

## PRACTICE NOTE 5

### CASE MANAGEMENT - PRE-TRIAL CONFERENCE Family Division

This guideline is to apply only to family matters that have been commenced by a statement of claim or a petition for divorce followed by the filing of a defence or an answer. The following steps will occur:

1. Issuance of statement of claim or petition.
2.
  - (1) 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 Conference with a judge 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 Conference.
  - (2) The following will take place at the first Planning Conference.

Clients are not expected to attend at the first meeting, although they are not excluded if they wish to be there. The first meeting is a very informal process; counsel and case management justice 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.
  - (3) Discoveries shall be completed within 60 days after pleadings are closed.

All of the above information will be recorded by the Judge on a Case Management Conference Form and may be signed by counsel and the Case Management Judge who will usually be the Pre-trial Judge. A copy of the Planning Conference Form may be distributed. The Case Management Judge will be available, on a speedy appointment basis, to meet with counsel at any time up to trial, to assist in their settlement negotiations. If the first conference is done by a conference call, the necessary adjustments to the above procedure shall be made.

3. Upon completion of the Case Management Conference, a Pre-trial Conference shall be held as set forth in Rule 50. All discoveries and production of documents should be completed by this time. The policy of the court is to try to schedule a pre-trial conference early on in the

action. This avoids the difficulty of trying to negotiate a settlement once the parties are entrenched in their positions as they might be prior to trial, especially after having disbursed large sums of money for legal fees.

Clients should attend the Pre-trial Conference unless they have a valid excuse. If a client is unable to attend, he or she must be accessible by telephone during the conference. Failure of a client to attend the conference or be available by telephone may result in an assessment of costs.

For the purpose of the Pre-trial Conference, it is understood that:

- (1) counsel be properly prepared and have produced to both the other side and the Court all the material necessary to come to a fair and equitable result, this includes a statement showing the tax consequences of various levels of maintenance and support where same is claimed;
- 2) clients be in a proper frame of mind to work toward a settlement; and
- 3) the pre-trial conference judge is prepared to make recommendations for settlement where possible.

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.