

## Settlement Conference Rules and Procedure

(For litigants and lawyers)

- [1] The Settlement Conference is the next to last step before a trial. It is a final opportunity for a judicial review and discussion about the disputed issues in the case, and to try to resolve them, in whole or in part, to avoid or shorten a trial. It is a confidential process. **The judge holding the conference will not be the trial judge.** Everything that is said by anyone participating in the conference is confidential and cannot be repeated in court or later presented at trial. The settlement conference documents (briefs) which each party must file before the conference are returned or destroyed afterwards. In order for the judge to make meaningful settlement recommendations, the parties must prepare a number of important documents before the conference and file them with the court.
- [2] The *Family Law Rules* (“the *Rules*”) govern what is required and what happens at a settlement conference. There are consequences if these rules are not followed. What follows is a procedural guide (and some tips) to the settlement conference process. Be mindful that the Chief Justice of Ontario issued a **Consolidated Provincial Practice Direction for Family Proceedings at the Superior Court of Justice** effective June 15, 2023 (the “Family Practice Direction”). This Practice Direction should be read in combination with an earlier **Notice to the Profession and Family Law Litigants** (the “Notice”) for Central East Region (effective April 19, 2022; updated June 1, 2022). All notices can be found on the Superior Court of Justice website at [www.ontariocourts.ca](http://www.ontariocourts.ca), the Family Practice Direction under “Provincial Practice Directions” and the Central East Region Notice under “Regional Practice Directions and Notices” (Home » Practice Directions, Notices, Rules and Forms » Regional Practice Directions and Notices » Central East). The website contains additional information about family law rules and practice. This can be accessed online by going to “A Guide to Process for Family Cases at the Superior Court of Justice” (Home>> Family Proceedings>> Resources-Family) or you can contact the Family Law Information Centre (“FLIC”) at your local court. Additional guides can be found at <https://www.attorneygeneral.jus.gov.on.ca/english/family/guides/fc/>.

## **Purpose of a Settlement Conference**

[3] The purposes of a settlement conference are set out in *Rule 17(5)* of the *Family Law Rules*,

### **PURPOSES OF SETTLEMENT CONFERENCE**

17(5) The purposes of a settlement conference include,

- (a) exploring the chances of settling the case;
- (b) settling or narrowing the issues in dispute;
- (c) ensuring disclosure of the relevant evidence;
- (c.1) settling or narrowing any issues relating to any expert evidence or reports on which the parties intend to rely at trial;
- (d) noting admissions that may simplify the case;
- (e) if possible, obtaining a view of how the court might decide the case;
- (f) considering any other matter that may help in a quick and just conclusion of the case;
- (g) if the case is not settled, identifying the witnesses and other evidence to be presented at trial, estimating the time needed for trial and scheduling the case for trial;
- (h) organizing a trial management conference or holding one if appropriate; and
- (i) in the case of a motion to change a final order or agreement under rule 15, determining the most appropriate process for reaching a quick and just conclusion of the motion.

[4] It is important to note what the settlement conference is not – **it is NOT a repetition, or duplication, of the case conference. It is not the place to reargue what may have happened, or been ordered, at earlier steps in the court proceeding like a case conference or a motion.**

## **Required Documents**

[5] These are the documents that **must** be prepared, served and filed with the court before a settlement conference can proceed:

- (a) a **Net Family Property statement**, if the parties are married and there are property issues involved;
- (b) a **Comparison of Net Family Property** statements (if (a) applies);

- (c) a **Certificate of Financial Disclosure**;
- (d) an **updated Financial Statement, or an affidavit** saying that the information in a previous financial statement sworn more than 60 days before the conference has not changed and is still true;
- (e) an **Expert Report**;
- (f) a **Settlement Conference Brief**;
- (g) an **Offer to Settle**, either in the settlement conference brief (where noted) or separately attached.

[6] Appendix A sets out when these documents must be served on the other party and filed with the court, along with the governing *Rule*. Some of these documents, such as (a) to (e) above, are filed in the court record (this is called the “Continuing Record”). A settlement conference brief and any Offer to Settle **do not** form part of the Continuing Record and are returned to the parties or destroyed after the conference (see **Confidentiality** below).

[7] Failure to comply with the *Rules* wastes the time of the parties and the court. Non-compliance will usually result in costs being awarded payable by the offending party (see **Cost Consequences** below).

### **Orders at a Settlement Conference**

[8] *Rule 17(8)* sets out the kind of Orders that the judge can make at a settlement conference.

#### **ORDERS AT CONFERENCE**

- (8) At a ... settlement conference ... the judge may, if it is appropriate to do so,
  - (a) make an order for document disclosure (rule 19), questioning (rule 20) or filing of summaries of argument on a motion, set the times for events in the case or give directions for the next step or steps in the case;
  - (a.0.1) make an order about expert evidence, including hiring an expert for one or more parties, the use of an expert opinion and how and when experts’ reports are to be served, filed and the opinion admitted into evidence;
  - (a.1) make an order requiring the parties to file a trial management endorsement or trial scheduling endorsement in a form determined by the court;
  - (b) make an order requiring one or more parties to attend,

- (i) a mandatory information program,
  - (ii) a ... settlement conference conducted by a non-judge who is a current or retired lawyer or a retired judicial officer of the Ontario Superior Court approved for that purpose by the regional senior judge;
  - (iii) an intake meeting with a court-affiliated mediation service, or
  - (iv) a program offered through any other available community service or resource;
- (b.1) if notice has been served, make a final order or any temporary order, including any of the following temporary orders to facilitate the preservation of the rights of the parties until a further agreement or order is made:
- (i) an order relating to the designation of beneficiaries under a policy of life insurance, registered retirement savings plan, trust, pension, annuity or a similar financial instrument,
  - (ii) an order preserving assets generally or particularly,
  - (iii) an order prohibiting the concealment or destruction of documents or property,
  - (iv) an order requiring an accounting of funds under the control of one of the parties,
  - (v) an order preserving the health and medical insurance coverage for one of the parties and the children of the relationship, and
  - (vi) an order continuing the payment of periodic amounts required to preserve an asset or a benefit to one of the parties and the children;
- (c) make an unopposed order or an order on consent; and
  - (d) on consent, refer any issue for alternative dispute resolution.

[9] While the *Rule* is worded to include case and trial management conferences, each of those has a different purpose than the settlement conference, although there will be some overlap. Some of the *Rule's* provisions, like sub-paragraphs (a), (a.0.1), (b) and (b.1) above, should have already been ordered at the case conference, or even motion – **a settlement conference is not the place to raise for the first time, for example, issues about disclosure or questioning.** If, for example, you have a complaint about failure by the other party to comply with an Order made at the case conference for disclosure or if you think that the disclosure

provided is inadequate, then consider bringing a motion well before the settlement conference.

### **Parties required to confer before settlement conference**

[10] Rules 17(3.1) to (3.3) **require** parties to discuss the issues in their case **before** the conference.

#### **REQUIREMENT FOR PARTIES TO CONFER**

(3.1) Before a conference, each party shall, subject to subrule (3.2), confer or make best efforts to confer orally or in writing with every other party respecting,

- (a) the parties' requests for financial disclosure; and
- (b) a temporary resolution of the issues that are in dispute; and,
- (c) in the case of a settlement conference..., a final resolution of the issues that are in dispute.

#### **EXCEPTION**

(3.2) Subrule (3.1) does not apply with respect to a party if,

- (a) the party is prohibited from such communication by court order; or
- (b) there is a risk of domestic violence by a party who is not represented by a lawyer.

#### **EFFECT OF FAILURE TO CONFER**

(3.3) If a party fails to comply with subrule (3.1), the court may, for greater certainty, make any order under subrule 1(8.1) that is appropriate in the circumstances, including,

- (a) an order postponing the case conference until the requirements of subrule (3.1) are met; and
- (b) an order for costs, regardless of whether the case conference is postponed.

[11] Although the lawyers (and the parties, if not represented by a lawyer) are required to file a confirmation (prescribed **Form 17F**) before the conference can proceed (see **Confirmation**

below), they are required to discuss the issues before the conference dealing with disclosure and a resolution of their disputed issues (on a temporary or final basis), failing which costs will likely be imposed against a non-compliant party.

### **Settlement Conference Briefs**

[12] There is a group of *Rules* that governs what documents must be served and filed by each party before a settlement conference can be held, and when those must be served and filed (see **Required Documents** above). These *Rules* include expert opinion evidence (see also **Expert Evidence** below). There is a prescribed **Form 17C** for a settlement conference brief not involving protection of children. The Family Notice limits the contents of your settlement conference brief and any additional pages of facts and/or documents that are attached as an appendix or schedule to 12 pages.

[13] Certain documents may accompany the brief and are **not** included in the 12-page limit. These include **relevant excerpts** from the following:

- (a) Parenting assessments (pursuant to Section 30 of the *Children's Law Reform Act*), Office of the Children's Lawyer reports and Voice of the Child Reports;
- (b) Documents *that* establish a child's educational needs (for example, report cards or Individual Education Plans);
- (c) Lists of any disclosure that remains outstanding;
- (d) Income or business valuations, pension valuations or real estate appraisals (where the value of property is in dispute);
- (e) Proof of income for the relevant period(s) including pay stubs, confirmation of benefits received and/or Statement of Business or Professional Activities from a party's Income Tax Return; and,
- (f) Domestic contracts, including separation agreements, marriage contracts or cohabitation agreements that are relevant to the issues in dispute.

In addition, the parties should include with their materials:

- (a) Previous orders and/or endorsements that are **relevant to the issues that are to be addressed** at the event;
- (b) Updated Financial Statements, Net Family Property Statements/ Comparative Net Family Property Statements;

- (c) Litigation expert reports;
- (d) Offers to settle;
- (e) Child Support or Spousal Support Advisory Guideline calculations.
- (f) Terms of recognizance, police reports or reports from the Children's Aid Society, where applicable.

These documents are also not included in the above page restrictions.

[14] **Please remember to upload what you have filed to CaseLines (this is required: filing with the court is not enough).**

[15] Voluminous texts, emails and/or social media postings must not be included but **relevant and necessary** excerpts may be referenced in the brief.

[16] Note that Expert Reports are not exempted from these page limitations because they are required to be filed in the Continuing Record **before** the conference (see *Rules* 20.2(2) and (14)). A summary of the expert(s) opinion(s) can be included in the brief so long as the page limitations are obeyed: if a party believes it necessary to exceed the page limit, the Notice requires that leave of the court be obtained by 14B motion in advance of the conference **before** the brief is filed.

[17] *Rules* 17(13), (13.1) and (14.2) set out the requirements for service and filing of settlement conference briefs.

#### **PARTIES TO SERVE BRIEFS**

(13) ...[E]ach party shall serve and file a ... settlement conference brief (Form 17C)

#### **TIME FOR SERVICE OF BRIEFS**

(13.1) **The party requesting the conference** (or, if the conference is not requested by a party, the applicant or party making the motion) **shall serve and file a brief not later than six days before the date scheduled for the conference and the other party shall do so not later than four days before that date. (bolding added)**

#### **REQUIREMENT TO BRING DOCUMENTS TO SETTLEMENT CONFERENCE**

(14.2) The following documents shall be brought to a settlement conference:

1. Any document that supports a party's position in respect of a dispute regarding the value of property or regarding the amount of a debt, in the case of a property claim under Part I of the *Family Law Act*.
2. Any document required to be served under rule 13 (financial disclosure), if there is a dispute as to whether it was served.

[18] An Offer to Settle must be included in, or accompany, the brief (see **Offers to Settle** below). It is prudent to consider having the Offer accompany the brief (rather than being included in it) because that may have later cost implications. The Offer should comply with *Rule 18*.

[19] Above all, briefs should be prepared with a view to a realistic agenda that can be fairly addressed by both sides in the time available with the court that day. Anything longer than the 12-page brief limit (with permitted attachments) or which includes unnecessary material may not be read and could expose the offending party to an Order for costs payable to the other side.

### **Expert Evidence**

[20] *Rule 20.2* deals with expert opinion evidence. A party can hire their own expert or the court can make an Order that an expert be hired by or for one or more of the parties. There are several kinds of experts described in *Rule 20.2(1)*. Whether the expert is hired by a party or a court Order has been made, the expert report must be served and filed with the court **at least 6 days before the settlement conference**. There are minimum requirements that must be met if you want to call an expert as a witness at trial (a "litigation" or "joint litigation" expert) or if you only want to file an expert's written opinion (a "participation expert"). These requirements include listing the documents or other sources of information relied on by the expert and serving copies of the documents on the other party or parties unless they have already been served.

[21] **It is usually a good idea to serve and file a copy of the expert report well in advance of the conference. Don't wait until 6 days before the conference.**

### **Financial Disclosure**



[22] Financial disclosure already made must be updated for the settlement conference. *Rules* 13(12), (12.1) and (12.2) 1. and 2. provide as follows:

#### **UPDATING FINANCIAL STATEMENT**

(12) Before a ...settlement conference...a party shall update their financial information by serving and filing the document specified in subrule (12.1) no later than the time specified in subrule (12.2), if the information in the last financial statement provided by the party would be,

(a) for a ...settlement conference...more than 60 days old by the time the conference is held;

#### **DOCUMENT TO BE PROVIDED**

(12.1) For the purposes of subrule (12), a party shall serve and file the following document:

1. If the information in the last statement has not changed, an affidavit saying that the information in the last statement has not changed and is still true.
2. If the information in the last statement has changed, the following document:
  - i. If the changes are only minor, an affidavit with details of the changes.
  - ii. In any other case, a new financial statement.

#### **TIMING REQUIREMENT**

(12.2) A party shall serve and file the document referred to in subrule (12.1) no later than the following time:

1. For a ...settlement conference,
  - i. six days before the conference, in the case of the party requesting the conference or, if the conference is not requested by a party, the applicant or the party making the motion, as the case may be, and
  - ii. four days before the conference, in the case of the other party.

[23] If there is any document earlier served as required by the *Rules* which has been corrected, updated or is a new version, an updated Certificate of Financial Disclosure must be served and filed in the Continuing Record. *Rule* 13(13.1) governs this,

## **UPDATING CERTIFICATE OF FINANCIAL DISCLOSURE**

(13.1) Before any settlement conference ... a party who has served a corrected, updated or new version of a document referred to in subrule (3.1), (3.3), (3.4) or (5.0.1) in accordance with subrule (15), or additional documents in accordance with subrule (16), shall serve and file an updated certificate of financial disclosure (Form 13A), no later than,

(a) six days before the conference, in the case of the party requesting the conference or, if the conference is not requested by a party, the applicant or the party making the motion, as the case may be; and

(b) four days before the conference, in the case of the other party.

[24] *Rule* 13(16) provides,

## **DUTY TO ADDRESS OMISSIONS IN FINANCIAL DISCLOSURE**

(16) As soon as a party discovers that he or she failed to serve a document required to be served under subrule (3.1), (3.3), (3.4) or (5.0.1), the party shall serve the document on the other party.

## **Property Claims**

[25] Where the case involves property claims between married (not common law) spouses, two important documents must be prepared. The first is a **Net Family Property statement** (Form 13B) and the other is a **Comparison of Net Family Property Statements** (Form 13C) both of which must be prepared and filed **six** days before the settlement conference.

[26] *Rules* 13(14), (14.0.1), (14.02), (14.2) and (14.3) are the applicable rules.

## **NET FAMILY PROPERTY STATEMENT**

(14) Before a settlement conference...each party to a property claim under Part 1 of the Family Law Act shall, no later than the time specified in subrule (14.0.1), serve and file,

(a) a net family property statement (Form 13B);

(b) if the party has already served a net family property statement and the information in that statement has not changed, an affidavit saying that the information in the statement has not changed and is still true.

## **SAME, TIMING REQUIREMENT**

(14.0.1) A party shall serve and file the document referred to in subrule (14) no later than,

- (a) for a settlement conference,
  - (i) six days before the conference, in the case of the party requesting the conference or, if the conference is not requested by a party, the applicant or the party making the motion, as the case may be, and
  - (ii) four days before the conference, in the case of the other party; and
- (b) for a trial, 30 days before the earlier of the start of the trial and of the trial sitting, as applicable.

**COMPARISON OF NET FAMILY PROPERTIES, JOINT**

(14.2) Parties who have served and filed net family property statements in accordance with subrule (14) shall file a joint comparison of net family property statements (Form 13C) no later six days before a settlement conference, subject to subrule (14.3).

**COMPARISON OF NET FAMILY PROPERTIES, SEPARATE**

(14.3) If the parties fail to agree on a joint comparison of net family properties, each party shall serve and file the party’s own comparison of net family property statements (Form 13C) no later than,

- (a) **six days before a settlement conference**, in the case of the party requesting the conference or, if the settlement conference is not requested by a party, the applicant or the party making the motion, as the case may be; and
- (b) **four days before the settlement conference**, in the case of the other party.

[27] These documents must be filed in the Continuing Record.

**Service and Filing of Briefs**

[28] Be mindful that there are different rules for the applicant and respondent for serving their briefs: the applicant must **serve and file** their brief on the respondent at least **six days** before the conference date, and the respondent **must serve and file** their brief **four days** before the conference date.

<i>Serving &amp; Filing of Briefs with the Court by the applicant (deadline for respondent in brackets)</i>	<i>For Conference date for the following week</i>
Monday (Wednesday)	Tuesday

Tuesday (Thursday)	Thursday
Wednesday (Friday)	Friday
Thursday (Monday)	Monday the second week afterwards
Conferences are not held on Wednesdays in Newmarket.	

[29] Where the deadline for filing falls on a statutory holiday, add a day. For example, if Monday would ordinarily be the deadline for filing briefs in time for a Tuesday Settlement Conference the next week, and the Monday is a statutory holiday, then the briefs must be filed with the court on the preceding Friday. **Always remember to serve and file your brief as soon after service on the other side as possible to ensure that you comply with this rule.**

[30] In Newmarket, the Court will accept a late brief if you have written consent from all the parties involved in the case. The brief must be served and filed with the court along with the consent by 2 pm no later than 2 days before the scheduled conference date.

[31] See Appendix A for service and filing deadlines.

### **Offers to Settle**

[32] An Offer to Settle must be made as part of the settlement conference process. Its terms are confidential and **cannot** be mentioned in any document filed in the Continuing Record or until after a judge has made a decision dealing with the subject matter of the Offer (i.e., after a trial or other hearing). *Rule 18* deals with offers to settle, who must sign them, the consequences of withdrawing an offer, and accepting or failing to serve or accept an offer.

[33] The settlement conference brief requires (at paragraph 19) that a party include the terms of their offer to settle. Please remember that while the Form requires each party to set out the terms on which they are prepared to settle the issues in the case, the settlement conference process and all associated documents associated are considered confidential. In other words, the offer referenced in the settlement conference brief will **not** qualify as a *Rule 18* Offer that a party will be allowed to mention after a trial when dealing with the issue of costs. The best practice is to refer to the terms of an offer in the brief or separately attach it. **In every**

case an Offer to Settle must be served and accompanied by an affidavit proving its service on the other party.

### **Confirmation**

[34] Even though the court, or either or both of the parties, have scheduled a settlement conference date, **each** party must still confirm with the other side and file with the court a confirmation that the conference will proceed. *Rule* 17(14) states:

#### **PARTIES TO CONFIRM ATTENDANCE**

(14) Each party shall,

~~(a) confer or attempt to confer orally or in writing with every other party about the issues that are in dispute, subject to a party being prohibited from such communication by court order;~~

(b) before giving the clerk confirmation of the conference in Form 17F under clause (c), **give a copy of the confirmation of conference to every other party using mail, fax, email or any other method**, except in a child protection case; and

(c) not later than 2 p.m. **three days before the conference date**, give the clerk the confirmation of conference (Form 17F) by,

(i) delivering it to the court office,

(ii) sending it to the court office by email, or

(iii) submitting it through the Justice Services Online website.

[35] See also “Service and Filing of Briefs” above (paragraphs [27] and [28]).

[36] The Form 17F confirmation is a filing requirement **in addition to** the deadline for filing briefs. **In other words, the filing of the brief does not relieve a party from serving and filing their confirmation.**

[37] The Family Practice Direction confirms the court’s expectation, and *Rule* 17(3.1) and Form 17F require, that the parties discuss with each other beforehand what are the specific issues for the conference and how much time each party expects will be needed to tell the judge how they think that the case can be settled. **It is required that each party list what they think are the specific issues for the conference.** This list is like an **Agenda** and will enable

the judge, who will have read the briefs beforehand, to focus on the issues, consider how to handle them and make settlement recommendations.

[38] The court will also expect the parties to alert it to any areas of agreement when filing their confirmations or at the outset of the conference.

[39] If no Confirmation is filed by either party (both parties are required to file one), the conference will be struck from the list and not heard unless the court orders otherwise. *Rule 17(14.1)* states:

#### **EFFECT OF FAILURE TO CONFIRM**

(14.1) Unless the court orders otherwise, a conference shall not be held if confirmation of the conference is not given to the clerk in accordance with clause (14) (c). O. Reg. 298/18, s. 12 (3).

[40] If the conference is not confirmed, the court may endorse the Record that no further steps in the case may be taken without the parties obtaining from the court an Order pursuant to Form 14B supported by an affidavit satisfactorily explaining the reason why the conference was not confirmed.

[41] If there is any change to the confirmation sent (such as certain issues being settled, or inadvertently omitted) the parties should let the court know right away.

#### **PARTIES TO UPDATE CONFIRMATION**

(14.1.1) If a party who has given a confirmation of conference determines at any time before the conference is held that the confirmation is no longer correct, the party shall, if possible, immediately,

(a) give a copy of the corrected confirmation of conference in Form 17F to every other party using a method listed in clause (14) (b) and subsequently give the clerk the corrected confirmation of conference by a method listed in clause (14) (c); or

(b) in a child protection case, give the clerk a corrected confirmation of conference in Form 17F by a method listed in clause (14) (c). O. Reg. 298/18, s. 12 (3).

## **Participation/Attendance**

[42] *Rule* 17(15) deals with the mandatory participation/attendance of parties and their lawyers at the settlement conference,

(15) The following shall come to each conference:

1. The parties, unless the court orders otherwise.
2. For each represented party, the lawyer with full knowledge of and authority in the case.

[43] The lawyer, or lawyer's agent, who appears for a party must not only be familiar with the issues in the case but also have the authority to give recommendations to, and receive settlement instructions from, the client.

[44] **Note:** Section 136 of the *Courts of Justice Act* prohibits any person from copying, recording, publishing, broadcasting or disseminating a court hearing or a portion of it, **including a hearing conducted over videoconference or teleconference**, without the court's permission. **This prohibition includes screenshots.**

## **Confidentiality**

[45] The settlement conference is confidential. These are the rules that were mentioned at the beginning of this summary,

### **CONTINUING RECORD, SETTLEMENT CONFERENCE BRIEFS**

17(22.2) Settlement conference briefs do not form part of the continuing record and shall be returned at the end of the conference to the parties who filed them or be destroyed by the court staff immediately after the conference.

### **CONFIDENTIALITY OF SETTLEMENT CONFERENCE**

17(23) No brief or evidence prepared for a settlement conference and no statement made at a settlement conference shall be disclosed to any other judge, except in,

- (a) an agreement reached at a settlement conference; or
- (b) an order.

## SETTLEMENT CONFERENCE JUDGE CANNOT HEAR ISSUE

17(24) A judge who conducts a settlement conference about an issue shall not hear the issue, except as subrule (25) provides.<sup>1</sup>

### The Conference

[46] The Conference will proceed on the date and at the time scheduled.

[47] Once all parties are present for the conference the judge will attend. If the parties have complied with the *Rules* and have properly identified the specific issues, the judge will explore with the parties their settlement options and try to narrow the issues in dispute. Recommendations will be given. Sometimes the judge may direct the parties to breakout rooms to discuss the issues and then have them return to the court for further discussions and/or an Order. The judge can make any Order that is considered appropriate (see **Orders at a Settlement Conference** above) or the judge can make an Order to which the parties have consented in writing: this could include a final Order settling one or more of the disputed issues.

[48] If there are experts involved in the case, it is worthwhile that the party planning to use that expert's opinion evidence to have the expert available on a stand-by basis in case the court (or the parties) have questions touching on the expert's qualifications or opinion.

[49] When the conference has ended, the judge will make an endorsement in the court file that the settlement conference has been held and note whether any Orders are being made. A copy of that endorsement will be sent to the parties and their lawyers by the court Registrar or a judicial assistant.

### Costs Consequences

[50] There are cost consequences where a party fails to obey the settlement conference rules. These can apply before, or at, the conference.

### **ORDER, IF DOCUMENT NOT PROVIDED**

13(17) If a party has not served or filed a document in accordance with the requirements of this rule or an Act or regulation, the court may on motion order

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<sup>1</sup> Subrule (25) deals with child protection cases.



the party to serve or file the document and, if the court makes that order, it shall also order the party to pay costs.

[51] If a settlement conference must be adjourned because a party has not complied with the *Rules*, a judge is required to order that party pay costs. *Rule* 17(18) provides as follows,

#### **COSTS OF ADJOURNED CONFERENCE**

(18) Costs shall not be awarded at a conference unless a party to the conference was not prepared, did not serve a required brief, did not make any required disclosure, otherwise contributed to the conference being unproductive or otherwise did not follow these rules, in which case the judge shall, despite subrule 24 (10),<sup>2</sup>

(a) order the party to pay the costs of the conference immediately;

(b) decide the amount of the costs; and

(c) give any directions that are needed. O. Reg. 114/99, r. 17 (18); O. Reg. 235/16, s. 3.

#### **COSTS MAY BE AWARDED LATER**

(18.1) Subrule (18) does not prevent the court from awarding costs in relation to the conference at a later stage in the case, if costs are not awarded at the conference. O. Reg. 298/18, s. 12 (5).

[52] This *Rule* (as well as *Rule* 17(3.3) above dealing with the failure to confer before the conference) emphasizes the importance of the settlement conference. Parties who have not followed the preceding rules can be held financially responsible to the other party by an award of costs immediately payable or payable by them at some later time or event as the settlement conference judge thinks appropriate.

#### **Summary**

[53] The settlement conference is the best, and likely the last, chance to get a judge's opinion about each party's case before trial. Settlement options are discussed: recommendations will be given. Compliance with the settlement conference rules and preparation of the documents required are essential. As already noted, some or all the disputed issues can be finally settled

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<sup>2</sup> Rule 24(10) provides that the court should deal with costs of each step in a case promptly.

and made into a final Order at the conference. An expensive trial can be avoided or shortened, along with its costs to the parties, by complying with the *Rules*.

*Guide updated August 15, 2023*

**APPENDIX A**  
**DOCUMENTS THAT HAVE TO BE SERVED AND FILED WITH THE COURT  
BEFORE A SETTLEMENT CONFERENCE (AND WHICH WILL FORM PART OF  
THE CONTINUING RECORD, EXCEPTING THE BRIEF AND CONFIRMATION)**

<b>Name of Document</b>	<b>Form</b>	<b>Deadline (not later than)</b>	<b>Rule</b>
Net Family Property Statement	13B	6 days before the conference	13(14.0.1)
Comparison of Net Family Property Statements	13C	6 days before the conference	13(14.2) and 13(14.3)(a)
Updated Financial Statements [or affidavit confirming financial information is the same]	13 or 13.1 [14A]	6 days before the conference (4 days for the other side)	13(12.2)
Updated Certificate of Financial Disclosure	13A	6 days before the conference (4 days for the other side)	13(13.1)
Settlement Conference Brief (with enclosed or attached Offer to Settle)	17C	6 days before the conference (4 days for the other side)	17(13.1)
Expert report	Report must comply with Rule 20.2(2)	6 days before the conference	20.2(2)
Confirmation	17F	3 days before the conference (both parties) by 2:00 p.m.	17(14)(c)