

# CASE CONFERENCES IN FAMILY COURT AT NEWMARKET

## What is a case conference?

A case conference is an important part of the Family Court process. It is a meeting, chaired by a judge, with the applicant, the respondent and their lawyers. If anyone else is directly involved in the case, such as Ontario Works or the Children's Lawyer, they attend too. Though the meeting may be held in a courtroom, it is not open to the public and only the parties and their lawyers can attend (unless the judge gives permission for others to be present).

The judge leads a discussion about the issues in the case and how the case will go forward. Sometimes the judge meets with the lawyers only. The applicant and respondent must be at the courthouse (unless arrangements are made with the judge in advance), to hear the judge's comments about the issues and to sign any agreement reached at the conference.

## What are the goals of a case conference?

The goals are to:

- explore the chances of settling the case
- identify which issues are in dispute and which are not, and dispose of undisputed issues by an agreement or court order
- explore ways to resolve the disputed issues, including options outside court, like mediation or an assessment
- ensure disclosure of the facts and documents needed to resolve the disputed issues
- note any facts that a party admits to be true and that may simplify the case
- set up a plan and a date for the next steps in the case, including a settlement conference to try to resolve all the disputed issues and avoid a trial.

Issues that are in dispute (other than some disclosure or procedural issues) are not usually decided at a case conference.

It is appropriate at this stage for the parties to think about whether mediation could help them to resolve any of the issues. Mediation is a process in which the parties try, with the help of a neutral person called a mediator, to reach a binding agreement on some or all of the issues in the case. Mediation is available at the courthouse and can be arranged through the Family Law Information Centre on the second floor. Mediation is also available from private service providers.

## When is a case conference held?

A case conference is usually held:

- in a case that was started by an application, after the respondent has served an answer
- in a motion to change an order or an agreement, after an affidavit in response to the motion has been served.

There can be two or more case conferences in a case.

If your case involves only issues of custody, access, support and restraining orders (not a divorce or property issues), your case conference will not be scheduled until after your file has been reviewed by a court official known as the rule 39 clerk. This review usually requires the parties to come to court. However, if the parties have

- served all required papers and filed them with the court (including affidavits of service and financial statements) and
- filed a request from all parties for the rule 39 clerk to review the file (the form is available at the Family Law Information Centre at the courthouse)

the clerk will review the file and may be able to schedule a case conference without the parties coming to see the clerk first.

## Do I have to have a case conference?

A case conference is **required** if a party wants the court to:

- make a temporary order (hear a motion) about a particular issue. A case conference about the substantive issues in the case must be completed **before any notice of motion or affidavits are served.**
- hear a motion to change a final order or an agreement. A case conference about that issue must be held **before the court holds a hearing to decide the issue.**

The only situations where a case conference is not required for a motion are:

- if the judge to whom a motion is presented thinks the situation is one of urgency or hardship or that a case conference is not needed for some other reason in the interest of justice
- the exceptions listed in rule 14 (6) of the *Family Law Rules*.

If you try to skip a case conference and go direct to a motion, and the judge does not agree that you are entitled to have a motion without a case conference, you will have to go to a case conference before your motion will be heard and you may be ordered to pay court costs to the other party. Those costs could include all or part of the other party's lawyer's fees.

### **Even if a case conference is not required, can I have one if I want it?**

Yes, on request, but if you are the respondent in a case started by an application, you must serve and file your answer first. If you are responding to a motion to change a final order or an agreement, you must serve your affidavit responding to the motion first. Case conferences are also available on request in enforcement matters.

### **How do I get a case conference?**

Book the time for the case conference with the court's trial coordinator by mail or courier sent to the courthouse or by fax to 905 853-4880. You can also book it in person at the courthouse. **Bookings can not be made by telephone.**

- Have a number of possible dates ready. Case conferences are usually held on Mondays and Fridays. You should get the other party's and lawyer's available dates first, match them with your own, and give those matching dates to the trial coordinator. If you book a date when the other party or lawyer is not available, the judge may adjourn the conference to another date when they are available and you may be ordered to pay some court costs.
- Case conferences are booked for half an hour. If you need a second case conference, the case conference judge may give you longer for the next one. You may not get all the time you ask for, as the court is extremely busy.
- Once the date is booked, you must serve a case conference notice (Form 17) on the other party's lawyer and file it in the court record for the case (with proof of service). **Filing must be done by someone coming to the court office.**

### **Do I have to have a lawyer? Can I have a friend or a paralegal represent me?**

You do not have to have a lawyer, but the issues are very important and the court procedures are not easy for non lawyers to follow. It would be much better to have your own lawyer to advise you. This is even more important if the other party has a lawyer. If you do not have a lawyer, you will still be expected to follow all the laws and the *Family Law Rules* applicable to your case, you will be responsible for preparing, serving and filing all documents required by the rules and you must provide a current address for service on you of documents in the case. You have to do everything that a lawyer would have to do in handling your case.

Only lawyers – not paralegals – have the right to represent people in the Family Court because of the importance of the issues and because only lawyers have the training and professionalism needed. An exception can be made in very rare and unusual circumstances, but this requires a judge's order in advance.

If you can not afford a lawyer, you may qualify for Legal Aid (see the telephone book under Legal Aid or go to the Family Law Information Centre at the courthouse). There are free Legal Aid advice counsel and duty counsel at the courthouse who can provide limited help if you qualify financially.

If you want to have a friend or family member come to help support you, you may do so, but the judge usually wants supporters to stay out of the room during a case conference. If you have concerns about your safety, let the court staff know **before** your court date if possible, and be sure to tell them as soon as you arrive. They will make arrangements for you.

### **How should I prepare for a case conference?**

At least a week before the case conference, you should think about and discuss with your lawyer what needs to be done to deal with each issue. You should have a proposal, or preferably some options, that you think the other party could accept. Be prepared to negotiate and to make compromises where appropriate.

Your lawyer should send your proposal to the other party's lawyer several days before the case conference. Your lawyer should talk with the other party's lawyer before the case conference to see if you can reach an agreement on at least some of the issues in the case. Perhaps both parties and their lawyers should meet together.

If you are not able to settle the issues, you might be able to agree on the process that should be followed in your case. For example, you might organize the disclosure of documents needed, agree to try mediation, agree to ask the judge to refer your case to the Children's Lawyer or look into hiring an assessor to deal with custody or access.

### **What documents do I have to prepare for a case conference?**

Each party has to serve a case conference brief (in most cases, Form 17A – in child protection cases, Form 17B) on the other party's lawyer and file it in the court record (with proof of service, which goes into a separate part of the court file).

- The party who asked for the conference has to serve and file the brief by 7 days before the conference date. The other party has to serve and file by 4 **working** days before the conference date. (If neither party asked for the conference, the applicant has to serve and file by 7 days before and the respondent by 4 working days before.)
- **If you serve or file late, the court staff must refuse to accept your brief**, unless you get the other party's consent or a court order to allow you to serve or file late. Even if you get a consent for late filing, you can not file later than 2 p.m. two working days before the conference date. The briefs are sent to the judge at that time, in preparation for the conference.
- If child or spousal support is an issue in your case, you must also serve and file an updated financial statement (Form 13 or 13.1, or an updating affidavit if the rules permit you to use that instead) within the time limit for your case conference brief.
- If property is an issue to be discussed at the case conference, you should also serve and file an updated net family property statement (Form 13B, or an updating affidavit if the rules permit you to use that instead) within the time limit for your case conference brief.
- Filing has to be done by someone coming to the court office and putting the brief and any other required documents in the court record. The affidavit of service of the brief goes in a separate part of the court file.

This may seem like a lot of material to prepare, but the other party's lawyer and the judge can not deal with the issues in the case without it. It is important to serve the brief and any required financial or property statements in time so that the other party can review them and think about settling the issues by agreement. It is best to serve your documents earlier than required by the rules, as this gives both sides more time to deal with the issues and try to settle them before the conference.

### **What is "confirming" the case conference?**

Some case conferences can not go ahead because some important document or piece of information is not available, a participant is ill, etc. Recognizing that, the court books more case conferences in a day than can actually be held. The court has to know which case conferences are going ahead and which ones are to be adjourned to another date. That is why:

- **You must file a confirmation (Form 14C) by 2 p.m. two working days before the conference date. If neither party files a confirmation in time, the conference will not be held and you will have to get a new date.**
- The confirmation form requires you to check first with the other lawyer, to see what issues are to be dealt with at the conference, before sending in your confirmation form.
- In filling out your confirmation form, be sure to fill out what issues the conference will cover, what materials the judge should read and your estimate of how long it will take. The judge will read the briefs but can not be expected to read the whole record. Do not ask for more time than you booked with the trial coordinator (usually half an hour).
- You can file your confirmation in person, by mail or courier sent to the **court clerk** or by fax at **905 853-4864**. If you file by fax you do not need to send a fax cover sheet. (Do not send your confirmation to the trial coordinator.)

### **How do I cancel or reschedule a case conference?**

If all the parties to the case have agreed to cancel or reschedule, send a letter, stating that the parties consent, to the court's trial coordinator by mail or courier to the courthouse or by fax to 905 853-4880. The letter must reach the trial coordinator **by 2 p.m. two days before the conference**. If you are asking to reschedule:

- Have a number of possible dates ready. Case conferences are usually held on Mondays and Fridays. You should get the other party's and lawyer's available dates first, match them with your own, and give those matching dates to the

trial coordinator. If you book a date when the other party or lawyer is not available, the judge may adjourn the conference to another date when they are available and you may be ordered to pay some court costs.

- Case conferences are booked for half an hour. If you need another case conference, the case conference judge may give you longer for the next one. You may not get all the time you ask for, as the court is extremely busy.

The trial coordinator will notify you if your request to cancel or reschedule has been accepted. Once the conference is rescheduled, you are responsible for notifying the other parties of the new date and time (it is not necessary to serve a case conference notice (Form 17) ). If you cancel the conference, to get a new case conference date you have to follow the procedure above under the heading **How do I get a case conference?**

If you do not meet the requirements for cancelling or rescheduling (for example, if a party does not consent or if you do not get a letter to the trial coordinator in time), and if the conference has been confirmed, you and your lawyer must attend at the scheduled time to ask the judge to cancel or reschedule. If you do not, the judge may proceed without you and may make an order in your absence.

### **Just what happens at the case conference?**

Arrive at least 30 minutes before the time when your case conference is scheduled. (If you want to see duty counsel, you should arrive at least an hour before.) Go to the Family Court area (third floor) and check the list to see which courtroom your case has been assigned to. Check in with the court officer assigned to that room. Meet your lawyer wherever you have arranged to meet. Your lawyer will advise you of any recent proposals from the other party, and you should tell your lawyer about any recent events that affect the issues in your case.

This is an opportunity for you and your lawyer to meet with the other party and lawyer. Try to work out any issues that you can before going in for the conference. The judge will expect that both sides have discussed the issues before coming into the room and will want to know what progress you have made. If you have not had a discussion before coming into the room, the judge may ask you to go out to talk with the other side and the judge will then go on to deal with other cases.

A case conference is normally scheduled for 30 minutes. Depending on the importance and complexity of the issues in your case and the number of other cases scheduled that day, the judge may have to limit the time spent on your case.

When you are called in for your case conference, come into the room and sit beside your lawyer (unless the judge has asked to see the lawyers only first). The judge will lead the conference. Usually the judge invites each lawyer to speak in turn. Sometimes the parties are invited to speak too. Do not interrupt – each side will have a chance to speak in their turn.

Most of the discussions at a case conference are considered to be private, “without prejudice” settlement discussions. That means that the discussions can not be used later as evidence in the case and can not be repeated to others. You can not order a transcript of the conference without the judge’s permission.

If you reach an agreement on an issue, the judge will ask the lawyers to write it down and have you and the other party sign it. If desired, the agreement can be turned into a court order. The lawyers will usually prepare the order later and send it to the court for signature, but sometimes they are able to present an order to the judge for signature just after the conference.

### **Can the judge make orders at the case conference?**

Yes, but only in very limited circumstances. Usually the court will make an order at a conference only with the parties’ agreement. Without the parties’ agreement, it is usual for an order to be made only in either of the following situations:

- the matter is procedural only (for example, an order for disclosure of documents, questioning of a party or setting time lines)
- there is clear and undisputed evidence in the record that justifies the order (for example, an order for child support based on the income shown in a party’s financial statement or income tax return).

However, the rules allow the judge to make a temporary or final order without the parties’ agreement, if it is appropriate to do so in the case and if notice of a party’s request for an order has been served on the other party.

## What happens when the case conference is over?

At the end of the case conference, the judge will usually discuss what the next event and date should be. Usually the next step is another case conference, a motion or a settlement conference. If there is to be a motion, the judge will often set timelines for serving the motion papers.

The case conference briefs are handed back to the lawyers (or destroyed by court staff). If there is to be another case conference, the judge may direct that the briefs be retained in the court file.

The next event and date can be booked right then and there, or can be booked later through the trial coordinator in person, by mail, by courier or by fax (but not by telephone). The trial coordinator's fax number is 905 853-4880.

*The **Family Law Rules** govern the court's procedure. They also contain the forms you must use. You can find the **Family Law Rules** on the Internet at: [www.e-laws.gov.on.ca/DBLaws/Regs/English/990114a\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/Regs/English/990114a_e.htm). The forms are found at: [www.ontariocourtforms.on.ca/english/forms/family/index.jsp](http://www.ontariocourtforms.on.ca/english/forms/family/index.jsp).*

*You can also get information about court procedures, rules and forms, Legal Aid, mediation and other resources to help you with your Family Court case at the Family Law Information Centre in the courthouse.*

*For case conferences, refer to the following provisions in the **Family Law Rules**: rule 17, rule 14 (4) - (6), rule 13 (12) - (12.2), Forms 14C, 17, 17A, 17B. Other rules and forms may also apply.*

