply in practice. This will assist in the partnership between the courts and legal practitioners of solving your clients' legal problems as quickly as possible and using court processes to assist in that expeditious resolution. Let me first, however, begin by speaking about e-Litigation in Queensland courts.

e-Litigation

The future of e-Litigation in Queensland depends on the commitment to it by legal practitioners. There is no doubt in my mind that the use of electronic aids in litigation increases efficiency and decreases costs. This is so whether the matter is conducted as an e-Trial or using electronic aids. While there is no precise definition of what constitutes an electronic trial, a number of the necessary features for a successful e-Trial include:[1]

- Collection of documents in a consistent electronic format
- Pre-Trial preparation using electronic means
- Electronic court Book
- Visual display
- Court operator
- Expertise to support the e-Court system

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[1] A Stanfield, *E-Litigation*, Thompson Legal and Regulatory Group, 2003 at 71; S Jackson "New Challenges for Litigation in The Electronic Age" (2007) 12 *Deakin Law Review* at 101-105.

An e-Trial is one which is a "paperless" trial with all documents simultaneously and instantly available for viewing by legal representatives, parties, and the Judge. Only a handful of cases in Queensland can properly be regarded as electronic.[2]

However there are ways of using technology to assist in the preparation and presentation of a case in court even without a full e-Trial. I have presided over a number of cases involving electronic aids such as CD's containing the list of agreed documents, projectors, and PowerPoint presentations.

The Queensland Court's Information Management Team has piloted an e-Trial project which is based on technology called e-Courtbook. This technology allowed all documentary evidence to be scanned into PDF documents which are fully text-searchable. An electronic portal was created to hold all the documents. The portal was accessible by all parties and is password protected. The Judge's Associate drove the database during court sittings and was able to search for, and sort documents, project them onto a large screen, and highlight and enlarge certain parts of the document for the court to view. The database was accessible 24 hours a day before and during

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[2] For example *Emanual Management Pty Ltd v Fosters Brewing Group Ltd* [2003] QSC 205; *Covecorp Constructions Pty Ltd v Indigo Projects Pty Ltd* [2007] QSC 262.

the trial. In the Supreme Court, two trials this year were run as e-Trials. The first pilot e-Trial in the Court of Appeal is scheduled to commence on 1 August 2009. However, there is no funding to continue the pilot programme. If practitioners want it to continue, they should let the department know about it. It can only be continued if the modest funding needed of approximately $250,000 a year is provided.

While it has been more common to conduct e-Trials in Criminal matters,[3] e-Trials would clearly be of great assistance in areas such as personal injury litigation. Personal injury matters are likely to have medical reports and a vast number of other documents which, if in paper, may consume hundreds of pages and lever arch folders. While it is common to think of e-Litigation as a necessity in cases where a paper trial would be impossible,[4] Professor Jackson suggests that this should not prevent trials, where a paper trial is possible, from enjoying the benefits and efficiencies produced by an electronic trial.[5]

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3 S Jackson "Reflection not rejection: Harnessing the benefits of trial technology" (2008) 29 Qld Lawyer 139 at 142.

4 See, for example *Seven Network Ltd v News Ltd* [2007] FCA 1062 at [10].

5 Note 3 at 141

You should examine your matters and consider how they could be more efficiently run if, for example, an agreed bundle of documents for use in the trial was scanned and burnt onto a CD rather than being endlessly photocopied.

There are many benefits. Some of these include:[6]

- Saving of time: it takes considerably less time to bring up a document instantaneously on screen as opposed to searching the file;
- Saving of space as a result of documents being stored electronically rather than in paper;
- Saving of costs: Professor Jackson discusses the 1997 Victorian *Estate Mortgage Case*. The plaintiff's solicitors in this case estimated savings of up to 30-40% in hearing time equating to 3 million dollars in legal costs. This was a case where, during the 80 day trial, approximately 75 000 documents were referred to;
- Improving the quality of presentation;

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[6] Note 3 at 143. also see Justice T Smith and Chivers I, *The Estate Mortgage Court System*, Presentation at the AIJA Technology for Justice Conference, 23 March 1998, http://www.aija.org.au/conference98/papers/estate/index.htm#1

- In a true e-trial 24-hour access to the portal allowing users to gain instant access and utilise the extensive searching and sorting tools of documents.[7]

There are also a number of benefits from electronic management of matters pre-trial. The disclosure of documents electronically does not only save time and costs but it is more accurate to disclose electronic documents electronically. After all this is disclosure of the original document and not just a paper copy.

E-filing would no doubt reduce the costs for practitioners of filing and searching court documents. An electronic file system is currently being piloted in Planning and Environment Court. This involves electronic filing, managing, receipting and viewing of court documents and the file.[8] Again this pilot will only be able to continue and be widened to cover other courts only if it receives further funding.

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7 Note 3 at 144 in relation to *Southern Equities Corp Ltd v Arthur Andersen* (2001) SASC 58; [2002] SASC 128; [2002] SASC 148 which eventually settled out of court prior to the completion of trial.

8 Note 1 at 6-7.

E-Filing would be likely to increase the efficiency of the case flow management system involving, as I shall explain, regular supervision and monitoring of claims against litigation timetables made by court orders.

Case-Flow Management

The Case-flow management system was introduced to manage and progress civil litigation claims where a request for trial date had not been filed within a reasonable time. The need for it arose because unfortunately claims were often characterised by lengthy and unnecessary litigation or neglect with no regular direction or supervision from the Court. The aim of case-flow management is to assist the speedy resolution of claims by progressing them to resolution through settlement or trial. This reduces costs to clients and the court system. Thus the objectives of case-flow, as is the case with e-Litigation, reflect the philosophy set out in Rule 5 of the *Uniform Civil Procedure Rules* 1999. The objectives also compliment the purpose of the *Personal Injuries Proceedings Act* 2002 (Qld) (*PIPA*) to settle claims in a speedy manner while reducing the time and resources of the courts and litigants.

The case-flow system monitors the progress of claims against court ordered timeframes and allows court intervention when proceedings are not progressing satisfactorily. Supreme Court Practice Direction 4 of 2002 governs the case-flow management of civil proceedings. Where a request for trial date has not been filed within 180 days of the filing of the notice of intention to defend, the case-flow management system is triggered. This trigger was chosen because it was thought that ordinarily a matter should be ready for trial within that time.

By not intervening before that time, the court does not net widen and draw in cases that are capable of being prepared without case management intervention. If a case is not ready for trial within that time, then the court now takes the view that it needs case management. The case-flow manager sends the plaintiff and all defendants who have filed a Notice of Intention to Defend a notice requesting an acceptable plan to be filed within 21 days which facilitates the timely determination of the proceedings. If a plan is not filed, is unacceptable, or if the parties later fail to adhere to their plan, a further notice is issued requiring parties to attend a case-flow review. Of course, Chapter 2 of the *PIPA*, provides extensive mandatory pre-court

procedures for personal injury matters including the mandatory exchange and disclosure of certain information and compulsory conferences. It is therefore expected that by the time personal injuries matters reach the court they will be well advanced in the litigation process certainly compared to claims which are not regulated by such procedures.

Case-flow review days are usually held on the last Friday of every month. The day consists of five timeslots. The first timeslot is reserved for applications for re-activation, which I will discuss in more detail a little later. The last timeslot is usually reserved for claims where at least one party is a self-represented litigant.

I encourage parties to provide proposed consent orders outlining suitable and realistic timeframes. Such orders reflect that the solicitors are communicating to establish mutually suitable ways to resolve the litigation. If a timetable has not yet been agreed to on a review day, I often send the parties outside to draft a mutually acceptable plan to bring back to me. This means that the lawyers involved use their skills and their knowledge of the file and their clients to propose suitable orders. Only where parties cannot agree do I impose a plan on them.

The purpose of making case-flow orders is to prevent delay in litigation and to ensure that solicitors litigate responsibly in the timely resolution of matters. My experience has shown that this can only be achieved by setting clear timeframes and clear consequences for non-compliance. The consequence of not adhering to the timetable has become an expensive reality for a number of practitioners. If a request for trial date is not filed by the date specific in the order, the matter is automatically deemed resolved. Where the matter is deemed resolved, parties wishing to continue with the litigation must file an application for re-activation. Legal practitioners who are at fault may be ordered not to charge their own clients for their services and/or pay the other party's costs.

I will also deem a matter resolved if it is listed for directions, and there is no appearance by either party. In this case, I make an order that the matter be deemed resolved and that the case-flow manager write to the parties requesting an explanation as to why they did not attend. The following statistics indicate the seriousness of attending reviews. In February 14.5% of matters heard on the review day were deemed resolved as a result of non-attendance; in March 9%, in April 3%, in May a slight increase to 6%, and

in June 2.5%. Hence there has been a general decrease in these orders. This is a positive indication that the lawyers take their responsibilities under case-flow management seriously, realise the consequences, and respect the authority of the court in managing the litigation process.

Some practitioners have had some difficulty adjusting to the new regime. A partner at a firm with a large litigation practice appeared before me once in the early days of the new system. The case had been meandering along. When I asked him if he had a case flow plan, he announced, “We act for the plaintiff Your Honour. We don’t require any directions from the court.” “I don’t think you’ll find that deters me,” I said. A plan was put in place and that firm is now a very effective user of the case-flow management system. A couple of years ago, it was a rare and noteworthy event when I was handed a draft order for directions which could be made without amendment. I still make more orders “as amended” compared to “as per draft”. However this is improving. For example, in April 2009, of the orders classified in this way, 78.5% were order as per draft as amended while only 21.5% were made as per the draft. In May the comparison was 68% to 18%. In June, the gap was closing with 51% “as amended” and 48% as per draft.

Nevertheless there are without a doubt two amendments I commonly make to orders. First, I always add the words “or the matter be deemed resolved” after the date for filing the request for trial date. Without this guillotine order, there are no consequences for non-compliance. I am quite pleased that it is becoming more common for solicitors to include the guillotine order in their proposed drafts indicating the profession is starting to understand the purpose of the case-flow system. Second, it is still quite common for solicitors to put general timeframes for compliance rather than exact dates. For example, I will always amend an order to read “mediation will occur on X date” rather than “mediation will occur 14 days after a consent order for mediation has been filed”. My experience shows that it is difficult enough to get lawyers to comply with exact dates, let alone general timeframes. Providing specific dates ensures the timeframes are clearly expressed with no room for debate.

Common issues in litigation

I encourage legal practitioners to keep the timetable as tight as possible but be realistic in their estimation of how long it takes to get things done. Sometimes even I am shocked by what legal practitioners regard as a

realistic timeframe. In one matter that came before me I was solemnly told that there was no need for intervention, the parties had agreed to stay the matter for 20 years (or thereabouts). The explanation given was plausible.

The plaintiff was a child, who suffered injuries including brain injury in an incident at a well known chain of child care centres. The medical evidence was that it was just not possible to predict the effect of this injury on the future economic loss of the child until well after adolescence so the lawyers submitted there was no point in wasting time and money on the litigation now. That sounded reasonable.

"Is liability in issue as well as quantum?" I enquired. "Oh yes," they said. "And in what particular respect," I enquired, "will witnesses' memories of what occurred be better in 20 years time than they are now?" It was a text book case for splitting the issues. I gave detailed directions so that the question of liability could be fully prepared to go first to mediation and then if necessary to trial.

It settled at mediation – not just on liability but the whole case. Result I'm sure, everyone much happier! The plaintiff received compensation for

serious injuries 20 years earlier than expected; there was no contingent liability for the insurers to carry for years; it happened before the corporate defendant, as it happened, went into liquidation necessitating an application for leave to continue; the court was not carrying an inactive but open file for years and years; and some poor lawyers, some perhaps not yet out of child care themselves, were saved, 20 years in the future, from the dreadful task from trying to put together what had happened 20 years or more in the past.

The most common orders made outside case-flow management days are those extending the general timetable for litigation including dates for filing amended pleadings, expert reports, mediation, and of course, filing the request for trial date. There are common emerging themes as to the difficulties faced by lawyers during litigation which impact on the case-flow timetable not being met. These issues include delays in obtaining expert reports due to experts not being available; the difficulty in finding a suitable date for mediation with the mediator; and parties wanting to file further pleadings after receiving the expert reports.

One such matter came to my attention very recently. The solicitors were proactive and could see that the timeframe was going to be pushed out long

before the request for trial date was due, and so requested an amendment. The original orders required the first and second defendants to deliver expert reports by 30 July 2009. The second defendant's solicitor explained that the earliest possible examination dates by the experts of the plaintiff were arranged and examinations took place by a neuro-psychologist and an occupational therapist. However, one of the experts then went overseas and was unable to complete the report prior to departing. As a result, these orders, and the subsequent orders dealing with mediation and filing a request for trial date could not be complied with. A consent order was made extending the dates by approximately two months.

Practitioners should take these issues into consideration when drafting proposed orders so they are realistic. You should also be proactive in ensuring that, where necessary, orders are amended before the timeframe is pushed out. The appointment of a joint or single expert will often be in these circumstances a time-saving, as well as a cost-saving, benefit.

The Case-Flow Management System and Self Represented Litigants

The case-flow system is particularly vital in the management of cases involving self-represented litigants.

In one matter, the plaintiff explained to me at the review that although she had read, and might be able to comply, with the proposed directions drafted by the defendant's solicitor, she did not want to continue with the matter due to the adverse impact on her mental health of the litigation. While I was uncomfortable with the prospect of this matter impacting on the plaintiff's mental health, I was also uncomfortable about the plaintiff ceasing litigation without obtaining legal advice particularly as, if her allegations were true, she had a good cause of action and a strong case. I referred the plaintiff to QPILCH and adjourned the matter for two months. Two months later the plaintiff had obtained legal representation and the matter was proceeding expeditiously. If this matter had not been subject to case-flow review, the plaintiff would have ended the litigation and forfeited any possible legal remedies which may have been available to her. This case reflected very well on the legal practitioner who was prepared to represent her, I suspect at reduced or no cost.

Another extraordinary case picked up by case flow involved an old wheelchair bound Korean grandmother duped, she said, by her son and his by now ex-wife to buy properties in Australia in their names in exchange for

their promise to look after her. Her son was now in jail for child sex offences; the properties had been transferred to his ex-wife who was trying to evict her ex-mother-in-law from the one room where she lived. Only the daughter-in-law was legally represented. No one spoke English apart from the student grandson who was trying to support his grandmother emotionally and financially while appeasing his warring parents and translating for everyone. With the help of QPILCH, the Prisoners' Legal Service and separate interpreters for each of the unrepresented parties we were able to give directions and send it to mediation where it settled enabling a very sad old lady to live out her final days in peace and relieve her grandson at least from the burdens of the litigation.

Reactivation

When a matter is deemed resolved as a result of the parties not filing a request for trial date within the specified time, the party wishing to continue with the matter must make an application to reactivate the matter.

In *ARC Holdings Pty Ltd v Riana Pty Ltd* [2008] QSC 191, I outlined the procedures required to make an application for reactivation, and the factors I

consider in making an order. As I said in that case, "the days of litigating at leisure are over."

Paragraph 5.4 of Practice Direction 4/2002 provides:

"A proceeding deemed resolved may be reactivated by an application by any party, supported by affidavit material explaining and justifying the circumstances in which the proceeding was deemed resolved, and proposing a plan to facilitate its timely determination."

While paragraph 5.5 of the practice direction provides that the registrar may refer the matter to a judge for a decision, the best practice is to ensure that when the application is filed, it is listed for hearing at the next case-flow review day before me. Once a matter has been deemed resolved by a court order, the parties cannot have it reactivated by a consent order.[9] The applicant must explain and justify the circumstances in which the matter was deemed resolved. The relevant factors that I will consider in making an order are set out in that judgment and include:[10]

a) The conduct of the litigation prior to the directions being given;

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[9] *Arc Holdings Pty Ltd v Riana Pty Ltd* [2008] QSC 191 at [7].

[10] Ibid at [9].

b) What explanation is provided for the failure to comply with the directions which has led to the matter being deemed resolved,[11] and whether this is attributable to the plaintiff, the defendant, both, or their legal representatives;[12]

c) Whether or not the failure to comply with directions has resulted in prejudice to the defendant leading to an inability to ensure a fair trial;[13]

d) How far the litigation has progressed[14] and how close it is to trial;[15]

e) What prospects the parties have of success in the action.[16]

Since February of this year, I have heard 16 applications for reactivation. In the past fortnight alone there has been three matters requesting an extension of time to file the request for trial date in circumstances where I cannot make

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11 *Campbell v United Pacific Transport Pty Ltd* [1966] Qd R 465 at 473-474; *Witten v Lombard Australia Ltd* at 412; *Dempsey v Dorber* [1990] 1 Qd R 418 at 420; *Keioskie v Workers' Compensation Board of Queensland* CA No 46 of 1992, 15 September 1992 per Thomas J at 4; *Cooper v Hopgood & Ganim* at 124.

12 *Campbell v United Pacific Transport Pty Ltd* at 473, 475; *Kaats v Caelers* [1966] Qd R 482 at 497; *Tate v McLeod* [1969] Qd R 217 at 224-225; *Gleeson v Brock* [1969] Qd R 361 at 369; *Holmes v Civil & Civic Pty Ltd* CA No 15 of 1992, 14 September 1992; *Keioskie v Workers' Compensation Board of Queensland* per Thomas J at 7; *Lewandowski v Lovell* (1994) 11 WAR 124; *Hoy v Honan* at 5; *Collingwood v Calvert* CA No 3028 of 1996, 6 December 1996 at 5, 7, per Fitzgerald P; *Cooper v Hopgood & Ganim* at 124.

13 *Witten v Lombard Australia Ltd* at 412; *Dempsey v Dorber* at 420; *Keioskie v Workers' Compensation Board of Queensland*; *Bishopgate Insurance Australia Ltd (In liquidation) v Deloitte Haskins and Sells* at 24-25; *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541 at 554-555 per McHugh J; *Cooper v Hopgood & Ganim* at 118, 124.

14 *Keioskie v Workers' Compensation Board of Queensland* at 10 per Thomas J.

15 *Bazley v State of Queensland* at [58]; *Quinlan v Rothwell* [2001] QCA 176 at [9], [35].

16 *Keioskie v Workers' Compensation Board of Queensland* at 2-3 per McPherson J; *Cooper v Hopgood & Ganim* at 124.

the order because the matter has already been deemed resolved. I will not grant an extension of time to file the request for trial date after 4pm on the day it is to be deemed resolved. Further, some solicitors have learnt the hard truth of leaving the request to the day it is due, finding that I am not in chambers to make the requested order. In these cases, the matter is deemed resolved.

Not all applications for reactivation are the result of poor litigation and time management. One matter I heard last month involved a plaintiff who suffered personal injuries in a motor vehicle accident which occurred almost 20 ago, which incidentally reinforces a point I made earlier. The most recent delays were due to difficulties in appointing a litigation guardian. After obtaining medical reports, the solicitors for the plaintiff attempted to appoint a litigation guardian. Due to unforeseen circumstances, there were numerous delays in the litigation guardian signing the consent form. This was followed by further difficulties in obtaining instructions from the litigation guardian in relation to the statement of loss and damage which then flowed on to delays in conducting mediation. Difficulties were then experienced settling a convenient date for the mediation, by which time the mediator had become unavailable. Settlement was not reached at the

mediation when it finally took place. An attempt was made by the parties to sign a consent order to extend the request for trial date. However, one party did not sign until the day after the deemed resolved date, and hence the matter was deemed resolved.

The application for reactivation was not opposed by the defendant. This was an example of the genuine difficulties faced in personal injury litigation, and why it should be started and finished promptly. Although the limitation period did not run, cases characterised by delay are very difficult to run both before and at trial no matter where the merits lie.

The Dog Ate my Homework and the Blame Game

I often hear excuses from legal representatives as to why they need to amend orders and why they could not file the request for trial date.

One such example is illustrated in an email received by my Associate last month from the solicitor of the plaintiff in a matter. The parties had received a case-flow intervention notice requiring a plan be submitted or that they attend case-flow review on 19 June 2009. The email was received the day before the case-flow review. The parties had undertaken mediation in

December 2008 and had reached agreement. One minor issue remained to be resolved, and once resolved the parties would then file a Notice of Discontinuance. This is usually a story that I like to hear, which indicates that the case-flow system is working. However, the reason provided by the solicitor as to the delay in resolving the final issue reminded me of "the dog ate my homework" excuse. He explained as follows:

> "Given the plaintiff is now in Sydney, the defendant is in Barcaldine and the Defendant's solicitors and counsel are in Port Douglas and Cairns, there are always delays in communications".

While Judges may not have had computers on their benches until relatively recently, I am certain that in 2009, all members of the legal profession representing clients in litigation have regular access to devices such as computers, mobile telephones and faxes, and that it is not this technology which results in difficulties in communication. Neither is geography the problem. Rather, sadly, it is often the practitioners themselves who cause the difficulties in resolving litigation by leaving everything to the last minute.

Unfortunately I see rather too many examples of obstructive rather than co-operative approaches to resolving problems. Let me given an example. A matter had automatically been deemed resolved as a result of the request for trial date not being filed. No orders I had previously made had been complied with. The defendants asserted that they opposed the re-activation of the matter due to substantial non-compliance on the part of the plaintiff. However, there was clearly non-compliance on both sides. The defendants had not filed the defence and counter-claim as required by 19 January 2009, five months earlier. Counsel for the defendant argued that the delay was because the amended statement of claim was not filed by the plaintiffs. Of course this was no excuse and the defence should have been filed regardless.

In open court I told counsel and their instructing solicitors that this was a clear example of a badly litigated matter. The correspondence between solicitors demonstrated that they were more concerned with arguing with each other rather than solving the matter. It was an example of “let’s see how hard we can make it for the other side”. The interests of the plaintiff and defendant were not being met, and as such, I ordered each set of solicitors to pay the costs of and incidental to the application for reactivation. An acceptable timetable was provided and the matter was

reactivated. It will be interesting to monitor the progress of this claim against the new timetable.

What could happen without Case-flow?

I am hoping that you are beginning to see why case-flow management is important in ensuring efficient litigation and the administration of justice. This following example highlights exactly what can happen where matters are not subject to case-flow. This matter, which commenced in 2005, came before me while I was sitting in the Applications jurisdiction in the first half of 2009. The defendant applied for leave *nunc pro tunc* to file an amended counterclaim and to dismiss the plaintiff's claim for want of prosecution. The plaintiff was aware of the amended counterclaim and the defendant's intention to seek leave from the time it was served in July 2008. The defendant alleged that apart from filing the statement of claim in January 2005, a requirement to preserve a caveat lodged by the plaintiff over the defendant's land, the plaintiff took no further steps to advance the litigation. The plaintiff did not comply with consent orders. The last step taken by the plaintiff was in September 2007 when it provided the defendant with copies of disclosed documents after numerous requests from the defendants.

While hearing this matter, I was puzzled as to why it had not been subjected to case-flow management. It then became clear. The matter was a Townsville Supreme Court file. At this stage, case-flow management only applies to Brisbane Supreme Court files. If the matter was subject to case-flow management, directions would have demanded compliance with specific timeframes. If the plaintiff did not comply, the matter would have been deemed resolved. Instead, the kind of litigation that case-flow aims to prevent, was able to continue over four years with great cost to the parties and the court system.

Handy Hints for the Case-Flow Management System

Before I conclude, I would like to give you some handy hints about case-flow.

1. When drafting orders, always include a date by which a request for trial date is to be filed. Always include the guillotine order "or the matter will be deemed resolved" after the date for filing the request for trial date.
2. Always include specific dates for the timeframes rather than "14 days after the obligations in paragraph 2 are fulfilled."
3. Always consider the need for joint experts and the need for mediation.

4. If an extension to the current order is required, email my Associate a copy of the proposed consent order signed by all parties. An order will not be made by simply emailing and requesting an extension. A draft order must be provided.
5. Provide an explanation for the delay and the reasons why an extension is needed.
6. Be pro-active. As soon as it becomes clear that the request for trial date will not be filed in time, prepare a draft order. The majority of requests to extend orders come in very close to 4.00pm on the day the matter is to be deemed resolved. I will not consider orders after 4.00pm and it is at your own risk to wait until the day the matter is to be deemed resolved. It cannot be guaranteed that I will be available to make the order within the required time.
7. Finally, until case-flow management is subject to e-Filing, and to ensure your proposed order is considered within the shortest possible timeframe, when a proposed order is emailed to my Associate, include a scanned copy of the previous case-flow orders. This will reduce time in having to locate and search the file.

I will conclude my discussion with a matter which illustrates the benefits of case-flow in progressing matters to trial quickly, and thereby encouraging resolution by settlement. This matter had come before me a number of times during year for review, and was fraught with disagreements between the parties regarding expert reports, amending pleadings and determining damages. The parties assured me that it would be impossible to come to an agreement on anything let alone settlement. In April it became clear that the defendant was delaying proceedings by seeking to file a further amended defence and a further expert report. I made orders dispensing with the defendants' signatures on the request for trial date, and ordered that no further expert reports be filed, and that no evidence was to be led at trial except from experts whose reports were already exchanged. The matter was set down for trial on 20 July 2009.

Late on Friday 17 July, the plaintiff indicated that the matter had settled. However proceedings between the defendants and the third party were still on foot. On Monday 20 July counsel for one of the defendants indicated that proceedings had settled with the third party. The other defendants had sacked their counsel late on Friday afternoon and sought new legal advice. Ironically, and perhaps unsurprisingly, the new counsel provided the same

advice, and as a result, the matter settled. In court I asked the solicitor for the plaintiff whether the case-flow system assisted the resolution of this matter. He said he believed it had made the matter come on quickly. It is in the public interest for matters to be resolved by agreement between the parties if possible and trial if necessary.

Conclusion

The court expects the legal profession and parties to progress matters to resolution, by early formulation of final pleadings to define the issues, communication with all other parties involved to propose a case management plan and to prepare the matter for an early resolution through negotiation or mediation or trial, if it cannot be otherwise resolved. The case flow management system is designed to ensure that those expectations are met and to facilitate the just and expeditious resolution of the real issues in dispute at a minimum of expense.

Justice RG Atkinson

31 July 2009