

Pharma in brief - Canada

Federal Court releases new case-management guidelines for prohibition applications

Instrument: “Case Management Guidelines for NOC Applications”, further to the *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133 (as am.) (the **Regulations**)
Date released: Presented 12 May 2016 at CBA IP Day Town Hall; on the Federal Court website 20 May 2016

Summary

The Federal Court has introduced new guidelines for the case-management of prohibition applications under the *Regulations*. The new guidelines were presented by Chief Justice Crampton, Justice Manson, and Prothonotary Tabib at the Canadian Bar Association’s 2016 IP Day Town Hall meeting. They build upon a practice direction that has been in effect for proceedings of this kind since 7 January 2008 and outline procedures that emphasise early scheduling, strict time management, narrowing of issues, and limiting the amount of material to be reviewed by hearing judges. They also introduce a general rule that all Federal Court cases (including infringement/impeachment and section 8 actions) will be heard on a fixed-end basis.

As explained at the Town Hall, these guidelines are effective immediately and apply to all new prohibition applications, as well as ongoing matters provided they are early enough in the process.

New guidelines

The new guidelines are not absolute, but will be applied by case-management and hearing judges in the absence of exceptional reasons for departing from this approach. In part, they reiterate the process already defined by the *Regulations* and familiar to litigants today. Among the new policies introduced, the following are highlights:

- **Claims construction.** Parties are now required to submit claims charts, in a format to be set by the Court, prior to hearing. A CMC will follow with a view to limiting claims construction issues. At the Town Hall, claims charts and construction were a topic of significant discussion. The Court wants parties to consider having claims construction decided before the main hearing and, if the parties agree, will try to facilitate this under a process akin to the *Markman* hearings used for this purpose in the United States. This is expected to be an area of ongoing interest and development.
- **Hearings and evidence.** Hearings will not be scheduled for more than five days; they should generally be completed in two to three days. All hearings and trials generally in the Federal Court will be conducted on a fixed-end basis (i.e., in the time allotted at scheduling). Parties remain limited to five experts each. These guidelines may be varied in extraordinary circumstances. In addition, parties are now required to serve and file compendia based upon the references cited in their respective memoranda of fact and law. The Court also welcomes outlines and compendia of argument.

- **Early and increased case management.** A case-management conference presided over by both the case-management and hearing judges should be held within 30 days after the requisition for hearing has been filed; at the Town Hall, it was emphasised that this filing should occur as early as possible to facilitate early scheduling of a hearing date. Further case or hearing-management conferences should be held two months, 90 days, and 30 days before the scheduled hearing date. As the hearing approaches, the parties will be expected to discuss motions and other scheduling, settlement and mediation prospects, narrowing and identification of issues and evidence, and agreed statements of facts and/or documents (with significant costs consequences for parties that fail to reasonably agree).

To access a complete copy of the new guidelines, as well as the previous practice direction, follow the links below.

Links to guidelines:

[Notice to the Parties and Profession \(May 2016\): Case Management Guidelines for NOC Applications](#)

[Notice to the Parties and Profession \(7 December 2007\): Practice Direction — NOC Proceedings](#)

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