NEW FEDERAL COURT NOTICE ON TRIAL MANAGEMENT GUIDELINES

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On April 28, 2017, the Federal Court released a Notice to the Parties and the Profession on Trial Management Guidelines ("**Notice**"). This document lays out various pre-trial conduct that parties are to undertake. The Notice is stated to expressly apply to matters that are scheduled for trial for five or more days in Federal Court.

The Notice, which has twenty-one requirements, can be found on the Federal Court website.[1]

Any litigant with a matter currently pending before the Federal Court will want to review the Notice to ensure that they are in compliance with the court's directives. Among the topics covered in the Notice are:

- Timing of motions;
- Timing of a trial management conference;
- Process and requirements around marshaling expert reports and evidence;
- Agreed statements of issues, statements of fact and joint books of documents;
- Scheduling of trial proceedings and timing and closing of closing arguments;
- Stipulations on the ability to file written argument and length thereof.

Many of the provisions in the Notice involve practices which effective trial counsel may already employ either voluntarily or as a result of pre-trial procedures.

The preamble of the Notice refers to Rule 270 of the *Federal Courts Rules*, which permits a judge or prothonotary before whom an action has been set down for trial to hold a conference to consider any matter that may assist in the just and timely disposition of the action. That said, the pre-trial procedures outlined in the Notice are in many cases mandatory and go beyond the "consideration of matters". Many of these procedures are unlikely to be contentious. Others are not as clearly so.

For example, the Notice provides (without qualification) that if a party submits an expert report to the court, it is undertaking to call the expert witness. This presumably refers only to the requirement in the Notice that experts' reports, and a list of issues still in dispute, are to be submitted to the court two weeks before trial. Copies of these reports will have already been filed with the court as part of the pretrial memoranda for the

pretrial that takes place many months before trial. This “undertaking” provision of the Notice suggests that even if the parties settle an issue related to an expert after submitting the report, the party who filed the expert’s report must still call the expert witness. This would not clearly lead to timely disposition and is unlikely to be what the Federal Court would unequivocally require. It will be interesting to see how the Federal Court applies the Notice, particularly in the first few instances where a party does not comply.

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[1] http://cas-cdc-www02.cas-satj.gc.ca/fct-cf/pdf/Trial_management_guidelines_270417_eng%20(with%20COA).pdf[ps2id id='1' target='/]

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.