

Getting the most from your small claims settlement conference

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Why do I have to attend a settlement conference?

A settlement conference is usually your first court appearance in a small claims lawsuit in B.C. Provincial Court. It is an informal meeting where you and the other party or parties (the people or companies named as claimants, defendants, or third parties in your lawsuit) meet with a judge in an audio or video conference before any court time is reserved for a trial.

Settlement conferences have 3 purposes:

1. A judge helps the parties talk about whether they can agree to settle the lawsuit.
2. The judge can help the parties prepare for a trial if the case cannot be settled.

3. The judge can weed out claims or defences that obviously have no reasonable legal basis. (The judge can dismiss claims or defences like this at the settlement conference.)

Settlement conferences can sometimes help parties agree on solutions to their disputes. When that's not possible, they help the parties be better prepared for their trial. They also help the Court reserve the right amount of time for each trial.

Audio and video settlement conferences

The Provincial Court of BC is now conducting settlement conferences by telephone, or by audio or visual conferences using Microsoft Teams, an online audio and video conferencing platform. For information about these "virtual" conferences and how to prepare, see:

- [Virtual conferences and hearings](#) – a web page with links to the Court's info on virtual conferences and hearings
- [Notice NP 21, Guide to Virtual Proceedings](#) - tips and conduct guidelines for court proceedings by telephone or audio or video conference, including directions on connecting to a conference on Microsoft Teams
- [What to expect in a family or small claims conference held by telephone or video?](#)

Treat your telephone or video settlement conference with the same seriousness and respect as if you were in a courthouse.

Who must attend?

Usually, all the parties to the lawsuit must attend a settlement conference. When a corporation (a company) or society is a party, a representative who has authority to settle the claim must attend. If a party has hired a lawyer, they may attend with their client. Other people who are not parties to the lawsuit will only be allowed to attend if the judge thinks they might make a useful contribution. (See [Small Claims Rule 7](#) for the rules about who must attend.)

If a party does not attend a settlement conference at the scheduled time, the judge may dismiss their claim or make a payment order against that party. The judge **may also order that party to pay any reasonable expenses** the party who did attend had to pay unnecessarily.

How can I prepare?

The better prepared you are for your settlement conference, the more you will gain from it.

Think about how you will prove your case if it goes to trial

- Read the claim, the reply and any other documents that have been filed, carefully.
- Write a list of the relevant events in chronological order.
- List the facts you need to prove.
- Decide how you will prove each fact. What witnesses will you need to bring to court? What documents?
- What other evidence might help the judge understand your case – photographs? Objects like samples of poor workmanship?
- Consider whether there are facts that you and the other party do not dispute. If so, you can tell the settlement conference judge that you “admit” those facts. This means those facts do not have to be proved by evidence in the trial. Admitting facts that you agree on will shorten the trial and allow the judge to focus on the issues you disagree about.

If you are the claimant (the person who starts a lawsuit by filing a claim in court), you must prove that the other party or parties did something wrong and caused you expenses or other loss. You must also prove the amount of your claim. Be prepared to show the judge and the other party how you will prove those things.

If you are the defendant (the person named in a claim who is being sued), be prepared to tell the judge and the claimant what you agree and disagree with in the claim. Be prepared to show the judge and the claimant what you believe is correct, and how you will prove it.

Find information on preparing a case for both claimants and defendants in the [Guide to Preparing for BC Small Claims Court](#).

At the settlement conference the judge may ask each party how many witnesses they will present at the trial and what each witness will talk about. Doing this preparation will also help you assess your chances of winning.

Consider whether all or part of your trial could be held by telephone or video-conference

To reduce the number of people in courthouses and protect court users' health during the COVID-19 pandemic, the Court is also conducting some trials or parts of trials by telephone or online video-conference. The judge at your settlement conference may ask whether your trial, or parts of it, could be held "remotely" (meaning by telephone, or audio- or video-conference).

Do you and your witnesses have quiet spaces where you could participate in a telephone or video trial? Do you and your witnesses have a cell phone, a tablet, or computer, with a reliable internet connection and a data plan that will allow you to spend the time needed for a trial online? For more information on remote trials see [Notice NP 21, Guide to Remote Proceedings](#).

If a trial will be held remotely, you will be asked at the settlement conference to provide the name, phone number, and email addresses of all your witnesses.

Gather and organize documents

Each party must "bring" copies of "all **relevant** documents and reports" to the settlement conference. ([Small Claims Rule 7\(5\)](#)). When the Court notifies you of the date of your audio or video settlement conference, you will also receive information on how to send documents to the Court before your conference, so the judge will be able to look at them during the conference. Although it is not required by law, send the other party copies of your documents and a letter asking for copies of their documents well before the settlement conference. Exchanging documents before the conference gives everyone a chance to think about the case from all sides and be better prepared. And your conference will work better if everyone can look at the same documents.

Keep in mind that the settlement conference judge will likely not have time to review large volumes of documents and will rely on you and other parties to point out the important parts.

A **relevant document** is one that has information that might help to prove one or more of the disputed facts. Repair invoices or estimates, copies of contracts between the parties, and photographs of damaged property are a few examples.

A **relevant report** is a statement, usually prepared by an expert, summarizing the evidence that witness will give about a fact in dispute. An expert is someone who has special skill or

knowledge about a subject – knowledge beyond that of ordinary people. For example, in a case about building construction or renovation, the parties often rely upon the opinions of an engineer or a person qualified in a trade about the quality of the materials and workmanship. A statement from a mechanic about the quality of repair work on a vehicle is another example.

If you don't have an expert witness, you can discuss whether you need to have one with the judge at the settlement conference. The trial judge will determine whether a witness is qualified to give expert opinion evidence based on the witness' background and experience. If the expert witness is not impartial, the judge will likely give less weight to their evidence.

See *Gather Your Evidence - Your Book of Documents* in the [Guide to Preparing for BC Small Claims Court](#) and [Small Claims How-to Guides – Organizing Documents](#) for tips.

Think about how you might settle your case

There are no sure winners in a court case. Every trial has risks.

Before your conference, ask yourself: Based on what I know now, what are my chances of winning? What are my chances of losing? But be aware that you may learn things at the settlement conference that will change your opinion of your chances.

Think about what it will mean for you if you don't settle your lawsuit. What's the best possible outcome? What's the worst?

Think about your goals and what the other party might want. It can be very helpful to put yourself in the other party's shoes. Give some thought to any settlement proposals you want to make at the conference and how to explain why they would be reasonable for both parties.

What will happen at the Settlement Conference?

Settlement conferences are designed to encourage people to talk freely. They are less formal than a trial. The judge will facilitate the discussion and ask to hear from all parties and lawyers (if they're involved).

Discussions at a settlement conference are "privileged". This means that if the case does not settle and goes to trial, no one can tell the trial judge anything about those discussions. If you need a trial, the judge at your settlement conference will usually not be the judge at your trial. (If

it is the same judge, they will not consider anything said at the conference in making their decision at the trial.)

At the settlement conference, the parties have the chance to talk about their case and how they are going to prove certain facts. Listen carefully to what the other party says, because you may hear things that change your assessment of your chances of winning or losing.

It is important to remember that a settlement conference is not a trial. Your witnesses have not yet testified in court or been cross examined (questioned) by the other party. What actually happens during a trial and what witnesses say beforehand can often be very different from what you expect. A settlement conference is an important chance for the parties to assess the strengths and weaknesses of their cases.

The settlement conference judge may offer an opinion about a party's chances of success. They may talk about the financial consequences of a particular outcome. This does not mean the judge is taking sides – they are only giving a view about what could **possibly** happen if certain facts are proven or not proven in a trial.

The role of the settlement conference judge and the trial judge are different. The settlement conference judge will help the parties assess the risk of going to trial. The trial judge will make a binding decision about what should happen after hearing the evidence from all parties.

Giving or accepting an offer to settle a case involves making a risk assessment. As you listen to the other party and the judge during the conference, ask yourself again: What are my chances of winning? What are my chances of losing?

Control your emotions. People who get emotional make poor decisions. Stay calm and revise your assessment of the settlement value of your case as the discussion goes on. If you find that you are getting emotional, ask the judge for a time-out to compose yourself.

Some cases may be dismissed at a Settlement Conference

The settlement conference judge may dismiss a claim or counterclaim if it:

- is without reasonable grounds;
- discloses no triable issue; or

- is frivolous or an abuse of the court's process.

The Provincial Court of B.C. cannot hear all cases. For example, many claims involving strata properties must be heard by the [Civil Resolution Tribunal](#). Claims for wrongful eviction or unpaid rent in a residential tenancy must be heard using the process set out in the [Residential Tenancy Act](#). If your case is one the Provincial Court cannot deal with, the settlement conference judge will discuss this with you. They can dismiss a case when the Provincial Court has no authority to deal with it.

The [Small Claims Act](#) and the **Helpful Resources** listed at the end of this guide (especially the *Annotated Small Claims Act and Rules*, and *Handbook*) offer information on what cases the Provincial Court can and cannot hear. See too [Small Claims Cases](#) on the Provincial Court website.

If your case is not settled, the settlement conference judge will help you get ready for a trial. The judge may make orders to provide documents to the other party within a certain time. They may also order that you exchange summaries of what your witnesses are expected to say at trial (called "Will-Say statements"). You will receive a handout with the judge's orders and directions for things you must do before the trial at the end of the conference, or afterwards by mail or email.

Talk to the judge about how you might organize and present your documents and photographs for the trial, including the possibility of doing so electronically (for example, by email).

Even if you don't settle your case, a settlement conference is valuable because you hear what the other party expects to prove at trial and that will help you be better prepared.

What if I need an interpreter?

If you need help with the English language at a small claims settlement conference or trial, you must provide and pay for you own interpreter. Ideally you should have someone with training and experience as an interpreter in court. Find lists of interpreters at www.stibc.org (the Society of Translators and Interpreters of B.C.'s website).

Other chances to settle

If your case is not settled at the settlement conference, you can still try to resolve it by negotiating directly with the other party or their lawyer before trial. You may be able to have another settlement conference if you and the judge think it will be helpful. If your trial is estimated to take longer than a day (or a half day, depending on the court location) you may be given a [Trial Conference](#) before the trial to ensure both parties are prepared.

Formal offer to settle

The decision to proceed to trial should not be made lightly.

[Small Claims Rule 10.1](#) allows each party to deliver a formal offer to settle. If a party rejects the offer, and the result at the end of the trial is less than the offer to settle, the trial judge may award the other party a penalty (up to 20% of the amount of the offer). For example:

- if a claim is made for \$10,000;
- the defendant delivers an offer to settle for \$6000;
- the claimant rejects the offer and proceeds to trial; and
- at trial, the claimant is awarded a judgment for \$5000;

the judge may order the claimant to pay the defendant a penalty of up to \$1200. The end result is that the claimant recovers only \$3800. Use [Offer to settle](#) (SCR Form 18) to make a formal offer to settle. (The forms used in small claims court can all be found online. There's a link to the [Forms](#) webpage at the end of this guide.)

Settlement offers cannot be disclosed to the trial judge until after they give their decision at the end of the trial.

What if I Need to Change the Date of the Settlement Conference?

If you will not be able to attend your settlement conference for a good reason, you can ask to have the date changed. The simplest way to do that is to get other possible dates from the [court registry](#) and ask the other parties if they agree to the change. If everyone agrees, you can file a

[Consent to Adjourn Settlement Conference \(Form SL829\)](#). All parties (or their lawyers when they have one) must sign the form.

If the other party or parties do not agree to change the date, you must file an [Application to the Registrar \(Form 16\)](#) at least seven days before the settlement conference. It is wise to deliver (or have someone else deliver) a copy to the other parties in person, by regular or registered mail, or, if permitted by the Small Claims Registrar, by email or another method (see [Rule 16\(2\)\(e\)](#)). In the [Form 16](#) you must say why you are not available. If it is true, include that the other parties will not agree although you have asked them.

If your application is allowed the court registry will let you know. The settlement conference will be set on another day and notice will be sent to all parties. If the application is not allowed, you may decide to file another [Application to the Registrar](#) to ask for an order that you be allowed to appear at the conference by phone.

Settlement Conference Checklist

- ✓ Review the claim, reply and any other documents that have been filed.
- ✓ List the points you need to prove your case and consider how you will prove each point.
- ✓ Gather the documents you will need and organize them in a logical order.
- ✓ Send your documents to the Court before the settlement conference and send a copy to all other parties.
- ✓ Prepare a list of all witnesses including experts that you believe are necessary and briefly summarize what you expect they will say. If an expert has prepared a report, send a copy to the other party and the Court before your conference.
- ✓ Use the [Guide for appearing in the Provincial Court using Microsoft Teams](#). Download the Microsoft Teams desktop app well before your conference. Get familiar with the microphone, webcam and speakers on your device, and make sure any external hardware is installed and working properly.

- ✓ Do your best to find a quiet, private space with a neutral background for participating in the conference. Make a test call on Microsoft Teams from the location you will use to test the technology and internet.

On the day of your hearing, ensure only you and your lawyer, if you have one, can hear your conference, unless the judge permits someone else to attend. Log in 15 minutes before your hearing time. Give yourself plenty of time and relax. The settlement conference judge is there to help everyone.

Law – the [Small Claims Act](#) and [Small Claims Rules](#)

The *Small Claims Act* and *Rules* have important information about the law and procedure that must be followed when you are in small claims court. They are not long and can be found online. You will be better prepared if you read them, particularly [Rule 7](#) (about settlement conferences) and [Rule 10](#) (about law and procedures for trials and witnesses).

Helpful Resources

Some of these may talk about settlement conferences held in-person in courthouse conference rooms. Remember that these have been replaced by audio or video conferences.

- ✓ Provincial Court of B.C. website: <https://www.provincialcourt.bc.ca/types-of-cases/small-claims-matters>
- ✓ [Guide to Preparing for BC Small Claims Court](#) – detailed guide written by Provincial Court judges
- ✓ [Small Claims How-To-Guides](#) – helpful BC government step-by-step guides
- ✓ Small Claims in BC by the Justice Education Society: www.smallclaimsbcc.ca
- ✓ Small Claims Forms are available online at: <http://www.smallclaimsbcc.ca/court-forms>
- ✓ *Small Claims Act and Rules – Annotated* and *Provincial Court Small Claims Handbook* by the Continuing Legal Education Society of BC (both available in [courthouse libraries](#))