



COURT OF APPEAL

## British Columbia Court of Appeal

### Practice Directive (Civil)

#### Title: Judicial Settlement Conferences

**Issued: 27 June 2014**

**Effective: Immediately**

**Cite as: *Judicial Settlement Conferences (Civil Practice Directive, 27 June 2014)***

#### 1. PURPOSE

[1] The purpose of a judicial settlement conference is to assist parties to resolve certain appeals at an early stage, to save the expense of an appeal, and to expedite the final resolution of the dispute.

#### 2. HOW DO I APPLY FOR A SETTLEMENT CONFERENCE?

##### A. File Form A and Form B at the Court Registry (forms are below)

[2] A settlement conference is available to parties involved in all civil appeals in one of two ways: a judge or a division may refer the parties to the settlement conference program or the parties may apply to participate in the process.

[3] Regardless of whether a party is referred to a settlement conference or wishes to apply themselves, they must file two forms with the Court of Appeal Registry:

- a) **Form A:** A “Joint Request for Settlement Conference” form, signed by all parties to the appeal; and,
- b) **Form B:** A consent order, also signed by all parties to the appeal.

[4] These forms may be found at the bottom of this practice directive. When Form B is filed, the timelines under the *Court of Appeal Act* and *Court of Appeal Rules* are suspended and not reinstated until the conclusion of the settlement conference or when one or more parties withdraws.

[5] A party may withdraw from a settlement conference at any time, at which time the conference shall terminate. 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 *Court of Appeal Rules*.

### **3. BEFORE THE SETTLEMENT CONFERENCE**

[6] After Form A and Form B have been filed, the parties will receive an acknowledgement letter from the Court, asking for available dates for an initial teleconference with the participating judge.

[7] 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 Form A and Form B.

[8] On occasion and depending on the nature of the case, the judge conducting the settlement conference may ask that expert witness(es) attend the settlement conference.

[9] The Court or a judge may reject the request on the basis that the matter is not suitable for a settlement conference. The types of cases that may be unsuitable for a settlement conference include those where the issues are too complex, the case raises a significant issue of law, or there are allegations of domestic violence or abuse.

### **4. AT THE SETTLEMENT CONFERENCE**

#### **A. Who Attends?**

[10] In an appeal 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.

[11] 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.

#### **B. What if I am Self-Represented?**

[12] Where one or more of the parties who has consented to a settlement conference is self-represented and the judge conducting the settlement conference 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.

### **C. What Happens at the Settlement Conference?**

[13] A judge of the Court of Appeal will conduct the settlement conference. At the outset, the 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.

[14] 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.

[15] 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, except in cases where all parties are self-represented.

### **D. Is the Settlement Conference Confidential?**

[16] 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 the appeal or in any other proceedings. The judge who conducts the settlement conference will not sit on the division presiding at the appeal and on any subsequent pre-hearing chambers proceedings. The fact a settlement conference has occurred will not be disclosed to the judges hearing the appeal.

[17] 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.


[18] No record of the settlement conference will be filed in the Registry file. Records of the settlement conference process will be maintained by the Pre-Hearing Judicial Settlement Conference Officer, who is the Legal Counsel 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.

## **5. AFTER THE SETTLEMENT CONFERENCE**

[19] 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

judges in the Court of Appeal for an order in those terms. Otherwise, the parties will file a Notice of Abandonment of the appeal.

[20] 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 *Court of Appeal Rules*. If an appeal is “allowed” by consent, it is not an expression of opinion by the Court on the correctness or otherwise of the Reasons for Judgment in the Court or Tribunal appealed from.

 C.J.R.  
\_\_\_\_\_  
The Honourable Chief Justice Bauman  
for the Court of Appeal of British Columbia

History:

Replaces the civil Practice Directive titled *Judicial Settlement Conferences*, dated 19 September 2011, which replaced the Practice Directive titled *Judicial Settlement Conferences*, dated 12 December 2005.

Form A

(Joint Request for 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 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 file a copy of all records requested by the Justice conducting the settlement conference 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 and subject to their willingness and availability, the parties hereby request the following Justice(s) to conduct the settlement conference: *(insert up to 3 name(s) of justices)*

Date: \_\_\_\_\_

<i>(Name and address of appellant's law firm or of appellant if self-represented)</i>	<i>(Name of counsel/appellant if self-represented)</i>  <i>(Name of appellant(s) being represented)</i>
<i>(Name and address of respondent's law firm or of respondent if self-represented)</i>	<i>(Name of counsel/respondent if self-represented)</i>  <i>(Name of respondent(s) being represented)</i>

Form B  
(Settlement Conference Consent Order)

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:

\_\_\_\_\_  
Counsel for the Appellant /  
Appellant in person

\_\_\_\_\_  
Counsel for the Respondent /  
Respondent in person