

SETTLEMENT CONFERENCES IN FAMILY COURT AT NEWMARKET

What is a settlement conference?

A settlement 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 whether it is possible to settle any of the issues in the case by an agreement of the parties. 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 settlement conference?

The goals are to:

- explore the chances of settling the case
- settle or narrow the disputed issues
- 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
- get the judge's view of how the court might decide the case, if the parties do not reach an agreement
- consider any other matter that may help in a quick and just conclusion of the case, such as mediation or arbitration of some of the issues or an assessment by a professional with expertise in custody or access issues
- if the case is not settled, start to plan the trial and start to get the case ready for a trial
- organize a trial management conference, or hold one then and there if appropriate.

Issues that are in dispute (other than some disclosure or procedural issues) are not usually decided at a settlement conference. If it appears that a trial will be necessary in your case, the judge may start to organize how the trial will proceed.

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 settlement conference held?

A settlement conference should be held only when the parties and their lawyers are ready to try to settle all the issues in the case, or at least some of the major issues. This is after the parties and their lawyers have exchanged any necessary financial statements, valuations of property, net family property statements or other documents relating to the issues. If the case involves custody of or access to a child, any necessary investigations or assessments should be completed first.

There can be more than one settlement conference in a case, if necessary.

Do I have to have a settlement conference?

Yes. There must be a settlement conference before a case can be scheduled for a trial.

How do I get a settlement conference?

Book the time for the settlement 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. Settlement conferences are usually held on Tuesdays and Thursdays. 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.

- Settlement conferences are normally booked for one hour. If you need more time, be sure to ask for it and explain why. You may not get all the time you ask for, as the court is extremely busy.
- Once the date is booked, you must give notice in writing to the other party's lawyer.

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 – are permitted to represent people in the Family Court because of the importance of the issues and because only they 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. They will not generally come into a settlement conference with you, however, because they do not have the necessary knowledge of your issues.

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 settlement 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 settlement conference?

At least two weeks before the settlement conference, you and your lawyer should make sure that you have provided all necessary information and documents about the issues to the other party, and that they have provided their necessary information and documents as well. You should tell your lawyer about any recent developments or changes, such as a change in your income, expenses, visiting arrangements with the children, etc.

The settlement conference is a very important step in your case. If it succeeds, there will not have to be a trial on the issues that you agree to settle. If it does not succeed, your case will be directed toward a trial. You and your lawyer should make every effort to be ready for the conference. If it appears you or another party will not be ready in time, your lawyer and the other lawyer should let the trial coordinator know as soon as possible, so that another case can be booked in your time slot.

You should think about and discuss with your lawyer what needs to be done to address each issue. You should have a proposal, or preferably some options, that you think the other party could accept. The rules require you to make an offer to settle the case at this stage. Be prepared to negotiate and to make compromises where appropriate.

Your lawyer should send your proposal to the other party's lawyer well before the settlement conference. Your lawyer should talk with the other party's lawyer before the settlement 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 completion of the disclosure of documents, 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 settlement conference?

Each party has to serve a settlement conference brief (in most cases, Form 17C – in child protection cases, Form 17D) on the other party's lawyer and file it, with proof of service, in the court file. Unlike other documents in the case, the settlement

conference brief should not be put into the court record, but rather should be kept separate from it. This is because it will be given back after the settlement conference.

- 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.)
- Your brief **must** contain your offer to settle some or all of the issues in your case. (Do not file an offer to settle separately from your brief.)
- **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 settlement conference brief.
- If property is an issue in your case, you must 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 settlement conference brief.
- Filing of a settlement conference brief can be done by mail or by someone coming to the court office and putting the brief in the court file. If you file by mail, remember to allow plenty of time.

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 settlement conference?

Sometimes a settlement conference can not go ahead because some important piece of information is not available, a participant is ill, etc. Recognizing that, the court books more settlement conferences in a day than can actually be held. The court has to know which 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 one 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 settlement 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. Settlement conferences are usually held on Tuesdays and Thursdays. 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.
- Settlement conferences are normally booked for one hour. If you need more time, be sure to ask for it and explain why. 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. 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 settlement 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 settlement conference?

Arrive at least 30 minutes before the time when your settlement 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 side, 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 settlement conference is normally scheduled for one hour. 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 settlement 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.

The discussions at a settlement 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 settlement 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 setting time lines or dealing with how the evidence at trial is to be presented)
- 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 settlement conference is over?

At the end of the settlement conference, the judge will discuss what the next event and date should be. Usually the next step is a trial management conference or another settlement conference. Sometimes the case is sent on directly for a trial.

The settlement conference briefs are handed back to the lawyers (or destroyed by court staff). If there is to be another settlement 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. The forms are found at: 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 settlement conferences, refer to the following provisions in the **Family Law Rules**: rule 17, rule 13 (12) - (15), Forms 13, 13.1, 13B, 14C, 17C, 17D. Other rules and forms may also apply.*

