

# Lawyers Should be Prepared at Case Conferences (Think Research Corp. v. N & M Medical Enterprises)

Case Conferences | Civil Procedure | Litigation | Litigation & Dispute Resolution

22 January 2024

The backlog of cases in Ontario's civil justice system has, for some time, raised alarms about the health of this important democratic institution and questions about access to justice. The media has reported that there are currently more than two dozen vacant positions at the Superior Court of Justice and two vacancies at the Court of Appeal for Ontario. However, the backlog of cases may need more than the filling of judicial vacancies or the hiring of additional judges in order to be resolved.

Recently, some judges are beginning to use their powers under rule 50.13(6) of the *Rules of Civil Procedure* (the “**Rules**”) to potentially ease the backlog of cases by making substantive orders at case conferences.

In *Think Research Corp. v. N & M Medical Enterprises Inc.*, 2023 ONSC 6910 (CanLII), the court granted substantive relief at a case conference. In doing so, the court explained the importance of the invaluable power contained in rule 50.13(6) of the *Rules*.

In this case, the applicant bought shares in a business for a price that provided for an adjustment after closing based on net working capital, as defined in the share purchase agreement. If the parties were unable to agree on that calculation, the agreement provided options for the appointment of certain named accounting firms to assist. The responsibility for providing initial calculations rested with the applicant. However, due to complications in arriving at the calculations, the applicant was unable to provide them until eight months after closing.

Discussions and emails followed, but the parties were unable to reach a resolution regarding the calculations. Eventually, the applicant delivered a notice to appoint an accounting firm to make the net working capital calculation. A date for the hearing of the application on the merits would not have been available for more than a year later.

At the case conference, the seller contended that the applicant buyer had lost its right to have an independent accountant appointed under the share purchase agreement, that evidence was necessary in order to deal with the merits of the application (so that, among other things, an exchange of emails between the parties could be properly interpreted and placed in their proper context), and that, moreover, the court had no power to grant substantive relief at the case conference.

The case conference judge rejected all of the respondent seller's arguments.

With respect to the ability to grant substantive relief at the case conference, the judge explained that the matter had first come before the court at a previous case conference that resulted in an order scheduling a further case conference at which “[t]he object of the case conference will be to make a determination on the merits of the application.” The endorsement further provided that both sides could deliver a case conference memo of up to 10 double-spaced pages setting out their respective positions.

The case conference judge also referred to [rule 50.13\(6\)](#) which expressly stated that a case conference judge has the power to:

- a. Make a procedural order;
- b. Convene a pre-trial conference;
- c. Give directions; and
- d. In the case of a judge,
- e. Make an order for interlocutory relief; or
- f. Convene a hearing.

In the circumstances, it was clear that the object of the case conference was to determine the merits of the application. A party could not simply make bald assertions that application records and factums should be exchanged and cross-examinations should be conducted to avoid the granting of substantive relief.

The case conference judge was also cognizant of the delays in the justice system, noting that the first date for a long motion (one over two hours long) was late June 2025 and that some litigants were potentially tactically taking advantage of the backlog of cases to increase delay by insisting on a full-blown process. This was contrary to principles of proportionality which is also enshrined under [rule 1.04](#) of the Rules.

The case conference judge explained that “[t]he failure to provide the relief requested would...allow the court to be ‘burdened by its own procedure’ to the point that it would ‘impede the very justice we are striving to protect’.”

Accordingly, the case conference judge concluded that it was proportional to grant the applicant buyer the relief requested. There was no reason to refuse the appointment of an accountant in the circumstances and no prejudice to the seller since it was only being asked to live with their agreement..

In my view, although the decision in this case is justifiable given the court’s order at the previous case conference which clearly signalled that the subsequent case conference was to determine the merits of the application, lawyers should not be taken by surprise at a case conference. A judge should not grant substantive relief at a case conference without prior notice to the parties and without the ability of the parties to file some form of written argument or materials, whether in the form of a 10-page memo or an aide memoire. Lawyers and their clients are entitled to fair hearings.

However that said, the key takeaway from this case is that a judge has the power to make a substantive order at a case conference. Lawyers should therefore be adequately prepared to deal with a client’s case and the issues that might arise at a case conference.

It remains to be seen whether, as long as there is a backlog of cases in our civil justice system and a “motions culture” within the profession, judges will utilize their powers to grant substantive relief at case conferences more and more. A PDF version is available to download [here](#).

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