

PRACTICE DIRECTIVE

Judicial Settlement Conferences

1. GENERAL INFORMATION

- 1.1 The British Columbia Court of Appeal introduced a pre-hearing judicial settlement conference pilot project on November 1, 2004, which ran for two years. The Court has decided to continue offering the pre-hearing judicial settlement conference project until further notice.
- 1.2 The purpose of the project is to assist parties to resolve certain appeals at an early stage, to save expense to the parties and to expedite the final resolution of the dispute.
- 1.3 A settlement conference is available to parties involved in all civil appeals. In order to participate in a settlement conference, all parties to the appeal must consent to the process. A party may withdraw from the process at any time, at which time the process shall terminate. The Court may reject a request for participation in a settlement conference on the basis that the matter is not suitable for a settlement conference.
- 1.4 On the filing of a joint request, in the approved form, the parties will apply for a consent order suspending the applicable time limits of the ***Court of Appeal Act*** and Rules. The applicable time limits will be reinstated at the conclusion of the process or when one party withdraws from the process.
- 1.5 A judge of the Court of Appeal who has agreed to participate in the pilot project will conduct the settlement conference at a date and time mutually convenient to all participants. If the parties are successful in resolving the dispute through a settlement conference, the parties will draft and sign an agreement and a formal order will be entered.
- 1.6 If the parties do not resolve the dispute through the settlement conference, the matter will proceed in accordance with the ***Court of Appeal Act*** and Rules. The substance of all communications by the parties during the settlement conference process are statements made off the record, are confidential and shall not be disclosed in any other proceedings. The judge

who conducts the settlement conference will not sit on the panel presiding at the appeal.

- 1.7 The judge who conducts the settlement conference acts as a mediator performing a judicial function. The parties agree that they will not call the judge as a witness in any proceeding relating to the subject matter of the appeal or to the settlement conference. The settlement conference judge maintains his or her judicial capacity and its accompanying immunity and cannot be compelled to testify in later court proceedings should they arise.

2. HOW TO APPLY FOR A SETTLEMENT CONFERENCE:

- 2.1 To participate in a settlement conference, the parties must submit a “Joint Request for Pre-Hearing Judicial Settlement Conference” form, Form **A**, (“Joint Request Form”) to the “Pre-Hearing Judicial Settlement Conference Office” at the Court of Appeal. The Joint Request Form must be signed by, or on behalf of, all parties to the appeal. The parties will also submit a consent order in Form B, endorsed with their consent.
- 2.2 Upon receipt of the Joint Request Form, an acknowledgment of receipt of the request will be sent to the parties. In the acknowledgement letter, the parties will be advised of available dates for an initial teleconference with the participating judge. At the initial teleconference, the parties and the participating judge will establish the date of the settlement conference and determine the relevant materials to be exchanged at or before the settlement conference. The initial teleconference will take place within 10 days of the date of the acknowledgement. The settlement conference will typically occur within 30 days of the receipt of the Joint Request Form.

3. WHO ATTENDS THE SETTLEMENT CONFERENCE?

- 3.1 In a matter involving an individual appellant and an individual respondent (for example, a family matter), both parties will attend the settlement conference, together with their respective legal counsel. Where a party to an appeal is a corporation, a representative of the corporation will attend the settlement conference with counsel. The person attending the settlement conference on behalf of the corporation must have the authority to bind the corporation to the terms of the settlement agreement. On occasion and depending on the nature of the case, the judge conducting the settlement conference may ask that an expert witness (or witnesses) attend the settlement conference.

4. SELF-REPRESENTED LITIGANTS AND THE SETTLEMENT CONFERENCE:

- 4.1 Where one or more of the parties who has consented to a settlement conference is self-represented and the Court is of the opinion that the matter is suitable for settlement conference, the judge conducting the settlement conference may suggest or request the assistance of *pro bono* legal counsel for the self-represented party during the settlement conference process.
- 4.2 Where both parties to the settlement conference are self-represented and the Court is of the opinion that the matter is suitable for settlement conference, the judge conducting the settlement conference may request that *pro bono* legal counsel assist the parties and draft the resulting settlement agreement. Where a judge conducts a settlement conference with self-represented parties, the judge will not meet separately with the parties (see discussion about caucusing in *The Settlement Conference* following).

5. THE SETTLEMENT CONFERENCE:

- 5.1 A judge of the Court of Appeal who has chosen to participate in the pilot project will conduct the settlement conference. The judges participating in settlement conferences will be assigned in rotation, subject to their availability, and the views of the parties.
- 5.2 The settlement conference process is meant to be as flexible as possible and is not governed by any procedural rules. The parties, together with the judge conducting the settlement conference, are free to determine the manner in which the settlement conference proceeds. A party to the settlement conference may withdraw from the process at any stage.
- 5.3 During the settlement conference, the judge may conduct a meeting with legal counsel representing the parties, without the parties present, to discuss the process to be followed during the settlement conference. The settlement conference judge may also conduct private meetings or caucuses with the individual parties and their legal counsel.
- 5.4 All parties must agree the settlement conference, and the fact that the parties participated in the settlement conference, will remain confidential, and are without prejudice to the parties' legal positions on the appeal.
- 5.5 No record of the settlement conference will be filed with the Court file. Records of the settlement conference process will be maintained by the Pre-Hearing Judicial Settlement Conference Officer, who is the Law Officer to the Court of Appeal, in a location separate and apart from the Court of Appeal Registry and its files. Information about the settlement conference will not be

maintained in the Court of Appeal's electronic information system and will not be available to other judges of the Court.

6. RESULTS OF THE SETTLEMENT CONFERENCE:

- 6.1 If the parties are successful in resolving the case through the settlement conference, the parties or their legal counsel will jointly draft an agreement which will be signed by all the parties. If an order is required, the parties must also agree to the form of order to be sought. In that event, the parties will apply to a Division of the Court for an order in those terms. Otherwise, the parties will file a Notice of Abandonment of the appeal.
- 6.2 The allowing of an appeal by consent is not to be taken as any expression of opinion by the Court on the correctness or otherwise of the Reasons for Judgment in the Court or Tribunal appealed from.
- 6.3 If the parties are unable to reach an agreement through the settlement conference, the parties may proceed through the usual appeal process. The judge who conducted the settlement conference is automatically excluded from the panel assigned to hear the appeal and from any subsequent pre-hearing chambers proceedings.

7. SUITABILITY FOR SETTLEMENT CONFERENCE:

- 7.1 The Court reserves the right to restrict the availability of a settlement conference where it considers a case unsuitable for settlement conference. The type of case which may be unsuitable for settlement conference includes those where the Court considers that the issues are too complex, the case raises a significant issue of law, or there are allegations of domestic violence or abuse.

“The Honourable Chief Justice Finch”
On behalf of the Court of Appeal for British Columbia

December 12, 2005

FORM A
(JOINT REQUEST FOR PRE-HEARING JUDICIAL SETTLEMENT CONFERENCE)

Court of Appeal File No. _____
Supreme Court File No. _____

COURT OF APPEAL

BETWEEN:

Appellant/Respondent
(Plaintiff)

AND:

Appellant/Respondent
(Defendant)

JOINT REQUEST FOR PRE-HEARING JUDICIAL SETTLEMENT CONFERENCE

We, the undersigned, jointly request a pre-hearing judicial settlement conference in order to attempt to conclude the present litigation by way of settlement agreement.

We will jointly prepare and forward to the Court of Appeal Settlement Conference Officer a copy of all relevant documents within the time frame established at the initial teleconference.

This joint request is an application to the Settlement Conference Judge for an order suspending the applicable time limits set out in the Court of Appeal Act and Rules.

We promise to respect the confidential nature of all matters discussed throughout the pre-hearing judicial settlement conference.

Date: _____

(Name and address of appellant's law firm or of appellant if self-represented)

*(Name of counsel/appellant if self-represented)
(Name of appellant(s) being represented)*

(Name and address of respondent's law firm or of respondent if self-represented)

*(Name of Counsel/respondent if self-represented)
(Name of respondent(s) being represented)*

FORM B

(PRE-HEARING CONFERENCE SETTLEMENT FORM)

Court of Appeal File No.

COURT OF APPEAL

BETWEEN:

Appellant/Respondent
(Plaintiff)

AND:

Appellant/Respondent
(Defendant)

CONSENT ORDER

[Insert date of the order]

WHEREAS:

- (a) all parties have consented to this order, and
- (b) no person involved is under any legal disability

IT IS ORDERED that the time limits for filing any document or taking any step in the Court of Appeal are suspended until further order.

APPROVED AS TO FORM:

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...
Counsel for the Appellant

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...
Counsel for the Respondent