

## Case Conference Rules and Procedure

- [1] In a family law case there must be at least one meeting with the judge. This is called a conference. There are several different kinds of conferences. Each has a different, and important, purpose and takes place at a different stage in the case. The first conference is called a “Case Conference” and this takes place at the beginning of a case after the parties have exchanged their positions in writing (their “pleadings”). What follows is a procedural guide to, and what is expected of each party, at a Case Conference as set out in the *Family Law Rules* (“the *Rules*”) which govern procedures in family cases.
- [2] The Superior Court of Justice issued an updated **Notice to the Profession**<sup>1</sup> for the Central East Region on December 18, 2020, effective January 4, 2021 (“the Notice”): among other things it deals with the filing of documents and restrictions on what can be filed. It can be found on the Superior Court of Justice website (Home>>Notices and Orders-Covid-19>>Regional Notices (Central East-Family)). Part III of that Notice gives instructions how to file documents and restrictions on them. The website also contains additional information about family law rules and practice and 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 Proceedings) or you can contact the Family Law Information Centre (“FLIC”) at your local court.

### Purpose of a Case Conference

- [3] The purposes of a Case Conference are set in Rule 17(4) of the *Rules* and include,
- (a) exploring the chances of settling the case;
  - (b) identifying the issues that are in dispute and those that are not in dispute;
  - (c) exploring ways to resolve the issues that are in dispute;
  - (d) ensuring disclosure of the relevant evidence;
  - (d.1) identifying any issues relating to any expert evidence or reports on which the parties intend to rely at trial;
  - (e) noting admissions that may simplify the case;

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<sup>1</sup> References in “[ ]” are to the numbered sections of the Notice. **Bolded** words or phrases are for emphasis purposes only.

- (f) setting the date for the next step in the case;
- (g) setting a specific timetable for the steps to be taken in the case before it comes to trial;
- (h) organizing a settlement conference, or holding one if appropriate; and
- (i) giving directions with respect to any intended motion, including the preparation of a specific timetable for the exchange of material for the motion and ordering the filing of summaries of argument, if appropriate.

### **Orders at a Case Conference**

[4] There are many kinds of Orders that a case conference judge can make so it is important to know what the judge can (or cannot) order.

- (8) At a case 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) order that the evidence of a witness at trial be given by affidavit;
  - (b) if notice has been served, make a temporary or final order;
  - (c) make an unopposed order or an order on consent;
  - (d) on consent, refer any issue for alternative dispute resolution; and
  - (e) 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 former lawyer or retired judicial officer of the Ontario Superior Court of Justice 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;

[5] A judge **cannot** make an order finally resolving the case, or any of its disputed issues, unless the parties agree beforehand or at the conference. A judge **can** make an order for support if notice of that request has been made in the Brief. This is more likely where there is no support being paid. Orders for more, or better, financial disclosure can be, and are often, made. Notice of what disclosure is missing or required should be identified in the Brief.

### **Case Conference Brief**

- [6] Each party must file a Case Conference Brief before the date of the conference. It is a Form (17A). **All** of the form's sections must be completed. Some sections only require basic information about family members or answering a checklist. Others require more details about the case and what the party filing the Brief would like to see the conference accomplish, and the judge order.
- [7] **A case conference should never be the first time for the parties or their lawyers to meet or to discuss the issues for the conference, or the case.** Paragraph 8 of Form 17A specifically asks whether the parties have explored before the case conference settlement of any outstanding issues still being disputed and, if so, to give details of those efforts (see **Costs** below about a judge's authority to order that a party pay costs where they don't comply with the *Rules*).
- [8] A Case Conference Brief is **NOT** the place to simply repeat the party's pleadings or to ask for orders on disputed or final issues that a judge cannot make (see above, **Orders at a Case Conference**). Keep in mind the purpose of the conference when preparing your Brief. Lengthy briefs, briefs containing material irrelevant to the Case Conference issues, baseless allegations and accusatory, inflammatory and unprofessional language are unacceptable and could result in an order for costs being made against the offending party. You **must** comply with paragraphs [35] and [37] – [40] of the Notice in terms of page limitations.
- [9] 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 (typically no more than 45 minutes). Briefs are limited to the four-page form set out in the *Rules* plus two additional pages of narrative: the two-page limit on narrative includes any attachments. Anything longer may not be read.

### **Financial Disclosure**

- [10] **Meaningful financial disclosure is required for every family law case involving property and support issues.** The Ontario Court of Appeal has emphasized this repeatedly (*Roberts v. Roberts*, 2015 ONCA 450 (CanLII)):

The most basic obligation in family law is the duty to disclose financial information. This requirement is immediate and ongoing.

Failure to abide by this fundamental principle impedes the progress of the action, causes delay and generally acts to the disadvantage of the opposite party. It also impacts on the administration of justice. Unnecessary judicial time is spent and the final adjudication is stalled.”

Financial disclosure is automatic. It should not require court orders – let alone three to obtain production.

- [11] Financial disclosure already made **must** be updated for the Case Conference. Rules 13(12), (12.1) and (12.2) 1. and 2 provide as follows,

13(12) Before any ... case conference ... **each party shall update the information in any financial statement that is more than 30 days old by serving and filing,**

- (a) a new financial statement; or
- (b) an affidavit saying that the information in the last statement has not changed and is still true.

13(12.1) If there have been minor changes but no major changes to the information in a party’s past statement, the party may serve and file, instead of a new financial statement, an affidavit with details of the changes.

13(12.2) The material described in subrules (12) and (12.1) shall be served and filed as follows:

1. **For a ... case conference requested by a party**, the requesting party shall serve and file **at least seven days before the conference** date and the other party shall serve and file at least four days before that date.
2. **For a ... case conference that is not requested by a party**, the applicant shall serve **and file at least seven days before the conference date** and the respondent shall serve and file at least four days before that date.

### **Certificate of Financial Disclosure**

- [12] Each party to a case must file and serve documents of a financial nature relating to their case depending on whether their case only involves child and spousal support and/or property claims. Some documents must be served with the party’s Financial Statement – these are identified in Rule 13(3.1) dealing with support claims and they involve certain income and proof of child expense documents.

- [13] Where property claims are involved, Rule 13(3.3) lists what must also be served on the other party “no later than 30 days” after the date by which the party’s Financial Statement must be

served. The list corresponds to many of the several Parts of the Financial Statement. There must accompany the listed documents being served what is known as a “**Certificate of Financial Disclosure**” (Form 13A). This Certificate must be signed by the party and filed with the court before a scheduled case conference or motion (Rule 13(5.0.2)). If there have been Financial Statement changes or other documents discovered or whose service was overlooked, the Certificate must be updated (and the additional documents served) before a settlement or trial management conference (Rule 13(13.1)). The other party has the same obligation.

[14] Appendix A sets out the mandatory disclosure and filing requirements.

### **Service and Filing of Briefs**

[15] Part III of the Notice (paragraphs [25] to [31]) explains how to file case conference documents. Be mindful that there are different rules for the applicant and respondent for serving their Briefs: **the applicant must serve and file with the court** their Brief on the respondent at least **six days** before the conference date, and **the respondent must serve and file with the court** their Brief **four days** before the conference date.

<i>Filing of Brief with Court (by 2:00 p.m.) 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.	

[16] 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 Case Conference the next week, and the Monday is a statutory holiday, then the Briefs must be filed with the court by no later than 2:00 p.m. on the preceding Friday. **Remember to serve and file with the court your Brief as soon after service on the other side as possible to ensure that you comply with the rule.**

[17] Appendix B sets out service and filing deadlines.

### **Mandatory Participatory/Attendance**

[18] Rule 17(15), deals with the mandatory participation/attendance of parties and their lawyers,

(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.

[19] Paragraphs [1] to [3] on the Notice presume off-site participation/attendance during Covid-19 unless a judge should determine otherwise. A conference **will** proceed virtually by ZOOM or by ZOOM teleconference if a lawyer or party is not comfortable with an in-person attendance due to Covid-19 concerns (see [3] of the Notice). Court administration will send out the details for the conference two days before its scheduled date.

[20] 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 even if the issues are only procedural in nature or temporary in duration.

[21] Sometimes either or both the party and their lawyer cannot participate in the conference. Reasons may include a party being out of the jurisdiction or a compelling medical reason which prevents personal attendance. Rules 17(16) and (17) deal with this:

(16) With permission obtained **in advance from the judge who is to conduct a conference**, a party or lawyer may participate in the conference by telephone or video conference.

(17) A party or lawyer who has permission to participate by telephone or video conference shall,

- (a) make the necessary arrangements;
- (b) serve a notice of the arrangements on all other parties and file it; and
- (c) participate in the conference as the notice specifies.

[22] It is the responsibility of a party's lawyer, or the party if they are representing themselves, to request from the court at the earliest available opportunity its permission so that the party and/or lawyer may participate by telephone or video conference. **This should be done by a Form 14B on notice to the other party at least three weeks before the date scheduled**

**for the conference.** The request must be accompanied by an affidavit that provides good reason(s) why the party and/or lawyer is unable to personally attend.

### **Confirmation**

[23] Even though the court, or either or both of the parties, have scheduled a case 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, or

(ii) if available in the court office, sending it by fax or by email. O. Reg. 298/18, s. 12 (3)

[24] See also “Service and Filing of Briefs” above (paragraphs [15] and [16]).

[25] 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.**

[26] Form 17F requires the parties to discuss with each other beforehand what are the important issues for the conference and how much time each party expects will be needed to tell the judge what is needed for their case. **It is required that each party list what they think are the important issues for that conference.** This list is like an **Agenda** and will enable the judge, who will have read the Briefs beforehand, to focus on the issues and consider how to handle them.

- [27] If no Confirmation is filed, 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).

- [28] If the conference is not confirmed, the file will be sent to a judge who may order 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.
- [29] If there should be any change to the information contained in 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).

**The Conference**

- [30] The conference will proceed on the date and at the time scheduled. During this time of Covid-19, the Trial Coordinator will forward a ZOOM link to the parties and their lawyers in advance.
- [31] Once all parties are present for the ZOOM conference, the judge will attend. If the parties have complied with the *Family Law Rules* and have properly identified the important issues, the judge will discuss with them what can, or should, be done. Sometimes the judge may

direct the parties to breakout rooms to discuss the issues and then have them return to the ZOOM session for further discussions and/or an order. The judge can make an order that is considered appropriate (see **Orders at a Case Conference** above) or the judge can make any order to which the parties have consented in writing at the conference: this could include a final order settling one or more of the disputed issues. If your case is one that may involve the valuation of assets, analysis of a party's income or any other matter that may require expert opinion evidence it is a good idea to make a request for that order at the case conference because an expert's written opinion or report must be served and filed at least 6 days before the settlement conference, which is the next (mandatory) event in the case. This may avoid having to bring a motion for this relief later.

- [32] When the conference has ended, the judge will make an endorsement in the court file that a case 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 afterwards. If an order is made, it is the responsibility of the lawyers (if there are lawyers involved) to draft the formal version of the Order and to have it issued by the court. If the parties are representing themselves, court administration will prepare the Order and send an issued copy to each party.
- [33] If experts are going to be involved in the case then even if there are no reports at the conference it may be prudent to consider obtaining permission from the judge to either file the expert report(s) for the Settlement Conference or, better, a summary of the expert's opinion(s) because there are page limitations for that event and expert reports are not excluded from those limitations.
- [34] Briefs will be destroyed by court staff after the conference (or destroyed if the conference is held in-person). The court can order that a Case Conference Brief be filed as part of the Continuing Record maintained by the court (Rule 17(22)) but if there are references to settlement of the case that portion of the Brief must be deleted (Rule 17(22.1)).
- [35] **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.**

### **Costs**

[36] The judge hearing the Case Conference may make an order for costs in appropriate circumstances,

#### **COSTS**

(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).

[37] In addition to the provisions of section 17(18) the court also has the power to award costs pursuant to Rule 13(17) if a party has not served or filed a document required by the *Rules*. This can be requested in a party's Case Conference Brief, or the court may order costs on its own initiative. Rule 2(8) may also be used to reflect the court's displeasure with inflammatory language, irrelevant issues raised or rambling and incoherent Case Conference Briefs. Non-compliance with the Notice may also result in costs being ordered against an offending party.

*Effective January 4, 2021*

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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.

## APPENDIX A

### CERTIFICATE OF FINANCIAL DISCLOSURE

[1] Depending on whether a claim for support and/or a claim to property is being made each party must serve what is known as a Certificate of Financial Disclosure on the other party no later than 30 days after the date on which their Financial Statement must be served. The information listed in the Certificate must include the following,

(3.3) A party who is required to serve and file a financial statement in relation to a claim under Part I of the *Family Law Act* shall, no later than 30 days after the day by which the financial statement is required to be served, serve on the other party the following information, unless the court orders otherwise:

1. The statement issued closest to the valuation date for each bank account or other account in a financial institution, pension, registered retirement or other savings plan, and any other savings or investments in which the party had an interest on that date.
2. A copy of an application or request made by the party to obtain a valuation of his or her own pension benefits, deferred pension or pension, as the case may be, if any, as of the valuation date.
3. A copy of the Municipal Property Assessment Corporation's assessment of any real property in Ontario in which the party had a right or interest on the valuation date, for the year in which that date occurred.
4. If the party owned a life insurance policy on the valuation date, the statement issued closest to that date showing the face amount and cash surrender value, if any, of the policy, and the named beneficiary.
5. If the party had an interest in a sole proprietorship or was self-employed on the valuation date, for each of the three years preceding that date,
  - i. the financial statements of the party's business or professional practice, other than a partnership, and
  - ii. a copy of every personal income tax return filed by the party, including any materials that were filed with the return.
6. If the party was a partner in a partnership on the valuation date, a copy of the partnership agreement and, for each of the three years preceding the valuation date,

- i. a copy of every personal income tax return filed by the party, including any materials that were filed with the return, and
- ii. the financial statements of the partnership.

7. If the party had an interest in a corporation on the valuation date, documentation showing the number and types of shares of the corporation and any other interests in the corporation that were owned by the party on that date.

8. If the corporation in which a party had an interest was privately held, for each of the three years preceding the valuation date,

- i. the financial statements for the corporation and its subsidiaries, and
- ii. if the interest was a majority interest, a copy of every income tax return filed by the corporation.

9. If the party was a beneficiary under a trust on the valuation date, a copy of the trust settlement agreement and the trust's financial statements for each of the three years preceding that date.

10. Documentation showing the value, on the valuation date, of any property not referred to in paragraphs 1 to 9 in which the party had an interest on that date.

11. Documentation that supports a claim, if any, for an exclusion under subsection 4 (2) of the *Family Law Act*.

12. The statements or invoices issued closest to the valuation date in relation to any mortgage, line of credit, credit card balance or other debt owed by the party on that date.

13. Any available documentation showing the value, on the date of marriage, of property that the party owned or in which he or she had an interest on that date, and the amount of any debts owed by the party on that date.

[2] There are different Rules for serving the required documents and filing the Certificate of Financial Disclosure.

[3] Rule 13(5.0.2) requires a party who is required to serve these documents to serve them with the Certificate and to afterwards file the Certificate in the Continuing Record just before the case conference, or a motion,

(5.0.2) A party who is required to serve documents under subrule (3.1), (3.3), (3.4) or (5.0.1) shall confirm service by,

(a) **serving a certificate of financial disclosure** (Form 13A) together **with the documents**; and

(b) **filing the certificate** no later than,

(i) seven days before a case conference, in the case of the applicant or the party making the motion, as the case may be, and

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

[4] The documents served with the Certificate are NOT to be filed with the court, only the Certificate is filed.

[5] There is no need to file another Certificate in the case unless there are new or additional documents disclosed or corrections are needed. In that situation, an updated Certificate must be served (with the documents, or corrections, noted) and that Certificate then filed in the Continuing Record before the next conference,

(13.1) Before any settlement conference or trial management 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) seven 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.

(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.

**APPENDIX B**

**SERVICE AND FILING DEADLINES**

<b>Name of Document</b>	<b>Form</b>	<b>Service Deadline (not later than)</b>	<b>Rule</b>
Certificate of Financial Disclosure	13A	7 days before the conference (4 days for the other side)	13(5.0.2)(a) and (b)
Updated Financial Statements [or affidavit confirming financial information is the same]	13 or 13.1 [14A]	7 days before the conference (4 days for the other side)	13(12.2) 1 or 2
Case Conference Brief	17A	7 days before the conference (4 days for the other side)	17(13.1)
Confirmation	17F	2 days before the conference (both parties) by 2:00 p.m.	17(14)