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## Advanced Civil Litigation for Paralegals

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# Complex Litigation

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## INTRODUCTION

Complex litigation presents unique challenges for litigants, lawyers, support staff and the courts. Each complex claim is unique. From class actions to professional negligence claims to corporate governance disputes, the background and context of a complex matter can vary from case to case. The best way to address complex litigation will be dependent on the degree of cooperation between the parties and their counsel, the number of separately represented parties involved in the matter, the number of issues that have to be decided, and whether extensive court supervision is required in the pre-trial process. There is no “correct” approach to dealing with complex litigation and what works in one case may not work in another. The purpose of this article is to address the obligations that parties have in a complex case and examine some of the ways to manage those obligations.

In complex litigation (as in any litigation) careful consideration needs to be given to the claim being made or defended with the most critical questions being, “what is the desired outcome for the client and is that outcome realistic?” Follow up considerations include asking what documentary evidence will be needed to achieve that outcome, who will need to be called as witnesses, will expert evidence be necessary to prove or respond to the claim, the possibility (or probability) that the client will not be able to achieve their desired outcome, whether there are issues raised in the pleadings that can be disposed of at an early stage and whether the costs of proving or defending the case are proportionate to the expected outcome. Every other decision respecting the management of a complex file, including whether a particular step is taken, should be made with the final result in mind. It also means that the case should be regularly re-evaluated as further information comes in from documents that are produced, the examination of witnesses at questioning and expert witness reports. New evidence may change the range of realistic outcomes, may take some issues off the table and may lead to a course correction in how the litigation is approached.

In remarks respecting the management of complex litigation to the Queensland Law Society’s Continuing Legal Education Society, Judge Richard Chesterman, then of the Queensland Supreme Court made a similar observation:

The point which I want to emphasise, and will repeat, is that managing complex litigation is about the means to an end, it is itself not the object. Litigation, like any intellectual endeavour requires that you first work out what it is you want to achieve and then examine the ways by which that end might be best achieved. It is the process of having disputes resolved by judicial