



Trial Preparation for Family Firms 101

Desk Reference Manual

Section A Introduction, Object of the Rules and Trial Basics

Introduction

This manual sets out the trial preparation process under the Supreme Court of British Columbia Family Rules into separation sections. Each section contains a detailed description about that particular process, as well as the applicable *Family Rules*, forms, check lists, and sample letters. Please note that only the *Family Rules* or sub-rules which indicate when a step in trial preparation is required, or provide authority for a particular procedure, are set out in these materials.

Keep in mind that trial preparation actually starts the moment you first open the file. Be sure there is a fee retainer agreement signed by the client that sets out how much the client will be charged for each day of trial, as well as the amount and when a trial retainer will be required.

Appendix A.1 sets out the fee retainer agreement from the Law Society of BC's website which includes a PDF and an MS Word version for your convenience.

Reference: <http://www.lawsociety.bc.ca/page.cfm?cid=1537&t=Retainer-Agreement-Family-Law>



Having a well organized file from day one will make your life easier, and will assist in a smoother transition to trial. Taking time to organize a file so that you are able to locate documents and facts quickly will also save you time and frustration.

Object of the Rules

Rule 1-3 sets out that the object of the Supreme Court Family Rules is to:

- help parties resolve their legal issues fairly in a way that will take into account the impact the conduct of the case may have on a child;
- to minimize conflict and promote cooperation between the parties; and
- secure the just, speedy and inexpensive determination of every case on its merits.

Securing the “just, speedy and inexpensive determination” of each case must be in proportion to:

- the interest of any child affected;
- the importance of the issue in dispute; and,
- the complexity of the family law case.

Trial Basics

At trial it is the judge’s job to see whether the evidence and the law support the claims before the court, such as arrangements for the children, or a fair division of assets. The judge must make decisions about the facts of the case after listening to the evidence; then review the authority (rules and common law) to decide the applicable law; and, finally make a decision applying the law to the facts of the case.

Although every effort should be made to settle, some family law cases simply must go to trial; particularly if it is clear that a decision by a trial judge will not compromise your client’s entitlement and has the potential to bring substantially better results than the settlement negotiations. Many family law cases will settle at the last minute, however, well organized and thorough trial preparation will provide strength throughout the proceeding and will allow for conducting an effective trial.

Calculation of Time

Good bring-forward (“BF”) systems are a must to ensure no dates are missed and that all necessary steps are taken in a timely fashion. Worksheets are essential to keep on top of steps and procedures required for each case.

Appendix A.2 sets out a Trial Preparation Worksheet.

An understanding of the following calculations of time will also ensure deadlines are met.

Rule 21-2(1) of the Family Rules sets out that “*Unless a contrary intention otherwise appears, if a period of less than 7 days is set out by these Supreme Court Family Rules or in an order of the court, holidays are not counted.*”

Section 25 of the *Interpretation Act* provides clarification regarding the calculation of time in the *Family Rules* as follows:

If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.

If the calculation of time is expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days, weeks, months or years, the first and last days are not counted.

In a calculation of time that is not referred to in the preceding paragraph, the first day is not counted and the last day is counted.

If, the calculation of time ends on a day in a month that has no date corresponding to the first day of the period of time, the time ends on the last day of that month (i.e. one month from January 31 = February 31 but in reality there is no corresponding dated to January 31, therefore one month from January 31 is February 28).

The *Interpretation Act* defines “holiday” to include:

- Sunday, Christmas Day, Good Friday, and Easter Monday;
- Canada Day, Victoria Day, British Columbia Day, Labour Day, Remembrance Day, and New Year’s Day;
- December 26; and,
- A day fixed by the Parliament of Canada or by the Legislature, or appointed by proclamation of the Governor General or Lieutenant Governor, to be observed as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday.

Business day is defined as a day on which the court registries are open for business.

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