RULE 219: STAIRWAY TO HEAVEN[1]

DAWN PENTELECHUK *

The author begins by outlining the history of rule 219 of the Alberta Rules of Court. Rule 219 deals with pre-trial conferences. She outlines some shortcomings of the old rule, and how the rule came under the scrutiny of the Civil Practice Steering Committee. She outlines the reform process which led to the current rule 219, and then goes on to assess whether the new rule has met its goals of settling actions and managing actions to the point of trial. Finding that the settlement of actions has not been much changed by the new rule, she offers ideas for improving the current scheme. In terms of case management, there is hope in the new rule for practitioners who make creative use of it. In conclusion, the author expresses a wish that the new Practice Note 7 will remedy the problems that still exist in regard to very long trials.

L'auteure commence par retracer l'histoire du règlement 219 des Alberta Rules of Court, qui traite des conférences préalables à l'instruction. Elle examine certaines des carences de l'ancien règlement et montre comment il a attiré l'attention du Civil Practice Steering Committee. Elle décrit le processus de réforme qui a donné lieu au règlement actuel, et se demande si ce dernier a réalisé ses objectifs visant le règlement et la gestion des actions en attendant l'instruction. Constatant que le règlement des actions a peu changé depuis le nouveau règlement, elle suggère quelques améliorations. En ce qui touche la gestion des cas, il est à espérer que le nouveau règlement se prêtera à une utilisation créative de la part des praticiens. En conclusion, l'auteure estime que la nouvelle note 7 permettra de remédier aux problèmes des instructions très prolongées.

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I. INTRODUCTION

The origins of our pre-trial conference are said to arise from Federal Rule 16[2] which came into existence in 1938. Its purpose was to narrow the issues at trial. If the case happened to settle, that was a bonus, but the rule was not specifically directed towards settlement.

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[1] Or Highway to Hell? This paper was prepared with the assistance of Lynne Moran, summer student, whose contributions are greatly appreciated.

[2] The Honourable W.A. Stevenson & The Honourable J.E. Côté, *Civil Procedure Guide - 1992*, vol. 1 (Edmonton: Juriliber, 1992) at 664.

prejudice basis, to determine those matters on which they agree and to identify those matters on which they do not agree,

(f) direct that all interlocutory applications be brought before him or her, and

(g) make any other order giving directions as may seem necessary or advisable with respect to the conduct of the proceeding.

(4) The court, prior to the conference, or the conference judge, may order that the parties file and exchange written briefs on or before the date fixed by the order, for the use of the conference judge, and the order may specify the content and length of the written briefs.

The use and content of written briefs is within the discretion of the court, in contrast with Manitoba and Saskatchewan, where such briefs are mandatory, and Ontario, where they are required by Practice Directions. The briefs will not require disclosure of the names or evidence of non-expert witnesses.

(5) Unless otherwise ordered, the solicitor representing a party at the conference shall be the counsel who will be representing that party at the trial, and that solicitor shall have obtained instructions from the party regarding the solicitor's authority to make admissions and agreements regarding all matters that the participants may reasonably anticipate may be discussed at the conference.

This provision, based upon the FRCP, is intended to ensure that the conference is effective and not frustrated by inadequate preparation.

(6) An order shall be entered reciting the action taken at the conference, and such order shall control the subsequent course of the action unless modified by a subsequent order. Any order made by the conference judge may be modified at the trial or hearing only in exceptional circumstances.

The provision is based on the FRCP. It contemplates that conference orders should control the course of litigation, and that such orders may be amended during the course of an ongoing conference. It is also intended that, after the conference is concluded, conference orders may still be amended, but such amendments should not be undertaken lightly.

(7) No communications shall be made to the trial judge as to the proceedings at the conference except as disclosed in the order or orders of the conference judge.

This provision is intended to prevent the disclosure to the trial judge of privileged or without prejudice material that is disclosed during the conference. Litigants must be free to participate fully and freely in the conference process. If instances of bad faith or abuse of the conference process arise, they can be dealt with by the conference judge.

(g) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems,

(h) the question of liability,

(i) the amount of damages, where damages are claimed,

(j) the advisability of directing a reference,

(k) the advisability of directing the trial of an issue,

(l) the advisability of having the court appoint an expert,

(m) the date for trial, and

(n) any other matters that may aid in the disposition of the action, cause or matter.

(3) The conference judge may

(a) adjourn the conference from time to time,

(b) set a plan and schedule for the completion of any steps to be completed by a party or parties in preparation for trial, which plan may set limitations on discovery procedures,

(c) require that any party, or if the party is a corporation, the party's representative, attend all or part of the conference together with their solicitors,

(d) request that any other person, whose attendance may be of assistance, be present at all or part of the conference,

(e) direct that experts who have been retained by the parties confer, on a without

This subparagraph includes elements taken from the Rules in B.C. and Saskatchewan. The provision for adjournment of the conference recognizes that in many cases the conference will be an ongoing process. It should be emphasized that all these procedures are discretionary, not mandatory. The planning and scheduling provision is considered an important technique for promoting the movement of cases towards resolution, as is the involvement of parties in the conference process. The power to direct that experts confer is taken from the B.C. rules. The conference judge will generally also hear all interlocutory applications in the action, which should discourage excessive or abusive motions.

SUGGESTED DRAFT PROVISIONS CASE PROCEDURE CONFERENCES

219. (1) In any action, cause or matter, the court, on application of a party, or on its own motion, at any stage of the proceeding, may in its discretion, direct the solicitors for the parties or any parties to appear before it for a conference or conferences before trial for such purposes as

(a) expediting the disposition of the action;

(b) establishing early and continuing control so that the case will not be protracted because of lack of management;

(c) discouraging wasteful pre-trial activities;

(d) improving the conduct of the trial through more thorough preparation, and;

(e) facilitating the settlement of the case.

Subparagraph (1) is based on Rule 16(a) of the U.S. Federal Rules of Civil Procedure ("FRCP"). It sets out the objectives of the conference. These objectives specifically include case management, discouraging wasteful pre-trial activities, and facilitating settlement. It is intended to shift the emphasis away from a conference focused solely on the trial and toward a process of judicial management that embraces the entire pre-trial phase, especially interlocutory applications and discovery.

(2) The conference judge may consider and take action with respect to

(a) the possibility of settlement of any or all of the issues in the proceeding,

(b) the formulation and simplification of the issues,

(c) the necessity or desirability of amendments to pleadings,

(d) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, agreements regarding the authenticity of documents, and advance rulings for the court on the admissibility of evidence,

(e) the possible use of extrajudicial procedures to resolve the dispute,

(f) the disposition of pending motions,

This subparagraph is also largely based on the FRCP. It is intended to encourage better planning and management of litigation, based upon the premise that increased judicial control during the pre-trial process accelerates the processing and termination of cases. Unlike the FRCP, the conference judge is not empowered to take action to eliminate frivolous claims or defences — these must be dealt with by separate application under Rules 129 or 159. The possibility of settlement discussions at the conference is recognized, although it is not intended to impose settlement negotiations on unwilling litigants. The use of extra-judicial procedures to resolve the dispute may also be considered, again, only where the litigants agree to do so. In large or complex actions, the use of special procedures is authorized, within the discretion of the conference judge. A broad range of specific items that may be considered are listed, and it is intended that the conference judge have the ability to deal with almost every aspect of the litigation with a view to maximizing the efficiency and fairness of the process.

- By requiring that pre-trial activity is reasonable and timely, it is expected that litigants will focus more quickly upon the real issues involved in the case, be in a better position to consider the possibility of settlement, and if necessary, proceed to a prompt and orderly trial.

This Approach is Consistent with Reforms in Other Jurisdictions

A majority of the Steering Committee feels that this proposal represents a significant step in the direction of procedural reforms elsewhere. Judicial case management is used extensively in other jurisdictions, notably under the U.S. Federal Rules of Civil Procedure, in most U.S. State Courts and, to a lesser extent, in B.C., Saskatchewan, Manitoba and Ontario. The draft amended rule provides for less extensive judicial case management than that available in B.C., under the Toronto Civil Case Management Rules, or in the U.S., where there has been a definite trend towards comprehensive mandatory judicial case management. A majority of the Steering Committee feels that, at the present time, the provisions of the draft amended rule should be both sufficient and effective.

PRESENT RULE 219
"PRE-TRIAL CONFERENCE"

219(1) In any action, cause or matter, the court, on application of a party, or on its own motion, may in its discretion, direct the solicitors for the parties or the parties themselves to appear before it for a conference to consider

(a) the simplification of the issues,
(b) the necessity or desirability of amendments to pleadings,
(c) the possibility of obtaining any admission that will facilitate the trial, and
(d) any other matters that may aid in the disposition of the action, cause or matter.

(2) Following the conference, the court may make an order reciting the results of the conference and giving such directions as the court considers advisable.

(3) The order, when entered, shall control the subsequent course of action, cause or matter, unless modified at the trial or hearing to prevent injustice.

(4) The judge who conducts a pre-trial conference in any action, cause or matter shall not be deemed to be seized of that action, cause or matter which may thereafter be tried by him or by any other judge or the court.

[Alta. Reg. 123/73]

parties would promote earlier narrowing of issues and earlier settlement of those cases that currently settle just before trial.

The Lack of Pre-Trail Continuity

When procedural disputes come before the court on interlocutory applications, it is extremely difficult for the court to reliably detect and deal with procedural abuses on such an *ad hoc* basis. Procedural abuses may be more effectively curtailed if the court is involved in the action on a continuing basis. Such continuing involvement is not required in every case, but is particularly useful in large or complex cases, or where continuing disputes over procedure have arisen between the parties.

THE PROPOSED REFORMS

A Clear Change of Direction is Required

- Although the existing Rule 219 is broadly worded and could possibly be interpreted to authorize many of the matters specifically addressed in the draft amended rule, the existing Rule 219 has not generally been so interpreted, nor effectively utilized, to date.

- A majority of the Steering Committee feels that the general use of the existing Rule is unsatisfactory, so the draft amended rule uses very explicit terms to emphasize the proposed changes.

Key Components of Reform

- The draft amended rule is intended to provide litigants with the option of seeking judicial case management for individual cases. Many cases will not require such management.

- Even in those cases where judicial case management occurs, it should be understood that the primary responsibility for the proper conduct of litigation will remain with the litigants themselves. The purpose of judicial case management is to act as a catalyst for more efficient litigation.

- By requiring litigants to perform early preparation and evaluation, judicial case management provides more and better opportunities for the parties to narrow issues or reach settlement.

- The continuity of judicial case management offers advantages to the bench and bar in controlling procedural abuses. By having a single judge deal with all pre-trial matters, procedural abuses should be more easily recognized and controlled. This is expected to prevent a large proportion of the procedural abuses that now occur, together with the expense and delay associated with such abuses.

circulate the members of the profession with some suggestions for change. We would earnestly solicit the views of the profession in this regard. Please submit your comments to:

Civil Practice Steering Committee
c/o The Law Society of Alberta
600, 919 - 11th Avenue S.W.
Calgary, Alberta T2R 1P3

ATTENTION: Mr. Peter Freeman

Comments should be submitted by September 15, 1993. Thereafter, the Civil Practice Steering Committee will reconsider its various views and consider a final recommendation to the Rules of Court Committee.

PREAMBLE

The first meeting of the Steering Committee was held on October 3, 1991. Over the course of several meetings, the Committee developed a list of policy issues and illustrative provisions, and ultimately the draft amended rule attached.

The deficiency being addressed by the draft amended rule is the fact that, at present, the litigation process is too slow and expensive. A major cause of this deficiency is excessive or wasteful pre-trial activity. In considering how to address this deficiency, the Steering Committee considered the following points:

Less Than 3% of Civil Actions Proceed to Trial

Over the 12 year period ending March 31, 1992, 840,144 civil actions were commenced in the Court of Queen's Bench excluding divorce. During this same period, 22,841 civil trials were heard, excluding divorce. It appears that over 97% of civil actions commenced are concluded without trial; presumably they are either settled, abandoned or otherwise disposed of prior to trial.

The Existing Rules are Not Effectively Utilized

The existing Rules of Court contain a wide range of procedures that may be used to encourage the resolution of actions without trial, or to deal with excessive or wasteful pre-trial activity, and thereby expedite the litigation process. At present these Rules are not as effective as they could be, because their operation is largely controlled by the litigants themselves.

The "Eve of Trial" Phenomenon

In many actions, the only point in time when all parties simultaneously assess and evaluate their respective cases is just before trial — a point when a significant proportion of cases settle. Earlier simultaneous assessment and evaluation by the

APPENDIX

PRE-TRIAL PROCEDURES

REPORT OF THE CIVIL PRACTICE STEERING COMMITTEE
January, 1993

REPRESENTING THE COURT OF APPEAL
The Honourable Mr. Justice J.E. Côté

REPRESENTING THE COURT OF QUEEN'S BENCH OF ALBERTA
The Honourable Mr. Justice D.P. Mason,
The Honourable Mr. Justice A.B. Sulatycky
The Honourable Madam Justice J.B. Veit
The Honourable Madam Justice M.J. Trussler

REPRESENTING THE LAW SOCIETY OF ALBERTA
N.C. Wittmann, Q.C.
W.S. Sowa, Q.C.
D.A. Sulyma, Q.C.
C.L. Kenny

REPRESENTING THE ALBERTA LAW REFORM INSTITUTE
P.J.M. Lown
M.A. Shone
E.T. Spink

INTRODUCTION

The Civil Practice Advisory Committee of the Law Society of Alberta deals with many suggestions from the profession with respect to proposed changes in the Rules of Court and the way civil litigation is conducted in the Province of Alberta.

In the spring of 1991, that Committee began receiving complaints about the time and expense of litigation, as well as suggestions for reform. After several meetings it was resolved that the Civil Practice Advisory Committee had neither the resources nor the time to attempt the kind of project that may be necessary to effect meaningful change. It also resolved to act in co-operation with the Bench, the Bar and to enlist the considerable resources of the Alberta Law Reform Institute.

In the result, the Civil Practice Steering Committee was formed. Its composition includes representatives of the Court of Appeal, Court of Queen's Bench, Law Society of Alberta, and the Alberta Law Reform Institute. It has had meetings and discussions since October 1991. The result is an agreement to circulate to the members of the profession the enclosed draft provision. It should be made clear that not all members of the Civil Practice Steering Committee are in agreement with the proposed changes. What is significant is the agreement of the Civil Practice Steering Committee to

Case management still seems to be reserved for the most lengthy and complex of cases only, and only on direction of the Associate Chief Justice.[13]

V. CONCLUSION

And, of course, the most troublesome issue is whether or not the orders of a pre-trial judge can bind the trial judge. There appears to be no consensus on this issue. Some judges appear disinclined to make any type of order — such as refusing an adjournment of the trial, or excluding evidence — that would bind a trial judge and effectively forgo the power apparently intended them by the *Practice Note*.

It appears clear that notwithstanding an order of a pre-trial judge, counsel opposing the order, at the very least, has standing to reopen the issue at trial. The trial judge may or may not abide by the pre-trial judge's ruling, leaving all concerned in a state of uncertainty. If pre-trial conferences are to be truly effective in reducing the time and expense of litigation, pre-trial conference judges must have the ability to make orders which would bind the trial judge. If counsel do not agree with the order imposed, the remedy should be a Notice of Motion before the Court of Appeal.

It is hoped that *Practice Note 7*, effective September 1, 1995, which introduces mandatory case management for trials likely to take more than 25 days, will facilitate the goals expressed by the Civil Practice Steering Committee and at the very least ensure that lengthy trials proceed as quickly and inexpensively as possible.

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[13] See *Murdoch* v. *Low* (16 March 1995), Edmonton 9403-11627 & 9403-12239 (Alta. Q.B.), the unreported decision of Madame Justice Veit, wherein case management was not recommended to the Associate Chief Justice.

3. Establishing a schedule for completion of steps such as Examinations for Discovery, provision of answers to undertakings, examination on those answers to undertakings and production of documents.[9]

The current *Practice Note* directs that the judge consider and discuss with the parties:

1. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

2. Agreements regarding the authenticity of documents, and advance rulings from the Court on admissibility of evidence, particularly demonstrative evidence.[10]

Since expert evidence plays an increasingly important role in the determination of many civil claims, the judge may also explore:

1. The exchange of Expert Substances of Opinion Statements prior to the time parameters set out in Rule 218.1;[11]

2. Whether those experts expected to testify should confer with each other on a without prejudice basis to determine the real matters in dispute;[12]

3. Whether Expert Substances or reports should be entered by agreement at the start of the trial with a view to streamlining examination-in-chief of those experts.

Further, the pre-trial judge in s. 10 of the current *Practice Note* has the power where a conference order has not been obeyed, where the party or his solicitor is "substantially unprepared" for the conference, or where "the party or [his] solicitor acts in bad faith," to order costs including legal fees on a solicitor-client basis, to strike pleadings, to stay or dismiss an action, award judgment or prohibit a party from entering certain evidence.

The current *Practice Note* can provide frustrated litigators with light at the end of a very lengthy civil litigation tunnel. Unfortunately, it fails to provide a clear procedure to follow to obtain the continuity and positive results of case management contemplated by the Steering Committee. If practitioners do not take the initiative to make creative use of the *Practice Note*, they will be back on the highway to "excessive or wasteful pre-trial activity" and will have no one to blame but themselves.

Many judges appear loathe to bind themselves to case management, where they conduct all conferences and determine all interlocutory applications to the time of trial.

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9 *Ibid.*, ss. 3, 4(b).

10 *Ibid.*, s. 2.

11 See *Northwestern Utilities Ltd.* v. *Roche Bonhomme Bungalows Ltd.* (1980), 11 Alta L.R. (2d) 399 (Alta. C.A.), where it was determined that a pre-trial conference cannot be used to compel disclosure of experts' reports.

12 *Civil Practice Note "3," supra* note 8, s. 4(e).

1. Reviewing use of alternative dispute resolution mechanisms such as mediation or arbitration;

2. Scheduling a mini-trial;

3. Inviting clients to an informal discussion.

While *Practice Note "3"* directs that the judge take the lead in considering and discussing settlement of the action with the parties, pre-trial conferences for the most part continue to be conducted as they always have been.

In Edmonton, judges designated to conduct civil pre-trials are assigned eight conferences per day. From the judge's perspective, adequate preparation for each pre-trial conference can be a nearly impossible task, particularly if counsel has not provided any type of brief beforehand and the judge is left simply with a review of the court file.

Secondly, not all pre-trial conference judges have experience or interest in alternative dispute resolution mechanisms, including mini-trials. With respect, it is difficult to have a meaningful discussion about the sorts of alternatives if the subject is completely foreign to the person directing the conference.

It would be ideal if a select number of pre-trial judges with both experience and a keen interest in alternative dispute resolution (ADR) conducted pre-trial conferences with settlement of the action being the primary goal. One of these selected judges would play an integral role in assisting the parties and determining which form of ADR would be most suitable, and as the case may be, conducting the actual mediation or mini-trial. This type of pre-trial conference should be available at the request of one or both parties.

In the event the ADR mechanism of choice is unsuccessful, or if it is apparent that the matter will be proceeding to trial, the parties can then focus on ensuring that the matter proceeds to trial as expeditiously and economically as possible.

B. MANAGEMENT OF THE ACTION TO THE POINT OF TRIAL

The pre-trial conference judge has always had the power under rule 219 to make an order with respect to many matters, including:

1. The necessity or desirability of amendments to pleadings;

2. The disposition of pending motions;

IV. THE REFORM PROCESS

Many of the draft amendments to Rule 219 were based on the U.S. Federal Rules of Civil Procedure (pre-1994). The U.S. Rule 16 was expanded in 1983 to broaden the scope of judicial case management.[5] The U.S. has traditionally been supportive of alternative dispute resolution mechanisms and in 1994, the *Federal Rules of Civil Procedure* rule 26 moved them to a mandatory disclosure discovery system.[6]

The suggested draft provisions were circulated to Law Society members in January of 1993 (see Appendix). The provisions were amended by counsel of the Court of Queen's Bench and the less potent, expanded rule 219 was implemented as *Civil Practice Note "C"* in June of 1994.[7]

After a period of operation, the counsel revised the rule again and introduced *Civil Practice Note "3,"* on April 1, 1995. This revision weakened the scope of the expanded rule even further, and changed the name of the procedure back to "Pre-trial Conferences."[8]

The current form of *Practice Note* pertaining to rule 219 is extremely broad in its parameters and contemplates two distinct goals:

1. Settlement of the action;

2. Management of the action to the point of trial.

Are either of those goals being met?

A. SETTLEMENT OF THE ACTION:

The potential for settlement of actions through the pre-trial conference forum remains relatively untapped. Section 2(b) of the current *Practice Note* states:

> The Pre-Trial Conference Judge shall consider and discuss with the parties, and may urge the parties with respect to...
>
> (c) the possibility of using extrajudicial procedures to resolve the dispute.

Depending on the complexity of the case and the parties involved, "extrajudicial procedures" may take a variety of forms:

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5. U.S. *Federal Rules of Civil Procedure*, r. 16.
6. U.S. *Federal Rules of Civil Procedure*, r. 26.
7. Court of Queen's Bench of Alberta, *Civil Practice Note "C": Case Procedure Conferences* (June 1994).
8. Court of Queens Bench of Alberta, *Civil Practice Note "3": Pre-Trial Conferences* (1 April 1995).

Our Rule 219 has been in force for over twenty years.[3] Traditionally, a pre-trial conference was automatically directed by the court where the trial was expected to exceed three days, where a jury was involved, or in contested matrimonial cases. With "long trials" (six or more days) a pre-trial conference was a condition precedent to obtaining a trial date.

Earlier versions of this rule were unclear in purpose and procedure. Powers afforded the pre-trial conference judge were not readily apparent. These factors contributed to lack of prominence of the rule in civil proceedings.

Nevertheless, the pre-trial conference has always had the potential to be an extremely valuable tool for the processing of cases, if properly prepared and conducted. All too often, however, the pre-trial conference has been a perfunctory exercise, treated as a formality necessary to obtain a trial date.

II. FORMATION OF THE CIVIL PRACTICE STEERING COMMITTEE

In early 1991, the Civil Practice Advisory Committee of the Law Society of Alberta began receiving complaints concerning the time and expense of litigation. At the time of writing, trials to be heard in Edmonton which exceed five days in length are placed on a "long trial" wait list, currently containing some thirty to forty cases yet to be scheduled for trial. Some trial dates, depending on length, are available in 1996 or 1997.

The committee was unable to commit the time or resources required to conduct a meaningful reform project, so the Civil Practice Steering Committee was formed, composed of representatives from the Alberta Courts, the Law Society of Alberta and the Alberta Law Reform Institute. The committee's task was to discuss and make changes to the Rules of Court. One rule specifically targeted for discussion and amendment was Rule 219.

III. COMMITTEE FINDINGS

The Committee began meetings in October 1991. They determined that a major cause of deficiency in the litigation process was "excessive or wasteful pretrial activity." In addressing the problems, they considered the following points:

1. Less than 3 percent of civil actions proceed to trial;
2. The existing Rules of Court are not effectively utilized;
3. The "eve of trial" phenomenon;
4. The lack of pretrial continuity.[4]

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[3] Stevenson & Côté, *ibid.*

[4] Civil Practice Steering Committee, *Pre-Trial Procedures Report* (1 January 1993) (see Appendix).

(8) The conference judge may make an order for costs but, in the absence of such an order, the costs of the conference shall be in the discretion of the trial judge.	The costs of the conference will normally be dealt with by the trial judge, but where appropriate the conference judge may make an order for costs.
(9) If a party or party's solicitor fails to obey a conference order, or if no appearance is made on behalf of a party at a conference, of if a party or party's solicitor is substantially unprepared to participate in the conference, or if a party or party's solicitor fails to participate in good faith, the conference judge, upon application or on his or her own initiative, [may] make such orders with regard thereto as are just, including any of the orders provided in Rule 704(1)(d), and in lieu of or in addition to any other order, the conference judge shall require the party or the solicitor representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this Rule, including solicitor's fees, unless the conference judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.	This provision gives the conference judge broad powers to use costs or other sanctions to preserve the integrity of the conference process. The reference to "reasonable expenses" includes the expenses of parties, in addition to solicitor's fees.
(10) The conference judge shall not preside at the trial unless all parties consent in writing. This subrule shall not prevent or disqualify the trial judge from holding trial meetings subsequent to the conference, before or during trial, to consider any matter that may assist in the disposition of the proceeding.	In some jurisdictions, the conference judge is prohibited from presiding at trial. This provision permits the conference judge to hear the trial, provided all parties agree in writing. This provision should not inhibit meetings involving the trial judge.
(11) A judge may direct that all or part of a conference be held by telephone.	This provision gives the conference judge the discretion to allow all or part of a conference to be held by telephone. Due to the nature and importance of conferences, it will rarely be appropriate that they be held by telephone.