Ontario

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ISBN 978-1-4435-3510-6 (Print)
ISBN 978-1-4435-3511-3 (PDF)

A Guide to Procedures in Family Court

June 2010

This guide does not provide legal advice. It is recommended that all parties seek legal advice where possible.

PART 9: TRIAL

If you and the other person are not able to work out the issues in your case on your own or if the issues are too complicated, the judge may order the case to a **trial**.

If you cannot afford a lawyer, you may contact Legal Aid Ontario to see if you are eligible for legal aid. Legal Aid Ontario's toll-free number is 1-800-668-8258 or 416-979-1446 in Toronto. To learn more about Legal Aid Ontario, you may wish to visit their website at, www.legalaid.on.ca.

You may represent yourself in your court case. However, it is a good idea to have a lawyer help you with your case. A lawyer can help you understand your rights and responsibilities and explain the court process to you. If you don't have a lawyer, you will need to work extra hard to familiarize yourself with the *Family Law Rules* to be prepared and to be clear about what you want to say to the judge. Court staff cannot advise you.

It is important for you to know that the court may order you to pay some or all of the costs of the other person, if you fail to appear in court, you are not properly prepared, or if the judge feels that you have taken an unreasonable position in the case. The judge will consider any offers to settle that have been made by either party when determining whether a party should be required to pay all or some of the other party's costs.

It is important to understand that trials can be long and expensive. They can also be very stressful for you and your family. If you have children, it can be difficult to reach a good place to parent together after going through a trial. Remember when you go to court it will be a third party that will be making the important decisions about your family.

For all of these reasons, it's usually a good idea to take all reasonable steps to avoid a trial and for you and the other person to make your own decisions about your family and your future.

Preparing for Trial

Trial Record

If you are going to trial, and if you are the applicant or the moving party in a motion, you must prepare a **trial record**.

Rule 23: Evidence and Trial of the *Family Law Rules* provides that the trial record must be served on every party and any person or agency required to be served and filed with the court at least **30 days** before the start of the trial.

The trial record must include:

- A table of contents;
- A copy of the application or motion, answer or response, and reply, if any;
- Any agreed statement of facts,
- If they are relevant to an issue at trial, financial statements and net family property statements for all parties, completed or updated not more than **30 days** before the record is served;
- Any assessment report ordered by the court or obtained by consent of the parties;

  An assessment report is usually completed by a mental health professional like a social worker or psychologist. An assessment report includes any report completed by the Office of the Children's Lawyer.
- Any temporary order relating to a matter that has not been resolved;

  For example, if you or the other party asked for an order for temporary custody of the children before a final order was made, you would need to include it in the trial record.
- Any order relating to the trial;

  For example, if you or the other party asked the judge for permission to present a witness' evidence in writing, by way of affidavit, instead of by asking them to attend the trial in person and questioning them. You would need to attach a copy of the judge's order.
- The relevant parts of any transcript on which you intend to rely at trial;

  For example, if the judge allowed you to question the other party on an affidavit they provided and you wanted to refer to some of their answers, you would include these pages of the transcript in your trial record.

If you need all or part of a transcript for your trial record, you should speak to family court office staff where the record was taken as soon as possible.

If you are the respondent in the case or the responding party in a motion, you do not have to prepare a trial record, but you can, no later than **seven days** before the start of the trial, add to the trial record that the applicant has prepared any document listed above that is not already there. You must also serve the applicant with any new document and file it with the court.

Witnesses

The documents in the trial record will help you tell your side of the case to the judge, but you might also decide that certain people or documents that you do not have access to would also help.

If you want a witness or document to be available to the judge at trial, you must prepare and serve the witness with **Form 23: Summons to Witness.** You are obligated to pay the person for each day he or she is needed in court. The fees to be paid to a witness are set out in Rule 23: Evidence and Trial of the *Family Law Rules*.

Remember, a witness can only give evidence about what they know, not what other people have told them.

If there are special circumstances and your witness cannot come to court, you can ask the judge for an order letting the witness answer questions before trial or provide their evidence in an affidavit that they will need to swear or affirm in front of a person who is a commissioner for taking affidavits.

If your witness is an expert in a particular area that is an issue in your case, you need to provide the other party with the report of the expert witness at least **90 days** before the trial. The summary must be signed by the expert and include their name, address, qualifications, employment and educational experience in his or her area of expertise and the substance of the expert's proposed evidence. Any supplementary reports by an expert witness must be served 30 days before the start of the trial. The parties may not call the expert witness unless they have complied with these terms or unless the trial judge allows otherwise. If you don't serve and file this summary, you may not be allowed to call the expert as a witness during the trial.

Trial

Judges alone without juries decide family cases. Trials are usually open to the public, which means there may be other people in the courtroom when your trial is being held. If there are reasons that you believe support a closed hearing, you can ask the judge not to let anyone other than the parties, their lawyers, if any, and courtroom staff in the courtroom. The judge may not grant your request.

Arrive Early on the Day of your Trial

When you arrive at the courthouse, you should look for the name of your case or court file number on that day's list of cases to be heard. The day's list of cases is usually posted on a board somewhere near the entrance to the court or outside the courtroom. If you have trouble finding it, you should ask at the family court counter.

You may need to check in with the clerk once you've found your courtroom. If court is already in session, wait to talk to the clerk until there is a break in the proceedings.

Who Goes First

Each party will have an opportunity to give the judge a short overview of their case and what they are asking for. These are called opening statements. The applicant will be asked to go first.

After opening statements, the applicant will ask their first witness to come forward and provide the court with the information that they believe is relevant to the case and would support what they are asking the court to decide. After the applicant has finished questioning their witness, the respondent will have a chance to ask the witness questions. After all of the applicant's witnesses have been questioned, it is the respondent's turn to call witnesses and ask them questions. The applicant will have a chance to question each of the respondent's witnesses after they give their evidence.

When all the witnesses have been questioned (including the applicant and the respondent if they choose to take the witness stand and give evidence), the parties will have a chance to summarize their evidence for the judge and tell the judge why an order should be made in their favour. These are called closing arguments, and again the applicant will present their closing argument first.

Decision

After closing arguments are finished, the judge may be ready to make a decision. Or, if the judge does not make a decision right away, he or she, may **reserve the decision** to a later time or date.

If the judge reserves the decision, it means that they need time to review the evidence. You may need to come back to court for the decision or you may be notified of the decision in writing.