

RULE 50

PRE-TRIAL CONFERENCE

PURPOSE

50.01 The purpose of this Rule is to provide an opportunity for the issues in a proceeding to be settled without a hearing and, with respect to any issues that are not settled, to obtain from the court directions to assist in the just, most expeditious and least expensive disposition of the proceeding, including directions to ensure that any trial or hearing proceeds in an orderly and efficient manner.

PRE-TRIAL CONFERENCES FOR ACTIONS

- 50.02** (1) A pre-trial conference before a judge is mandatory for actions unless otherwise directed by a judge.
- (2) Any party to an action may deliver a request to the case management coordinator for a pre-trial conference and shall confirm to the case management coordinator whether the purpose of the pre-trial conference is settlement or trial readiness and, where the parties are unable to agree, the pre-trial conference shall be deemed to be for the purpose of trial readiness.
- (3) After reviewing the request from the parties, the court may set down a date, time, and place for a pre-trial conference or give such other directions as it considers necessary or advisable with respect to the conduct of the action.
- (4) The case management coordinator shall deliver notice to every party of the date, time, and place of the pre-trial conference.
- (5) Parties to an action in the Small Claims Section may be directed by the Registrar to appear before a judge for a pre-trial conference and, upon review of that direction, the court may set down a date, time, and place for a pre-trial conference or give such other directions as it considers necessary or advisable with respect to the conduct of the action.

PRE-TRIAL CONFERENCES FOR APPLICATIONS

50.03 In an application, a judge may at any time, on their own initiative or at a party's request, direct that a pre-trial conference be held before a judge.

MEMORANDUM TO BE SERVED AND FILED

50.04 At least seven days before a pre-trial conference, each party shall file

with proof of service a pre-trial conference memorandum (Form 50A).

PARTICIPATION

Attendance

50.05 (1) The lawyers for the parties shall appear at the pre-trial conference and, unless the presiding judge directs otherwise, the parties shall also appear at the pre-trial conference.

Authority to Settle

(2) A party who requires another person's approval before agreeing to a settlement shall, before the pre-trial conference, arrange to have immediate access to the other person throughout the pre-trial conference.

Duty of Lawyers

(3) Every lawyer attending the pre-trial conference shall ensure that they have the authority to deal with the matters referred to in Rule 50.06 and they are fully acquainted with the facts and legal issues in the proceeding.

MATTERS TO BE CONSIDERED

50.06 The following matters may be considered at a pre-trial conference:

1. The possibility of settlement of any or all of the issues in the proceeding.
2. Simplification of the issues.
3. The possibility of obtaining admissions that may facilitate the hearing.
4. The question of liability.
5. The amount of damages, if damages are claimed.
6. The estimated duration of the trial or hearing.
7. The advisability of having the court appoint an expert.
8. The number of expert witnesses and other witnesses that may be called by each party, and dates for the service of any outstanding or supplementary experts' reports.
9. The advisability of directing a reference.
10. Any other matter that may assist in the just, most expeditious and least expensive disposition of the proceeding.

DOCUMENTS TO BE MADE AVAILABLE

50.07 All documents intended to be used at the trial or hearing that may be of assistance in achieving the purposes of a pre-trial conference, such as any medical reports and reports of experts, shall be provided to the presiding judge at the pre-trial conference.

POWERS

Conduct of the Proceedings

- 50.08** (1) If the proceeding is not settled at the pre-trial conference, the presiding judge may
- (a) establish a timetable for the parties;
 - (b) direct the parties to a case management conference;
 - (c) continue the pre-trial conference on another date if the judge considers it necessary or advisable to do so;
 - (d) direct the parties to participate in an additional pre-trial conference for the purpose of readiness for the trial or hearing;
 - (e) authorize dates for the trial or hearing of the proceeding;
- and
- (f) give such other directions as the judge considers necessary or advisable with respect to the conduct of the proceeding.

Memorandum or Order

- (2) If the proceeding is settled at the pre-trial conference, the parties or their lawyers may sign a memorandum setting out the results of the pre-trial conference and the presiding judge may make such order as is considered necessary or advisable with respect to the conduct of the proceeding.

Memorandum or Order Binds Parties

- (3) A memorandum or order made under this Rule binds the parties unless the judge presiding at the trial or hearing of the proceeding orders otherwise to prevent injustice.

Copy of Memorandum or Order

- (4) A copy of any memorandum or order made under this Rule shall be placed with the trial or application record.

NO DISCLOSURE

50.09 No communication shall be made to the judge presiding at the hearing of the proceeding or a motion or reference in the proceeding with respect to any statement made at a pre-trial conference, except as disclosed in a memorandum or order under Rule 50.08.

PRE-TRIAL JUDGE NOT TO PRESIDE AT TRIAL OR HEARING

50.10 A judge who conducts a pre-trial conference shall not preside at the trial of the action or the hearing of the application, except with the written consent of all parties.

CONFERENCE BEFORE TRIAL OR HEARING JUDGE

50.11 Rule 50.10 does not prevent a judge before whom a proceeding has been called for hearing from holding a conference either before or during the hearing to consider any matter that may assist in the just, most expeditious and least expensive disposition of the proceeding without disqualifying the judge from presiding at the hearing.

COSTS OF PRE-TRIAL CONFERENCE

50.12 At the pre-trial conference, the presiding judge may make an order for costs of the conference but, in the absence of such an order, the costs shall be assessed as part of the costs of the proceeding.

CASE MANAGEMENT CONFERENCES

50.13 A judge presiding at a pre-trial conference may at any time, on their own initiative or at a party's request, direct that a case management conference be held before a judge or the case management coordinator.

PRE-TRIAL CONFERENCE BY TELEPHONE OR VIDEO CONFERENCE

50.14 Where all lawyers and parties participating in a pre-trial conference consent, and the presiding judge considers it necessary or advisable to do so, the presiding judge may authorize the pre-trial conference to be conducted by telephone or video conference.

Where a previous court order arose from a pre-trial conference, the trial judge found that it related to “the conduct of the proceeding” under Rule 50.02, but set the order aside in its entirety, with two specified exceptions.

Ayangma v. P.S.A.C. and P.E.I.H.R.C., 2014 PECA 15

Rule 50.07 does not prevent a judge before whom a proceeding has been called for a hearing from holding a conference either before or during the hearing to consider any matter that may assist in the just, most expeditious and least expensive disposition of the proceeding without disqualifying the judge from presiding at the hearing. This rule differentiates and excepts that kind of conference from a pre-trial conference.

Ayangma v. P.E.I. Teachers’ Federation, 2014 PECA 9

Rule 50 does not apply in the case of a Memorandum of Settlement and Release where a party to the proceeding was not a party which resulted in the Agreement. Where a party to the Memorandum of Settlement and Release provides the documentation voluntarily, it is not protected by any pre-trial confidentiality contemplated by Rule 50.

MacDonald v. Underhay, 2003 PESCAD 14

Documents and communications disclosed during a pre-trial conference may not be subsequently disclosed for any purpose unless they were part of or contained in a memorandum signed by all the parties or, alternatively, the disclosure has been ordered by the court.