

## **Moving Ahead: Litigation Plans In Action**

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*Case Management, Litigation Plans, and the “Drop Dead” Rule*

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## **Moving Ahead - Litigation Plans in Action**

### **NEW RULE, OLD CONCEPT?**

One of the more controversial provisions of the new *Alberta Rules of Court*, A. Reg. 124/2010 (“New Rules”) is the requirement for complex case litigation plans. However, the Old Rules already contemplated the use of “litigation plans”. For example, the Old Rules allowed parties to serve a proposal as to the timing of the litigation on the other parties. The Old Rules provided that:

Rule 243.2(1) Any party to an action may serve a proposal on another party opposite in interest proposing the pace or timing for some act relating to the action that is already permitted by law, and in default of a written agreement being entered into between those parties in respect of that proposal, either party may move for directions respecting the pace or timing of any act that was the subject of that proposal.

(2) This Rule may be used from time to time.

Furthermore, the Very Long Trial Practice Note required the completion of a case timetable to be determined during the scheduling conference with the Case Management Judge (paragraph 18).

Despite the existence of Rule 243.2 (proclaimed in 1994) and the Very Long Trial Practice Note, the proposal was rarely used in the litigation process. The New Rules, on the other hand, make such a proposal, known as a Litigation Plan, mandatory in certain circumstances.

These Litigation Plans can be useful tools for Plaintiffs’ counsel who are seeking to move their clients claims forward. This is especially important in light of Rule 4.33, the drop-dead Rule, which requires that a step in the litigation should be completed within two years of the last thing done that significantly advanced an action.

### **RESPONSIBILITIES OF THE PARTIES**

The purpose of the New Rules is to allow the parties to manage their own disputes themselves. Only if disputes on the handling of the litigation occur will the Court provide guidance on the litigation process. This is set out in Rule 4.1 which makes it clear that:

4.1 The parties are responsible for managing their dispute and for planning its resolution in a timely and cost effective way.

In achieving this goal, Rule 4.2 outlines what the specific responsibilities of the parties include.

Rule 4.2 states:

- 4.2 The responsibility of the parties to manage their dispute and to plan its resolution requires the parties:
- (a) to act in a manner that furthers the purpose and intention of these rules described in rule 1.2 [*Purpose and intention of these rules*],
  - (b) in an action categorized as a standard case, to respond in a substantive way and within a reasonable time to any proposal for the conduct of an action,
  - (c) in an action categorized as a complex case, to meet or to adjust dates in a timely way in a complex case litigation plan,
  - (d) when the complexity or the nature of an action requires it, to apply to the Court for direction, or request case management under rule 4.12 [*Request for case management*], and
  - (e) to consider and engage in one or more dispute resolution processes described in rule 4.16(1) [*Dispute resolution processes*] unless the Court waives that requirement.

As such, the New Rules are clear that the Parties have the joint responsibility of moving the claim forward. Sometimes, however, a Plaintiff may find that Defence counsel is non-responsive to requests from Plaintiff's counsel to move a claim forward. In these rare instances, the provision of a proposed Litigation Plan can be used to set out deadlines for the remaining steps in the litigation.

#### **EXCEPTIONS TO PART 4**

In an action commenced by Originating Application, Parts 4 [*Managing Litigation*] and 5 [*Disclosure of Information*] do not apply. However, the parties can agree that these parts of the New Rules apply, or alternatively a Court can order that these parts apply, to actions commenced by Originating Application. Rule 3.10 states:

Part 4 [*Managing Litigation*] and Part 5 [*Disclosure of Information*] do not apply to an action started by originating application unless the parties otherwise agree or the Court otherwise orders.

As such, in an action commenced by originating application, a complex case litigation plan will not be required unless the parties agree that Part 4 applies, or the Court orders that Part 4 applies.