

# The Civil Trial in Ontario: The Culture Shift from the “Sport of Kings” Towards the “One Judge Model”

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Effective February 1, 2019, the Ontario Superior Court of Justice will implement the Provincial Civil Case Management Pilot – One Judge Model (the “**Pilot**”). Civil litigants may apply to participate in the Pilot in which a single judge will have carriage of the matter from its acceptance into the Pilot through to trial, including the procedural management and administration of the case through the civil court system.

The Pilot is another step towards reducing the civil court system’s delay, expense, and scarcity of resources and improving the orderly and efficient resolution of civil disputes. The time it takes to advance a civil matter to trial, and the cost associated with the procedure have led to proliferation of methods of alternative dispute resolution, a reduction in the number of civil trials and a general inability for regular citizens to engage in protracted litigation. “[P]rotracted litigation has become the sport of kings in the sense that only kings or equivalent can afford it.”<sup>[1]</sup>

Case management has been discussed in Ontario as a means to improve the efficient resolution of disputes since at least 1988.<sup>[2]</sup> In 1991, the Commercial List was established in the Toronto Region. Cases on the Commercial List have benefitted from a judiciary that is engaged in matters through chamber’s appointments, and informal and formal case management. It is anticipated that a judge who determines a substantive component of a proceeding on the Commercial List will continue to hear all subsequent substantive components in that proceeding.<sup>[3]</sup>

In 2010, the *Rules of Civil Procedure* were updated to include a streamlined process for civil case management under Rule 77 applicable to actions and applications in Ottawa, Toronto and the County of Essex. Under Rule 77.06(2), a judge designated to case manage a case cannot preside at the trial of the action, except with the written consent of all the parties.

In 2014, the Supreme Court of Canada commented in *Hyrniak v Mauldin* that a “culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system.”<sup>[4]</sup>

The introduction of the Pilot on February 1, 2019 may be the beginning of the culture shift in Ontario. Parties that apply for, and are accepted into the Pilot will have one judge that is assigned to case manage the action and preside over all pre-trial hearings, case management conferences, and the trial. The Pilot includes the following additional features:

- a different judge will preside over case conferences solely dedicated to settlement;
- no formal interlocutory motions will be scheduled without the approval of the case management judge – informal procedures will be used, including meetings in chambers or teleconferences;
- trial dates will be fixed at a relatively early stage of the proceedings along with a schedule for completing necessary steps prior to trial.

The Pilot Practice Advisory indicates that a variety of factors will be considered when determining whether to include a case in the Pilot, including:

- The complexity of the issues of fact or law;
- The importance to the public of the issues of fact or law;
- The number and type of parties or prospective parties, and whether they are represented;
- The number of proceedings involving the same or similar parties or causes of action;
- The amount of intervention by the court that the proceeding is likely to require;
- The time required for discovery, if applicable, and for preparation for trial or hearing;
- In the case of an action, the number of expert witnesses and other witnesses;
- The time required for the trial or hearing; and
- Whether there has been substantial delay in the conduct of the proceeding.<sup>[5]</sup>

The Pilot Practice Advisory supplements the existing region-specific practice directions and existing civil case management provisions under the *Rules of Civil Procedure*.

The benefits of the one judge model were discussed in a report of the Judiciary Committee of the American College of Trial Lawyers titled, *Working Smarter But not Harder in Canada: the Development of a Unified Approach to Case Management in Civil Litigation*. The report identifies several benefits to the one judge model, including, but not limited to:

- reducing the number, length and complexity of interlocutory disputes and motions;
- controlling the behaviour of the parties;
- ensuring that timelines and deadlines are imposed and adhered to; and
- allowing the case management judge to become familiar with the case, thereby increasing efficiency and consistency.<sup>[6]</sup>

The Pilot is a welcome development towards improving the efficient resolution of civil disputes in Ontario, and we encourage all stakeholders to consider the Pilot for their cases. The Pilot is expected to run for a period of two years.

Would your case benefit from the Pilot?

[1] *Kerr v Danier Leather Inc.* 2007 SCC 44, at para 63, as referred to in a report of the Judiciary Committee of the American College of Trial Lawyers, “*Working Smarter but not Harder in Canada: The Development of a Unified Approach to Case Management in Civil Litigation*” (American College of Trial Lawyers, 2016) at page 4 [the “**ACTL Report**”].

[2] The Joint Committee on Court Reform, “Report to the Attorney General of Ontario” (The Law Society of Upper Canada, 1988) as referred to in the ACTL Report at pages 9-10.

[3] Consolidated Practice Direction Concerning the Commercial List, online: Ontario Superior Court of Justice <<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/commercial/>>

[4] *Hyrniak v Mauldin*, 2014 SCC 7, at para 1, as referred to in the ACTL Report at page 4.

[5] Practice Advisory Concerning the Provincial Civil Case Management Pilot – One Judge Model, online: Ontario Superior Court of Justice, <<http://www.ontariocourts.ca/scj/practice/civil-case-management-pilot/>>.

[\[6\]](#) ACTL Report at page 7.

**The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.**

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