

RULE 55
PROCEDURE ON A REFERENCE

GENERAL PROVISIONS FOR CONDUCT OF REFERENCE

Simple Procedure to be Adopted

- 55.01** (1) A referee shall, subject to any directions contained in the order directing the reference, devise and adopt the simplest, least expensive and most expeditious manner of conducting the reference and may,
- (a) give such directions as are necessary; and
 - (b) dispense with any procedure ordinarily taken that the referee considers to be unnecessary, or adopt a procedure different from that ordinarily taken.

Special Circumstances to be Reported

- (2) A referee shall report on any special circumstances relating to the reference and shall generally inquire into, decide and report on all matters relating to the reference as fully as if they had been specifically referred.

General Procedure

- (3) Subject to subrule (1), a reference shall be conducted as far as possible in accordance with Rules 55.01 to 55.07.

PROCEDURE ON A REFERENCE GENERALLY

Hearing for Directions

- 55.02** (1) The party having carriage of the reference shall forthwith have the order directing the reference signed and entered and, within ten days after entry, request an appointment with the referee for a hearing to consider directions for the reference and, in default, any other party having an interest in the reference may assume carriage of it.

- (2) A notice of hearing for directions (Form 55A) and a copy of the order directing the reference shall be served on every other party to the proceeding at least five days before the hearing unless the referee directs or these rules provide otherwise.

Directions

- (3) At the hearing for directions, the referee shall give such directions for the conduct of the reference as are just, including,
 - (a) the time and place at which the reference is to proceed;
 - (b) any special directions concerning the parties who are to attend; and
 - (c) any special directions concerning what evidence is to be received and how documents are to be proved.
- (4) The directions may be varied or supplemented during the course of the reference.

Adding Parties

- (5) Where it appears to the referee that any person ought to be added as a party to the proceeding, the referee may make an order adding the person as a defendant or respondent and direct that the order, together with the order directing the reference and a notice to party added on reference (Form 55B), be served on the person, and on being served the person becomes a party to the proceeding.
- (6) A person served with a notice under subrule (5) may make a motion to a judge to set aside or vary the order directing the reference or the order adding the person as a party, by a notice of motion served within ten days after service of the notice under subrule (5), or where the person is served outside Prince Edward Island, within such further time as the referee directs, and naming the first available hearing date that is at least three days after service of the notice of motion.

Failure to Appear on Reference

- (7) A party who is served with notice of reference under subrule (2) or (5) and does not appear in response to the notice is not entitled to notice of any step in the reference and need not be served with any document in the reference, unless the referee orders otherwise.

Representation of Parties with Similar Interests

- (8) Where it appears to the referee that two or more parties have substantially similar interests and can be adequately represented as a class, the referee may require them to be represented by the same lawyer and, where they cannot agree on a lawyer to represent them, the referee may designate a lawyer on such terms as are just.
- (9) Where one of the parties referred to in subrule (8) insists on being represented by a different lawyer, he or she shall not recover the costs of his or her separate representation and, unless the referee orders otherwise, shall pay all costs incurred by the other parties as a result of his or her separate representation.

Amendment of Pleadings

- (10) The referee may grant leave to make any necessary amendments to the pleadings that are not inconsistent with the order of reference.

Procedure Book

- (11) The referee shall keep a procedure book in which he or she shall note all steps taken and all directions given in respect of the reference, and the directions need not be embodied in a formal order or report to bind the parties.

Transferring Carriage of Reference

- (12) Where the party having carriage of the reference does not proceed with reasonable diligence, the referee may, on the motion of any other interested party, transfer the carriage of the reference to another party.

Evidence of Witnesses

- (13) Witnesses on a reference shall be examined orally unless the referee directs otherwise, and evidence taken orally shall be recorded.
- (14) The attendance of a person to be examined on a reference may be compelled in the same manner as provided in Rule 53 for a witness at a trial.

Expert Witness

- (14.1) Rule 53.03 (expert witness) and Rule 53.08 (evidence admissible only with leave) apply, with necessary modifications, to the calling of an expert witness on a reference.

Expert Appointed by Reference

- (14.2) A referee may appoint an independent expert and Rule 52.03 (court appointed experts) applies, with necessary modifications.

Examination of Party and Production of Documents

- (15) The referee may require any party to be examined and to produce such documents as the referee thinks fit and may give directions for their inspection by any other party.

Filing of Documents

- (16) While a reference is pending, all documents relating to it shall be filed with the referee and, on completion of the reference, the documents shall be returned to the office in which the proceeding was commenced.

Execution or Delivery of Instrument

- (17) Where a person refuses or neglects to execute or deliver an instrument that becomes necessary under an order directing the reference, the referee may give directions for its execution or delivery.

Rulings

- (18) Where the referee has made a ruling on the admissibility of evidence or any other matter relating to the conduct of the reference the referee shall, on the request of any party, set out the ruling and the reasons for it in the report or, in the discretion of the referee, in an interim report on the reference.

Preparation of Report

- (19) When the hearing of the reference is completed, the referee shall fix a date to settle the report and the party having carriage of the reference shall serve notice of the date on all parties who appeared on the reference unless the referee dispenses with notice.
- (20) The party having carriage of the reference shall prepare a draft report and present it to the referee on the day fixed for settling the report.
- (21) When the referee has settled and signed the report, the party having carriage of the reference shall forthwith serve it on all parties who appeared on the reference and file a copy with proof of service.
- (22) In a proceeding for the administration of the estate of a deceased person, the report shall, as far as possible, be in Form 55 C.

PROCEDURE TO ASCERTAIN INTERESTED PERSONS AND VERIFY CLAIMS

Publication of Advertisements

- 55.03** (1) The referee may direct the publication of advertisements for creditors or beneficiaries of an estate or trust, other unascertained persons, or their successors.

Filing of Claims

- (2) The advertisement shall specify a date by which and a place where interested persons may file their claims and shall notify them that, unless their claims are so filed, they may be excluded from the benefit of the order, but the referee may nevertheless accept a claim at a later time.

Examination of Claims

- (3) Before the day specified by the referee for the consideration of claims filed in response to the advertisement, the executor, administrator or trustee, or such other person as the referee directs, shall examine the claims and prepare an affidavit verifying a list of the claims filed in response to the advertisement and stating which claims he or she believes should be disallowed and the reasons for that belief.

Adjudication of Contested Claims

- (4) If a claim is contested, the referee shall order that a notice of contested claim (Form 55D), fixing a date for adjudication of claim, be served on the claimant.

PROCEDURE ON TAKING OF ACCOUNTS

Powers of Referee

- 55.04** (1) On the taking of accounts, the referee may,
- (a) take the accounts with rests or otherwise;
 - (b) take account of money received or that might have been received but for wilful neglect or default;
 - (c) make allowance for occupation rent and determine the amount;
 - (d) take into account necessary repairs, lasting improvements, costs and other expenses properly incurred; and
 - (e) make all just allowances.

Preparation of Accounts

- (2) Where an account is to be taken, the party required to account, unless the referee directs otherwise, shall prepare the account in debit and credit form, verified by affidavit.
- (3) The items on each side of the account shall be numbered consecutively, and the account shall be referred to in the affidavit as an exhibit and shall not be attached to the affidavit.

Books of Account as Proof

- (4) The referee may direct that the books in which the accounts have been kept be taken as prima facie proof of the matters contained in them.

Production of Vouchers

- (5) Before hearing a reference, the referee may fix a date for the purpose of taking the accounts and may direct the production and inspection of vouchers and, where appropriate, cross-examination of the party required to account on his or her affidavit, with a view to ascertaining what is admitted and what is contested between the parties.

Questioning Accounts

- (6) A party who questions an account shall give particulars of the objection, with specific reference by number to the item in question, to the party required to account, and the referee may require the party to give further particulars of the objection.

DIRECTION FOR PAYMENT OF MONEY

Payment into Financial Institution

- 55.05** (1) Where under an order directing a reference the referee directs money to be paid at a specified time and place, the referee shall direct it to be paid into a financial institution to the credit of the party entitled and the Registrar.

Payment Out

- (2) Where money is directed to be paid out of court to the credit of the party entitled, the party may name the financial institution into which he or she wishes it to be paid.
- (3) Where money has been paid into the joint credit of the party and the Registrar, the Registrar shall sign the cheque or direction for payment out on the production of the consent of the party paying in, verified by affidavit, or of the party's lawyer, or, in the absence of the consent, on the order of the referee.

Money Belonging to Minor

- (4) Where it appears that money in court belongs to a minor, the referee shall require evidence of the age of the minor and shall, in the report, state the minor's birth date and full address.

Money to be Paid to Creditors

- (5) Where an order of reference or a report directs the payment of money out of court to creditors, the person having carriage of the reference shall deposit with the Registrar a copy of the order or report and shall serve a notice to creditor (Form 55E) on each creditor stating that payment of the creditor's claim, as allowed, may be obtained from the Registrar.

REFERENCE FOR CONDUCT OF SALE

Method of Sale

- 55.06** (1) Where a sale is ordered, the referee may cause the property to be sold by public auction, private contract or tender, or partly by one method and partly by another.

Advertisement

- (2) Where property is directed to be sold by auction or tender, the party having carriage of the sale shall prepare a draft advertisement according to the instructions of the referee showing,
- (a) the short title of the proceeding;
 - (b) that the sale is by order of the court;
 - (c) the time and place of the sale;
 - (d) a short description of the property to be sold;
 - (e) whether the property is to be sold in one lot or several and, if in several, in how many, and in what lots;
 - (f) the terms of payment;
 - (g) that the sale is subject to a reserve bid, if that is the case; and
 - (h) any conditions of sale different from those set out in Form 55F.

Conditions of Sale

- (3) The conditions of sale by auction or tender shall be those set out in Form 55F, subject to such modifications as the referee directs.

Hearing for Directions

- (4) At a hearing for directions under subrule 55.02(3), the referee shall,
 - (a) settle the form of the advertisement;
 - (b) fix the time and place of sale;
 - (c) name an auctioneer, where one is to be employed;
 - (d) give directions for publication of the advertisement;
 - (e) give directions for obtaining appraisals;
 - (f) fix a reserve bid, if any; and
 - (g) make all other arrangements necessary for the sale.

Who May Bid

- (5) All parties may bid except the party having carriage of the sale and any trustee or agent for the party or other person in a fiduciary relationship to the party.
- (6) Where the party having carriage of the sale wishes to bid, the referee may transfer carriage of the sale to another party or to any other person.

Who Conducts Sale

- (7) Where no auctioneer is employed, the referee or a person designated by the referee shall conduct the sale.

Purchaser to Sign Agreement

- (8) The purchaser shall enter into an agreement of purchase and sale at the time of sale.

Deposit

- (9) The deposit required by the conditions of sale shall be paid to the party having carriage of the sale or his or her lawyer at the time of sale and the party or lawyer shall forthwith pay the money into court in the name of the purchaser.

Interim Report

- (10) Where a sale is made through an auctioneer, the auctioneer shall make an affidavit concerning the result of the sale, and where no auctioneer is employed, the referee shall enter the result in the procedure book and, in either case, the referee may make an interim report on the sale. (Form 55G)

Objection to Sale

- (11) A party may object to a sale by making a motion to the referee to set it aside, and notice of the motion shall be served on all parties to the reference and on the purchaser, who shall be deemed to be a party for the purpose of the motion.

Completion of Sale

- (12) The purchaser may pay the purchase money or the balance of it into court without order and, after the confirmation of the report on the sale, on notice to the party having carriage of the sale, the purchaser may obtain a vesting order.
- (13) Where possession is wrongfully withheld from the purchaser, either the purchaser or the party having carriage of the sale may move for a writ of possession.
- (14) The purchase money may be paid out of court in accordance with the report,
 - (a) on consent of the purchaser or his or her lawyer; or
 - (b) on proof to the Registrar that the purchaser has received a transfer or vesting order of the property for which the money in question was paid into court.
- (15) No transfer shall be approved until the referee is satisfied that the purchase money has been paid into court and, where a mortgage is taken for part of the purchase money, that the mortgage has been registered and deposited with the Registrar.

REFERENCE TO APPOINT LITIGATION GUARDIAN OR RECEIVER

- 55.07** (1) Where, by an order directing a reference, a referee is directed to appoint a litigation guardian or receiver, the referee shall not report on the appointment until the referee has settled and approved any security required by the order and until the security has been filed with the registrar.
- (2) Where by an order directing a reference or a report, the person so appointed is required to pass accounts or to pay money into court and has not done so, the referee may, on the passing of accounts, disallow any compensation and may charge the person with interest.

Campbell, Harris and Kays v. Ford and Harris, 2022 PESC 13

As part of the court's order for partition and sale of real property owned by seven family members, the prothonotary was appointed to facilitate the sale, based on the goals of

maximizing selling price, and a fair, transparent and timely sale.