

PRACTICE NOTE 4

CASE MANAGEMENT - PRE-TRIAL CONFERENCE - GENERAL DIVISION

To keep the procedures as simple as a possible and because of our unique circumstances, the following procedure will be followed in pre-trial conferences:

Pleadings Close:

1. The usual time limits in the Rules of Court will apply up to this stage.
2. Case Management Telephone Call:

Within forty-five (45) days after the service of the statement of defence or answer the case management coordinator shall set a date for a case management call with a judge or the case management coordinator for the purpose of planning and giving directions for the timing of further steps in the proceeding and setting the date for a pre-trial.

The following will take place at the first Case Management Conference.

The first meeting is a very informal process usually conducted by a telephone conference call at which the counsel and the case management judge or case management coordinator will briefly discuss the future progress of the case in the following terms:

- (a) the contested and uncontested issues will be identified;
- (b) the possibility of mediation, and other alternative dispute mechanisms will be explored;
- (c) each counsel will outline what information he will require from the other. Undertakings for production of material will be made, and the dates set for those productions will be specified;
- (d) with specific regard to property issues, the needs for valuations of property will be identified;
- (e) counsel will be asked to estimate the time they would need to prepare their case sufficiently for a proper pre-trial conference. A pre-trial conference date may be set at this meeting.

All of the above information will be recorded by the judge or case management coordinator on a Case Management Conference Form. If a case management judge is involved, he/she usually will be the pre-trial judge. A copy of the case management conference form may be distributed. If the first conference is done by a conference call, the necessary adjustments to the above procedure shall be made.

Discovery:

3. Discovery should be completed within 90 days after pleadings are closed.

Pre-trial Conference:

4. (1) A pre-trial conference shall be held after the time for the completion of discovery under paragraph 3 or not earlier than 30 days from the date the transcript of evidence on discovery is completed, whichever shall last occur.
- (2) The case management judge may direct the parties to attend personally with their counsel at all or part of a pre-trial conference.

For the purpose of the pre-trial conference it is understood that:

5. (1) counsel will be properly prepared and have produced to the other side and the court all the material necessary to come to a fair and equitable result;
- (2) the judge will be prepared to make recommendations for settlement where possible;
- (3) if the case is not settled, a Pre-trial Conference memorandum shall be prepared by the judge outlining what issues have been resolved, what issues are not resolved, and giving counsels' estimate as to the length of trial. The judge who conducts the pre-trial conference will be available up to the date of the trial to assist in settlement negotiations. A "last meeting" at the discretion of counsel, may be held to iron out last minute details.

It should be noted that the pre-trial conference is primarily a settlement conference. Adjournments will not be given lightly.

Trial Date:

6. At the pre-trial conference, the judge may authorize a trial date.

Complex Cases:

7. Where a party is of the opinion that the case has complex issues of law or fact, that party should at the initial conference with the case management coordinator inform her and she will obtain an appointment with a judge to continue the management of the case.

Miscellaneous:

8. (1) At the first case conference the judge or case management coordinator may set,
 - (a) a date for completion of the next one or more steps in the action;
 - (b) a date for the next case conference; and
 - (c) a trial date or a target date for the trial.
- (2) At the first case conference, the case management judge or case management coordinator may give directions to deal with any problem that may arise in connection with carrying out the purpose of these rules.
9. No General Section case will be given a date for trial until after a pre-trial conference has been held.
10. Counsel should not request a pre-trial conference unless and until he or she is ready for trial

and when counsel is ready for trial, he or she may contact the case management coordinator to obtain a date for a pre-trial conference.

11. Rule 50.01(3) states that a pre-trial conference memorandum shall be filed with the court at least seven days before the date set for the conference. The purpose of filing no later than seven days prior to the conference is to allow the pre-trial judge time to study the file. If a conference is to be beneficial to the parties the pre-trial judge must be aware of and understand all the issues. Having four or five memorandums placed on the judge's desk the night before the conference or the morning of the conference does not allow sufficient time to understand all the issues.

Section 53(1) of the *Supreme Court Act* provides:

53(1) Subject to the express provisions of any statute, the costs of and incidental to all proceedings authorized to be taken in court or before a judge are in the discretion of the court or judge, and the court or judge has full power to determine by whom and by what extent the costs shall be paid.

In the future, costs will be awarded against any party not abiding by Rule 50.01(3). Furthermore, the party against whom the costs are awarded must pay the costs that have been awarded before being allowed to file any further documents in the court or take any further steps in the action.

12. Counsel must exchange copies of documents a reasonable time prior to the pre-trial conference.
13. Minimal completion of the memorandum is not acceptable. All legal research should be completed before the pre-trial conference and all authorities should be cited and included in the memorandum.
14. Counsel having carriage of the case is required to be present at the pre-trial conference. Pre-trial commitments will be viewed as seriously as trial commitments. The entire pre-trial process is rendered ineffective unless counsel having carriage is in attendance; failure of counsel of record to attend is subject to cost consequences.
15. All documents intended to be used at the trial that may be of assistance at the pre-trial conference, such as medical reports, reports of experts, extracts from transcripts, etc. and any other documents which will be sought to be introduced at trial, shall be made available to the pre-trial judge. Correspondence between counsel should not be included as part of the pre-trial documents.
16. The party producing expert reports, and other documents which will be sought to be introduced at trial should file them with the pre-trial conference memorandum. The reports and other documents should be in a sealed envelope, and placed in the court file, marked "pre-trial documents". The pre-trial conference judge shall return them to the parties on completion of the pre-trial conference.
17. Adjournments may be granted by the case management coordinator up to 48 hours prior to the scheduled appointment. Thereafter, counsel must appear before the presiding pre-trial judge. Any adjournment will be a matter for consideration of the pre-trial judge in the ultimate disposition of costs.

18. All materials used on the pre-trial conference which counsel feel should not be left in the file, shall be removed on the completion of the pre-trial process.
19. The effectiveness of the pre-trial process in the settlement of cases depends on the pre-trial judge having all materials available to him or her for review well before the scheduled appointment. This will afford the judge an adequate opportunity to review the materials which counsel view as important.
20. As can be seen, the intent of this directive is to have discoveries completed at the earliest date possible and to have the case management judge involved at a stage earlier than the pre-trial conference. Your co-operation in attempting to speed up the disposition of trials would be appreciated.