Timetables

Litigation timetables can be extraordinarily lengthy. The general presumption is that any delay is prejudicial to clients' interest and to the proper function of the judicial system. As a firm, therefore, we strive to obtain tight timetables and execute them as written. Our interactions with opposing counsel must go to this point: we do not brook delay without a reasonable justification.

Taking such a stance, which many legal professionals view as hard-line, requires us to behave beyond reproach.

Clients may upset a tight litigation schedule. Litigation planning must account for the client's disposition, the amount and kind of evidence to hand, and the complexity of the issue(s).

Definition

From the *Rules of Civil Procedure*, s. 1.03 –

> “timetable” means a schedule for the completion of one or more steps required to advance the proceeding (including delivery of affidavits of documents, examinations under oath, where available, or motions), established by order of the court or by written agreement of the parties that is not contrary to an order

A timetable is a binding document created by the parties or the Court. It is a written instrument that provides the Court and parties with an expectation as to the date on which a matter is ready for hearing or trial. The *Rules* provide penalties for failure to abide by a timetable. Proceedings may by stayed, a pleading struck, or the Court will prescribe a remedy.

Pleadings

A timetable is not required for pleadings, and the timetable will run from the close of pleadings–that is, when the time for replies has expired.

Applications

An application runs only on the timeline establish by the client's needs.

A notice of appearance or defence is required within thirty (30) days. When we reply to an application, we file a notice of appearance immediately.

Until a notice of appearance is filed, we do not communicate with opposing counsel or with the respondent to an application. The respondent must file a notice of appearance in order to take part in the proceeding. After thirty days, we obtain a hearing date even if the other party has not filed a notice of appearance. Once a hearing date is obtained, the respondent is provided with one notification of the hearing date and time.

Defending an action

When we defend a claim, we serve and file the defence within thirty days, unless time is so short that we must request an extension. If we request an extension, we always specify a date on which the defence will be served and filed.

Our practice is to allow reasonable extensions of time for serving a defence. Opposing counsel, however, may **never** be allowed an open-ended extension of time. Counsel must agree to deliver a defence on a set date, or risk being noted in default. Open-ended dates lead to delays.

Counsel will sometimes object to our insistence on a fixed date on which they must deliver a defence. Such objections are opposing counsel's problem. If counsel wants to receive an indefinite extension of time, we will deny the extension and note default. This fact should be clearly communicated to opposing counsel.

We waive the requirement to deliver a notice of intent to defend when counsel makes initial contact.

The basic table (for actions)

Covering letter for time-table sent to opposing counsel

Basic time-table for an action

The basic table (for applications)

n.b. This timetable is used for non-urgent applications. If an urgent application is necessary, see below.

Item	Relative time	Date	Comments
Notice of application issued	*Initio*	*Fill in date*	All relative dates calculated from this date.
Obtain hearing date	*Initio*	*Fill in date*	Same date as notice of application issues.
Reminder to parties	+ 30 days		A single reminder to parties if they have not filed a notice of appearance.
Exchange affidavits	+ 60 days		Affidavits should be in process before the notice of application is filed.
Notice for possible motions	+ 60 days		Motions (both sides) to be heard in consolidated hearing.
Cross-examination on affidavits	+ 120 days		Only if necessary; may require leave of the Court.
Supplementary affidavits	+ 120 days		Standard procedure for contesting evidence.
Motions hearing	+ 150 days		Only if necessary; all motions heard at once. Motions may be sequenced.
Hearing of application	+ 180 days		Scheduled when filing application.

Table for an urgent application

Item	Relative time	Date	Comments
Notice of application issued	*Initio*	*Fill in date*	All relative dates calculated from this date.
Obtain hearing date	*Initio*	*Fill in date*	Same date as notice of application issues.
Applicant's affidavit	*Initio*		Served with application.
Reminder to parties	+ 5 days		A single reminder to parties if they have not filed a notice of appearance.
Notice for possible motions	+ 10 days		Motions (both sides) to be heard at hearing.
Supplementary affidavits	+ 14 days		Standard procedure for contesting evidence.
Hearing of application	+ 21 days		Scheduled when filing application.

Failure to respect timetable

The Court of Appeal eloquently stated the judicial approach to breaches of timetables:

> procedural rules are the servants of justice not its master. We must allow some latitude for unexpected and unusual contingencies that make it difficult or impossible for a party to comply. We should strive to avoid a purely formalistic and mechanical application of timelines that would penalize parties for technical non-compliance and frustrate the fundamental goal of resolving disputes on their merits. 2012 ONCA 544, para. 19

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