

February 2, 2022



COURT OF QUEEN'S BENCH OF ALBERTA

ANNOUNCEMENT

ESTATE CASE CONFERENCES (ECCs)

In 2019, the Court of Queen's Bench initiated a pilot project with Justices conducting Estate Early Intervention Conferences. These were intended to facilitate the orderly conduct and early resolution of litigation in estate matters.

This Announcement describes the Court's current policies and procedures relating to that project. Those policies and procedures expand the options available to litigants. That expansion seeks to provide access to two different types of ECCs. Parties will be able to choose a form of ECC which will be most relevant to the issues confronting them at their particular point in the litigation continuum.

In order to distinguish these conferences from those conducted in family matters and make them available at any point in the litigation they have been rebranded as "Estate Case Conferences".

What circumstances permit the conduct of an ECC?

The filing of a Statement of Claim in an estate matter or a Form C1 will permit parties to apply to schedule an ECC.

Where will an ECC be available?

An ECC will be available to parties in all of Alberta's Judicial Centres.

How will an ECC be conducted?

An ECC will be conducted either in-person or virtually, depending on the Court's current policy on in-person vs virtual hearings.

What ECC options are available to litigants?

Litigants may seek to arrange either a one-hour ECC or a half-day ECC.

The one-hour ECC

Litigants may find a one-hour ECC helpful at an early stage in the litigation. It will afford an opportunity to identify the parties, the issues, the steps required to move the matter forward and, on a preliminary basis, to explore the alternatives for early resolution.

The half-day ECC

The half-day ECC will focus on resolution. The parties' positions will have been clearly delineated. It is expected that the parties will have explored opportunities for resolution but, to that point in time, will not have been entirely successful.

A half-day ECC will qualify as a judicial dispute resolution process, as contemplated in Rule 4.16(1)(c) of the *Alberta Rules of Court (Rules)*. As such, it will qualify as one of the dispute resolution processes which must have been conducted before the parties may request a trial date in accordance with *Rule* 8.4 (3)(a). A half-day ECC will be non-binding.

A decision to pursue a one-hour ECC will not preclude the parties from pursuing a half-day ECC at a later stage in the litigation process.

It is anticipated that failure to achieve resolution at a half-day ECC will lead the parties to seek to have the matter set down for a Court imposed resolution.

How do I arrange an ECC?

Parties wishing to arrange an ECC must submit their request in writing to the Court Coordinator in the Judicial Centre where the proceeding was commenced.

Requests may be submitted in writing by letter. One party may submit a request, provided all parties receive a copy of that letter.

What information should be included in that request?

The request should identify the type of ECC sought to be arranged. It should be accompanied by a brief summary identifying the parties, their counsel, (if applicable), the issues, the type of pleading by which the action was commenced (Form C1 or Statement of Claim) and any relevant limitation dates which have been identified.

The request should also provide a number of dates for the ECC which are mutually acceptable to the parties.

What if not all of the parties agree to the conduct of an ECC?

All parties must agree to the conduct of a half-day ECC.

If all of the parties agree to the conduct of either a one-hour ECC or a half-day ECC, the Court Coordinator will schedule the ECC and advise the parties.

If consent of all of the parties to conduct a one-hour ECC has not been obtained, parties can file an application with the Surrogate Clerks' Office to be heard on the next available Adult Guardianship and Trusteeship Act (AGTA) date.

Parties or their counsel who oppose the request for a one-hour ECC must appear, either in-person or virtually, depending on the Court's current policy, at the hearing of the AGTA list. A party consenting to the request for a one-hour ECC need not attend, provided their consent in writing to the matter proceeding to an ECC is obtained prior to the hearing. The presiding Justice will decide if a one-hour ECC is warranted. Requests which the presiding Justice directs to an ECC will be heard on a date scheduled by the Court Coordinator in the Judicial Centre where the proceeding was commenced.

What the parties may do after an ECC has been scheduled?

Parties may take additional steps in the litigation prior to either form of ECC.

What material must the parties submit to the Justice assigned to hear the ECC and by when?

One-hour ECC

The following material should be delivered by each of the parties to the Justice assigned to conduct the ECC, and to each other, not later than noon on the Friday before the week in which the ECC will be conducted:

1. Any pleadings which have been filed in addition to the Form C1 or Statement of Claim by which the matter was commenced.
2. A proposed agenda for the ECC.
3. A brief history of the litigation which identifies:
 - a. The parties and, if applicable, their counsel,
 - b. The issues,
 - c. Attempts, if any, at resolution, and
 - d. Any Orders proposed to be issued at the ECC.

It is sufficient if one of the parties or their counsel communicate this information on behalf of all parties, provided all parties agree to the content of that communication.

Half-day ECC

The following information should be delivered by each of the parties to the Justice assigned to conduct the ECC, and to each other, not later than noon on the Friday before the week in which the ECC will be conducted.

1. A brief synopsis of the facts;
2. The relief that is sought by the parties, under separate headings where appropriate (e.g. removal of a personal representative, passing of accounts, performance of the terms of a will, construction and interpretation of a will, rectification, damages for breach of trust);
3. An executive summary or highlights of any expert reports, with actual reports available at the ECC. (If one party includes an expert report in their materials and another party wishes to refer to it in their brief, it is not necessary for the report to be included in the other party's brief);

4. Witness statements for all non-experts that are anticipated at trial;
5. Headnotes (only) of any case law upon which the parties will be relying with the full cases available at the ECC;
6. Any other information and material the parties deem relevant to their case; and
7. A current bill of costs.

Parties attending a half-day ECC are expected to have full authority to settle. They are also expected to have had at least one settlement conference prior to the ECC in which real efforts to resolve the outstanding issues have been made. The Court will expect there to be outstanding offers as a result of this earlier settlement conference.

What will happen at the ECC?

One-hour ECC

The ECC will seek to:

1. Clarify and prioritize the issues requiring resolution;
2. Achieve an understanding of the scope and duration of any Court proceedings required to achieve resolution and the potential costs arising therefrom; and
3. Explore the possibilities for a non-court imposed resolution.

Half-day ECC

The parties will be expected to be actively engaged in bringing resolution to all of the outstanding issues. The objective will be to conclude an agreement which effectively ends the litigation.

In the absence of resolution, the matter may be set down for a Court imposed resolution. In that case, the parties and the participating Justice will identify the appropriate forum (special application, summary trial or regular trial) in which to secure a Court imposed resolution and seek to establish a litigation plan for the orderly conduct of the matter. Efforts will be made to determine the nature of the evidence which will be provided (affidavit and/or *viva voce* evidence).

Conclusion

These revised policies and procedures seek to afford greater opportunity for efficient and effective conduct of estate litigation. Ultimately, they seek to promote early and cost-effective resolution of contentious estate matters.