

Reducing Trial Delays or Coerced Settlements?

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The Toronto Region has recently announced a pilot project intended to combat the considerable delay civil actions face in getting to trial. Currently, it can take upwards of two years from the point at which the action has been set down to reach trial. Recent media attention has called the delay a “worsening disaster”. The Toronto Star^[1] identified one main cause of the delay as the diversion of court resources to criminal prosecutions which can be dismissed for unreasonable delay under the Charter. This has caused the diversion of court resources away from civil actions.

The new pilot project targets personal injury actions which account for a majority of civil actions on the Toronto trial dockets. The theory appears to be that most personal injury actions will settle on the eve of trial. Therefore, by forcing an earlier trial in personal injury actions, many matters will settle and be diverted from the court system, freeing up court resources to deal with the remaining matters in a more timely manner.

In order to achieve this, **Toronto is converting its fixed trial date system to a “running list” or “sittings” system.** The details include:

- Applies only to **personal injury jury trials (excluding med-mal), 2-3 weeks** in length
- Matters that already have fixed trial dates scheduled from September to December of 2017 will be moved to a four week sitting commencing November 27, 2017
- Matters that already have fixed trial dates from January to June 2018 will be moved to a four week sitting commencing June 4, 2018
- Pre-trials with fixed dates will proceed as scheduled, however there will also be a pre-trial blitz prior to each sitting

Counsel handling cases to which these criteria apply have already begun to receive notices from the court informing them that their cases are being rescheduled and that there will be no advance mechanism to opt out of the new sittings. Instead, any adjournment requests will be addressed during the sittings.

While this pilot project may achieve its aims, we think the sittings process will lead to the uncertainty and costs-duplication that occur in other jurisdictions with the sittings system. Lawyers will invariably have several cases on the same sitting, potentially requiring simultaneous preparation for multiple cases that might not even be reached during the sitting. Similarly, doctors and other expert witnesses will be preparing for and attempting to fit in numerous trials in a sitting, while attempting to maintain their practices. This Court-induced scrambling may well give both sides a reason to settle much earlier than waiting for the sittings which is, perhaps, exactly what the project is intended to achieve.

We will have to wait to see how these and other issues get resolved in the context of this new system. The overarching theme, however, appears to be a push to “settle, settle, settle,” continuing on the heels of mandatory mediation, still in operation in the Toronto Region. The success of the pilot project will determine whether additional sittings are scheduled after June 2018.

[\[i\] Ontario lawyers warn civil court delays a worsening ‘disaster’](#), January 23, 2017, The Toronto Star.