

## PRE-TRIAL PROCEDURES

### RULE 46

#### PLACE OF TRIAL

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##### **To be Named in Statement of Claim**

- 46.01** (1) The plaintiff shall name in the statement of claim the place where he proposes the action is to be tried.
- (2) Where no place has been named for the trial of the action the place shall be where the statement of claim was issued.
- (3) In a divorce action the place of trial shall be named in accordance with Rule 70.17, and in a family law proceeding it shall be named in accordance with Rule 71.05.

##### **Changing Place of Trial**

- 46.02** The court on motion of any party may order that the trial be held at a place other than determined by Rule 46.01 where the court is satisfied that,
- (a) the balance of convenience substantially favours the holding of the trial at another place; or
- (b) it is likely that a fair trial cannot be had at the place named in the statement of claim.

*TMC Avion Inc. v. Lapegna et al. v. Holland et al.*, 2020 PESC 13

The court stated that the issue of *forum non conveniens* should be analyzed only once jurisdiction is established.

*Polar Foods v. Jensen*, 2002 PESCTD 63

The defendant's motion to stay the proceeding on the grounds of *forum non conveniens* was dismissed because the defendant did not establish there was a more convenient or appropriate forum than P.E.I.

*DesRoches v. Di-Carra Inc.*, [1999] P.E.I.J. No. 107 (Q.L.) (P.E.I.S.C.T.D.)

The defendant brought a motion to change the place of trial from the place named in the statement of claim. The motion was granted. The defendant had established, on the balance of convenience, that the trial should be held at a place other than the place named by the plaintiff in the statement of claim.