

ADR Flash Bulletin



ADR Institute of Ontario, Inc.
ONTARIO DISPUTE RESOLUTION CENTRE

Here Comes Status Review – and More Mediations?

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This January is the two-year anniversary of the introduction of Rule 78, the “practice direction” that changed the mandatory mediation rule in Ontario. Many mediators saw a drop in mediation cases over the last two years, as the requirement for early mediation was relaxed. The reduced number of mediations may be about to increase.

Starting in September the Registrar began to enforce Rule 48 in Toronto Region, which is the rule governing Status Review. You will recall that Rule 48 has effectively been dormant, but under the Toronto Region Pilot Project¹ it will now be used as the single enforcement procedure in place of the various case management deadlines that were typical under Rule 77. Indeed, pursuant to a further direction issued by the Chief Justice in August of 2005, Rule 48 is to be the mechanism for ensuring civil litigation proceeds in a timely fashion throughout the province.

This will apply to the majority of civil actions whether they are governed by Rule 77 or by Rule 78. Any case that has a defence that is two years old will be receiving a Status Review notice, unless an extension has been granted.

Rule 78 requires that all cases be mediated prior to the pre-trial, and it is likely that most cases subject to status review have not yet been mediated. This means that as cases hit status review, they will be required to submit a schedule for the case that sets it down for trial within 12 months, potentially triggering a noticeable increase in the need for mediation, starting in January.

Here is a quick look at the numbers, according to Master Calum MacLeod. By January of 2007, the court will have sent out roughly 6000 status hearing notices, including all case managed files since 2001 that have not been set down. These are the cases outstanding prior to the practice direction. Starting in January of 2007, approximately 300 practice direction cases per month will be reaching the 2 year mark, and will be receiving notices. What is unknown, of course, is how many of these cases are still active and will continue on toward trial, and how many will be abandoned.

Should a large percentage of these cases remain active and require mediation, mediators in the GTA may start to see an increase in demand. The next six months will be the time to watch.

In the meantime, here is a quick summary of how status review works, and how it will unfold:

1. If the action has not been placed on the trial list or terminated by another means within two years of a statement of defence the Registrar will issue a status notice (Form 48C).
2. The status notice gives the plaintiff 90 days to either set the action down for trial, terminate the action or obtain an order at a status hearing allowing the action to continue.
3. Unless a status hearing is requested or one of the other positive steps is taken to bring the action to conclusion, the Registrar will dismiss the action with costs 90 days after the date of the status notice.
4. There are two options for responding to the status request. The first is to agree with the opposing party to a timetable to bring the matter to conclusion and providing the timetable does not require an extension of the Rule 48 deadline by more than one year, the status hearing may proceed in writing without either party attending. The second option is to request an actual hearing.
5. If a status hearing is requested the matter will be placed on a list before a case management master who will have all of the authority of a judge under Rule 48.14 as well as the authority to make orders under Rule 78.08, Rule 78.09 or Rule 77 as the case may be. It is expected that status hearings will begin in January and generally a master will be available for this purpose each day. When the request for status hearing is received by the court, the parties will receive a notice of status hearing and must attend on the scheduled date.
6. Parties may still avoid attendance if they file a status hearing in writing complying with Rule 78.08 (1) and (2) at least 7 days before the scheduled date.
7. At a status hearing the onus is on the plaintiff to show cause why the action should not be dismissed. The plaintiff must therefore have a plan to bring the action to conclusion.

It should be clear that status review is designed to bring closure, one way or another, on cases within a reasonable amount of time. It will be interesting to watch over the next year to see how effectively the status review mechanism will work for the system.

¹ The pilot project was implemented by Practice Direction and subsequently by Rule amendment effective January 1st, 2005. Rule 78 and corresponding amendments to Rules 77 and Rule 24.1 currently expire in May of 2008. Use of Rule 48 as a single enforcement deadline is a key component of the Pilot Project.

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