



Assessment Review Board

Practice Direction

Settlement Conference

Effective April 1, 2017

Practice Direction – Settlement Conference

The purpose of this Practice Direction is to describe the Settlement Conference process, and to outline how the parties are to participate in a Settlement Conference.

Procedure

Pursuant to Rules 56 through 61, a Settlement Conference is an appearance before the Board prior to the scheduling of a hearing, where the Presiding Board Member will meet with the parties to review the issues in dispute, in order to clarify and attempt to resolve some or all of the issues.

If there are unresolved issues, the Presiding Member will discuss with the parties whether mediation would assist them in resolving the appeal. At a Settlement Conference, the Presiding Member will focus primarily on the legal issues raised in the appeal. Mediation is beneficial, in that it affords the parties an opportunity to explore their underlying interests, which may be broader than the legal issues to be addressed in a hearing before the Board. As a Settlement Conference is a relatively brief appearance before the Board, mediation may also be beneficial where the parties require more time to negotiate, because:

- the issues or evidence are complex or voluminous;
- there are multiple parties to an appeal; or
- there are multiple appeals in respect of a property that are being heard at the same time.

Where mediation is not required, the Presiding Member will give procedural directions for the scheduling of the hearing, the exchange of witness statements, and any other directions to ensure the just, most expeditious and least expensive determination of every proceeding.

Where the parties agree that they wish to participate in the mediation, the Presiding Member will give directions to schedule the mediation and file any written mediation briefs in advance of the mediation. If a mediation does not result in a resolution of all the issues, the Board Member conducting the Mediation may then act as a Presiding Member to give procedural directions respecting the hearing of the outstanding issues.

Requirement to Serve and File a Settlement Conference Brief

Under the applicable Schedule of Events, before the Board will conduct a Settlement Conference, each party will be required to file its pleadings (Statement of Issues, Statement of Response, or Reply) and all documents on which the party intends to rely if the appeal proceeds to a hearing. For a settlement conference, each party is also required to serve on all other parties, and file with the Board, a brief outlining:

- the issues in dispute;
- the party's position on each issue; and
- an explanation of the reasons why the parties have adopted different positions on the issue.

For example, if the appeal is pursuant to s.40 of the *Assessment Act*, where the issue in dispute is the correct current value of the property under appeal, it is not sufficient for the parties to each simply state their conclusion as to what the current value should be. They also need to further clarify the specific issues to be addressed by the Board, by explaining precisely how their underlying assessments of property value differ, e.g. each party applied a different capitalization rate or fair market rent, or made different assumptions respecting functional or economic obsolescence, etc.

Where appropriate, a settlement conference brief may also serve as a mediation brief, if the appeal is referred to mediation.

Settlement Conference is a Confidential Hearing Event

The Settlement Conference is confidential. Pursuant to Rule 59, by participating in a settlement conference, all parties undertake to maintain confidentiality and non-disclosure in respect of the settlement conference. Pursuant to Rule 60, a Board Member who presides over a Settlement Conference will not be assigned as the adjudicator conducting the hearing of the appeal.

Pursuant to Rule 60, a Board Member who presides over a Settlement Conference will only be assigned to conduct a mediation, with the written consent of the parties.