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Provincial Court Pre-trial Conferences

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THE PRE-TRIAL CONFERENCE

The *Provincial Court Act*

Section 64 of the *Provincial Court Act* is the authority for the court to direct a pretrial conference. This is discretionary and may be directed whether the matter has been through mediation or not. A pretrial conference is typically not directed where the matter has been triaged into a simplified trial, or a binding judicial dispute resolution.

While the discretion vested in a provincial court judge by section 64 of the *Provincial Court Act* is broad, resort can also be had to rules 4.9 to 4.15 of the *Rules of Court*. These rules provide for case management by the court but also address potential dispute resolution. Section 8 of the *Provincial Court Act* provides that where there is no specific procedure set out in the *Provincial Court Act* or the *Regulations*, the court can apply the *Rules of Court* in its discretion in order to ensure an expeditious and inexpensive resolution of the matter.

The primary objective at a pretrial conference is to assist the parties in arriving at a settlement of their dispute. The judge attempts to facilitate a settlement (S 64(1)(a)). In the paper entitled “A Different ‘Day in Court’,” the Ontario Bar Association opined that judicial dispute resolution was made effective, in part, “because of what a judge brings to the table by virtue of his or her office”. Our experience is that people generally want to be given an assessment of the merits of their case, which likely carries more weight if they hear it from a judge.

That said, the parties are also advised that the comments and assessments made by the pretrial judge are not binding upon them and will not be conveyed to the trial judge.

Typically, a pretrial conference lasts about 30 to 45 minutes, and there are usually 6 pretrial conferences set for any given day before that judge.

The parties are advised at the beginning of the pretrial conference that the objective is to arrive at settlement, with the assistance of the judge. They are also told that the judge presiding over the pretrial conference will not be the trial judge as it would be inappropriate for a trial judge to hear settlement discussions or evidence that is not properly entered.

- See *Blicharz v Livingstone* 2016 ABCA 157 where the Alberta Court of Appeal determined that a pretrial conference judge was not prohibited from hearing the trial because the issues discussed at the pretrial conference related to matters of trial efficiency and no settlement discussions were held.