



BFLG'S TRIAL PREPARATION CHECKLIST

You are now scheduled to go to trial in Family Court.

You are worried, confused and scared of what is next.

You know that you must begin preparing, but you don't know what to do.

This BFLG checklist will help you be ready for your trial.

By following these 20 steps, you will avoid critical mistakes and even find confidence in the process leading up to your trial, and during trial.

You may even surprise your trial judge with your excellent organizational skills, competency and trial readiness.

So take a deep breath and get started.

Here you go:

STEP 1: Block out the trial dates in your calendar. Let everyone know that you are preparing for trial, and that you will be inaccessible for the weeks leading up to trial and then during trial. Arrange all necessary work-related and personal back-ups.

STEP 2: Create a list of critical dates, deadlines and contact information such as the names, emails and phone numbers for the client, their family and support persons, Trial Coordinator, opposing counsel, witnesses, experts, investigators, accountant, etc.

STEP 3: Read your entire file from beginning to end including the Application, Amended Application, if any, Answer and Claim By Respondent, Amended Answer and Claim By Respondent, if any, Reply, and Amended Reply, if any, sworn Financial Statements, either filed or not filed in court, Case Conference Briefs, Settlement Conference Briefs, Offers To Settle, Requests To Admit, Responses To Requests To Admit, Notices of Motion, Endorsements, Court Orders, Domestic Contracts such as Separation Agreements, Cohabitation Agreements and Marriage Contracts. It is a good idea to build a paper binder or digital binder with all these documents well-organized and tabbed. Then summarize that information by outlining what you are claiming, what you are defending, what facts are in dispute and what evidence you need to adduce to prevail. If you have missed a claim that you want to make, then serve your amended pleading and then ask the Judge who signed the Trial Scheduling Endorsement to add this claim for trial in the Trial Scheduling Endorsement. Make sure that any document

that you want to refer the trial judge to is uploaded on Justice Submissions Online and CaseLines (read Anthony v. Oqunbiyi, 2023 ONSC 861).

STEP 4: Identify the undisputed versus disputed facts and issues, and then address the undisputed facts by serving a Request To Admit leading to a Statement of Agreement Facts. Then build a list of your witnesses including documentary and expert witnesses that will meet the burden of proof of the disputed facts.

STEP 5: Carefully read your Trial Scheduling Endorsement that was signed by the Judge presiding at your last Trial Management Conference. Use this to create a calendar of each step, each deadline and each document that you are required to prepare, serve and file in court. Then create another personal deadline for yourself that is much earlier so that you are not facing a looming deadline and are rushing through a step and likely causing errors that will prejudice your case. If there is an error or omission in the Trial Scheduling Endorsement or a deadline that you cannot meet, then schedule a follow-up teleconference with the Judge who signed the Trial Scheduling Endorsement. This may not be easy, but it is your only option before your trial begins.

STEP 6: Follow Rule 23 of the Family Law Rules and make sure that your Trial Record is complete, served and filed onto Justice Submissions Online and CaseLines including all Statement of Agreement Facts, Expert Reports and Transcripts from Questioning.

STEP 7: Prepare, serve and file on Justice Submissions Online and CaseLines your updated Financial Statement and Net Family Property Statement. If trial evidence is to be by Affidavit, then these too must be prepared, served and filed on Justice Submissions Online and CaseLines in accordance with the deadline set out in the Trial Scheduling Endorsement.

STEP 8: Prepare and serve (but do not file) a global Offer To Settle. This should be done early to capture all of the time that you have devoted to trial preparation. Make sure that your terms of settlement can be ordered by the trial judge and that your precise terms will likely be exceeded by the trial judgment so that you are entitled to a reimbursement of your costs to prepare for trial and to attend trial. Now prepare the Final Order that you will be asking the trial judge to make at the conclusion of the trial. This should be more favourable than your more modest Offer To Settle in order to trigger the cost consequences. Both the Offer To Settle and the Final Order should have your Supportmate calculations and Net Family Property Statement attached.

STEP 9: Build your Table of Contents for your Trial Exhibits that you intend to refer the trial judge to during trial. Ensure that each of your Trial Exhibits have been served upon all parties or counsel, and be ready to provide your proof of service. If you intend to rely on an Expert Report, Medical Records or Business Records, serve and file Notices under the Evidence Act. Each Trial Exhibit should be uploaded to Justice Submissions Online and CaseLines individually as a separate document.

STEP 10: Create an Event Chronology of all material events in your case from the commencement of the relationship, through to cohabitation, during cohabitation or marriage and since separation. Include the birth dates of the children. Upload this Event Chronology onto Justice Submissions Online and CaseLines and provide it to the trial judge at the beginning of trial as part of your opening address.

STEP 11: Research any important legal issue that you wish to refer to as part of your arguments at trial and then create a Factum of Law and Casebook including the Canlii hyperlinks to the legislation and case-law. Determine who bears the burden of proof in each claim (eg. parenting, decision-making, relocation, property exclusions and deductions). Upload your Factum of Law and Casebook onto Justice Submissions Online and CaseLines and provide it to the trial judge at the beginning of trial as part of your opening address.

STEP 12: Create a proposed Trial Schedule listing the times/dates of trial and when each witness will testify. Include in the Trial Schedule any procedural issues for the trial judge to address before and during trial such as the use of Zoom for remote witnesses and challenges to evidence, motions to strike affidavits and voir dres. Upload this Trial Schedule onto Justice Submissions Online and CaseLines and provide it to the trial judge at the beginning of trial as part of your opening address.

STEP 13: Now that you have completed all of the above documents and steps, create a Table of Contents of all your documents on Justice Submissions Online and CaseLines and another Table of Contents of all the other parties' documents on Justice Submissions Online and CaseLines. You will be using this throughout trial to find what you need to refer to. Ask the trial judge if they would like a copy of your Table of Contents during your opening address.

STEP 14: Prepare your Opening Statement. Now that you have a Table of Contents of all your documents on Justice Submissions Online and CaseLines, your Opening Statement should be used to navigate the trial judge to them. To recap, this should include the Table of Contents of all your documents on Justice Submissions Online and CaseLines such as the Trial Scheduling Endorsement, Final Order, Trial Record, Statement of Agreement Facts, Expert Reports, Transcripts from Questioning, pleadings, Financial Statements, Net Family Property Statement, Endorsements, Court Orders, Domestic Contracts, Table of Contents for your Trial Exhibits, Event Chronology, Factum of Law, Casebook and Trial Schedule.

STEP 15: Your trial preparation gets deeper now. You will now prepare for all witness examinations, cross-examinations and re-examinations by reading all past Affidavits and Transcripts from Questioning. Interview your witnesses and prepare their questions and rehearse their examinations and cross-examinations. This includes you and your spouse as two of the witnesses. Note that your questions for examination of your witnesses and cross-examination of opposing witnesses will need to be refined throughout trial. In your Opening Statement, you will highlight to the trial judge what you anticipate your witnesses' evidence will be to prove your points. Also, prepare a summary of your cross-examination questions of the other witnesses that you will use to impeach. This also

applies to experts. If there are any witnesses that will not attend voluntarily, prepare and serve summonses with the witness fees.

STEP 16: Flag any pre-trial or evidentiary issues that you wish to address with the trial judge at the outset and prepare for any pre-trial motions (eg. to strike portions of affidavits, adding witnesses, voir dire, etc.).

STEP 17: Now that you have done all this, you are ready for trial. But that does not mean that you are totally ready. You now need to read and study the other parties' case and be prepared to refute it with evidence from witnesses and documents. So prepare an outline of how you will do so and follow that through the trial.

STEP 18: Stay in close contact with the Trial Coordinator in the courthouse to find out when your trial will begin, in front of what judge and in what courtroom. Make sure that the Trial Coordinator has all your current contact information to reach you. Notify the Trial Coordinator of any demonstrative aids you need (video, Zoom, screen share, etc.).

STEP 19: Your trial starts. Treat the court staff with the utmost respect. Introduce yourself and learn their names. Carefully and methodically set up your table with your documents, computer and WIFI (either your own hotspot or the courthouse WIFI). Test all electronics including the courtroom screens for Zoom and screen-sharing. Have your Opening Statement and documents ready for when the trial judge enters the courtroom.

STEP 20: Breathe. Stay calm. You are ready. Know that you did everything right. Follow the plan you created. Be ready for mis-steps and deviations, as they will occur. Be ready to course-correct when events do not unfold as planned. Maintain calm throughout. Listen (really listen) to the trial judge. Ask the trial judge when there will be breaks throughout the day and honour that by keeping your eye on the clock.

GOOD LUCK !!!

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