

RULE 50

PRE-TRIAL CONFERENCE

WHERE AVAILABLE

- 50.01** (1) In an action or application, a judge may, at the request of a party or on his or her own initiative, direct the lawyers for the parties, either with or without the parties, and any party not represented by a lawyer, to appear before a judge for a pre-trial conference to consider,
- (a) the possibility of settlement of any or all of the issues in the proceeding;
 - (b) the simplification of the issues;
 - (c) the possibility of obtaining admissions that may facilitate the hearing;
 - (d) the question of liability;
 - (e) the amount of damages, where damages are claimed;
 - (f) the estimated duration of the hearing;
 - (g) the advisability of having the court appoint an expert;
 - (h) the advisability of fixing a date for the hearing;
 - (i) the advisability of directing a reference; and
 - (j) any other matter that may assist in the just, most expeditious and least expensive disposition of the proceeding.
- (2) A pre-trial conference shall not be necessary in any matter in the Small Claims Section unless a judge at the request of a party or on his or her own initiative directs a pre-trial conference.
- (3) Each of the parties to an action in regard to which a pre-trial conference is to be held shall file with the court, with proof of service on each opposite party, a pre-trial conference memorandum (Form 50 A) at least seven days before the date set for the conference.

MEMORANDUM OR ORDER

- 50.02** (1) At the conclusion of the conference,
- (a) counsel may sign a memorandum setting out the results of the conference; and
 - (b) the judge may make such order as he considers necessary or advisable with respect to the conduct of the proceeding, and the memorandum or order binds the parties unless the judge

presiding at the hearing of the proceeding orders otherwise to prevent injustice.

- (2) A copy of a memorandum or order under subrule (1) shall be placed with the trial or application record.

NO DISCLOSURE TO THE COURT

50.03 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 the memorandum or order under Rule 50.02.

PRE-TRIAL JUDGE CANNOT BE TRIAL JUDGE

- 50.04** (1) Subject to subrule 50.04(2), a judge who conducts a pre-trial conference shall not preside at the hearing of the application.
- (2) Where a pre-trial conference in a divorce action or an action under the *Family Law Act* has resolved all the issues, the judge who conducted the pre-trial conference may preside at the trial on consent of the parties.

EVIDENCE TO BE MADE AVAILABLE

- 50.05** (1) All documents intended to be used at the hearing that may be of assistance in achieving the purposes of a pre-trial conference, such as medical reports and reports of experts, shall be made available to the pre-trial conference judge.
- (2) Each party shall disclose at the pre-trial conference the names of the witnesses intended to be called at the trial and a short resumé of the evidence that witnesses will be giving at the trial.
 - (3) Where a party, after making the disclosure in subrule (2), discovers a further witness that he intends to call, the party shall forthwith make disclosure to the other party of the name of the witness and his intended evidence.
 - (4) Where a party fails to make disclosure under this rule, the party shall not be permitted to call that witness at the trial except with leave of the trial judge.

COSTS OF PRE-TRIAL CONFERENCE

50.06 A judge who conducts a pre-trial conference may make an order for costs of the pre-trial conference but in the absence of such an order the costs shall be assessed as part of the costs of the proceeding.

CONFERENCE BEFORE TRIAL JUDGE

50.07 Subrule 50.04(1) 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 themselves from presiding at the hearing.

PRE-TRIAL CONFERENCE BY CONFERENCE TELEPHONE

50.08 Where all counsel and parties not represented by counsel participating in the pre-trial conference and the judge or other officer of the court conducting it consent, the pre-trial conference may be conducted by means of a conference telephone call.

Zenner & Zerd v. Flanagan et ors., 2022 PESC 29

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.