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Preparing for a Family Court Trial in Provincial Court

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Definitions

These are simple explanations of words as they are used in this guide.

Affirmation - a solemn promise to tell the truth without reference to religious belief. It has the same legal significance as a sworn oath.

Cross examine - to question the other party and their witnesses after they testify in direct examination.

Direct examination – the testimony a witness gives in answer to questions posed by the party presenting them (or by their lawyer if the party has a lawyer).

Evidence - witnesses' testimony and paper documents, photographs, etc. that are admitted as evidence by the judge and marked as exhibits.

Oath - a solemn promise to tell the truth sworn on a holy book.

Parties – the person making an application (Party 1) and the person who replies to an application (Party 2)..

Testify - to tell the judge the facts after swearing or affirming to tell the truth.

Testimony - oral (spoken) evidence given under oath or affirmation.

Trial - also sometimes called a “hearing” - a proceeding where the parties present evidence to a judge, who makes a decision based on the facts proven by the evidence and the law that applies.

Trial Procedure

A family court **trial** (*also called a hearing*) in Provincial Court usually works this way:

1. **Opening Statement** The **parties** may make brief opening statements telling what the **trial** is about. Or the judge may begin by asking the parties what court orders they are requesting, what the issues are, what their position on each issue is, and how many witnesses they will present during the hearing.
2. **Party 1's Evidence** The person who applied for a court order (Party 1) will **testify** and present any other witnesses they've brought to court. The other party (Party 2) will have a chance to question each witness including Party 1. If lawyers are involved they do all the questioning of witnesses.
3. **Party 2's Evidence** The person responding to the application (Party 2) will then **testify** and present any other witnesses they've brought to court. Party 1 will have a chance to question each witness including Party 2.
4. **Closing Submission** After all the witnesses have been heard, each **party** will have a chance to sum up briefly, explaining what they want the judge to order and how the **evidence** supports them.

When a **party** has a lawyer their lawyer will speak for them except when they **testify**. If neither **party** in a family court **trial** has a lawyer the judge may use a different procedure to help both **parties** present their **evidence**. If so, the judge will explain it at the start of the trial.

Preparing for Trial

If you are participating in a Provincial Court family **trial** without a lawyer it may be helpful to follow these steps when you prepare. Even if you won't have a lawyer with you in court you can speak to a lawyer about preparing and presenting your case. Find links to organizations that can help you get [legal advice](#) on the [Clicklaw](#) website.

1. Think about what court orders you would like the judge to make. See samples of [court orders](#) that can be made under the B.C. [Family Law Act](#). List the issues that you and the other **party** disagree about.
2. If there are financial issues, you will have to file and exchange [financial statements](#) before the **trial** as explained below. Also see [Preparing Financial Documents for Family Court](#).
3. Gather any **evidence** you want to show the judge, send a copy to the other **party**, and bring the original (if possible) and 3 copies to court on the day of your **trial**. Bring one additional copy if there is a lawyer for a child (under Rule 162 of the Provincial Court Family Rules). If you must provide email or text chains, mark the portions you say are relevant.
4. Prepare to **testify** about things that are relevant to the issues you've listed. See the links on [page 6](#) for lists of facts that may be relevant to various family court issues. Make notes about the facts you want to cover. Telling your story in the order that events happened makes it easy for the judge to follow.
5. If you wish the judge to hear from other witnesses during the **trial**:
 - a. They must have direct knowledge of the things you want them to **testify** about. They cannot tell the judge something you told them about an event - they must have observed the event themselves.

- b. Generally, a witness may not tell the judge what someone else said unless the speaker was the other **party**, or the judge permits the witness to quote a child.
 - c. They must come to court and be ready to **testify** on the day of your **trial**. If they will not come voluntarily or need a court order to show an employer, ask for a “subpoena” at the Court Registry and deliver it to them as directed.
6. Prepare to **cross-examine**. See [Cross-examination](#) (page 7).
 7. Prepare a brief opening statement, simply stating what you want the judge to order and whether you have witnesses other than yourself present to **testify**.
 8. Prepare to sum up your case. After all the **evidence** is presented you will have a chance to explain briefly what you want the judge to order and why the **evidence** supports you. You may hand a point form summary of your closing submission to the other **party** and to the Court Clerk for the judge when you make your closing submission.
 9. Take paper and a pen to court so you can take notes during the **trial**. You may not use an electronic device to record, receive or transmit in the courtroom. If you wish to use one for note-taking you must ask the judge for permission. You should mute or turn off your cell phone. See [Public & Media Access Policy](#) for more details on the Court’s policy on electronic devices.
 10. A note about [legal research](#) – family law changes from country to country and even, on some subjects, from province to province in Canada. The B.C. Provincial Court must apply the B.C. [Family Law Act](#) and [Family Maintenance Enforcement Act](#). Be careful about relying on information from other provinces and countries.

Evidence

Remember that a judge must make decisions based only on the evidence presented by the parties in the courtroom during the trial.

Evidence includes the testimony of **parties** and other witnesses given under **oath** or **affirmation** and any paper documents, photographs etc. accepted by the judge and made “exhibits” in the **trial**.

Generally, a witness may not tell the judge what someone else said unless the speaker was the other **party**, or the judge permits the witness to quote a child.

Evidence must be relevant to an issue in the **trial**. The following pages show the kind of information that may be relevant to various types of applications or issues in Family Court **trials**:

A. Applications to change a Court order or separation agreement	9
B. Applications about guardianship, parenting time, parenting responsibilities, or contact	10
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Find more information on preparing for **trial** at <https://family.legalaid.bc.ca/bc-legal-system/if-you-have-go-court/trials-provincial-court/preparing-attend-provincial-court>

Cross-examination

You may be given a chance to question the other **party** and their witnesses after the other **party** questions them. This can be very hard to do because at this point in the **trial** **you can only ask questions**. If you disagree with the witness' answer you cannot tell the judge they're lying; you cannot tell the judge your version; you cannot argue with the witness; you may only ask another question.

Preparation for cross-examination

Prepare before the **trial** by writing out the questions you think you may want to ask. Those questions might be designed to bring out facts that:

- Clarify the **evidence**.
- Support your case. ("You'd agree that the children enjoy spending time with me?")
- Test the observations, recollections and truthfulness of the witness, for example:
 - Show the witness has not had much opportunity to make their observations. ("You've only seen Lee with the children a few times, haven't you?")
 - Show the witness may be biased ("You and Don are best friends?")
 - Show that the witness previously said something significantly different from their testimony in court. (Ask the judge if you may show the witness a letter, email, or text they wrote. If given permission, read out the portion that contradicts their testimony and ask the witness if they wrote it.)
 - Put your version of the facts to them. ("Isn't it true that you've cancelled my parenting time at least once a month for the last three months?")

During the witness' **direct examination** (*also called examination in chief*), when the witness is asked questions by the **party** who is presenting them, take notes of points you might want to question them about.

Tips for effective cross-examination

- Be brief.
- Short questions, plain words.
- Only one question at a time.
- Don't argue with the witness. Remember you may only ask questions while cross-examining.
- Don't ask the witness to repeat testimony they gave earlier.
- Don't comment on the witness' answers. You can do that when you sum up at the end of the **trial**.

If you don't feel able to cross-examine

Tell the judge if you don't feel able to cross-examine the other **party** or their witnesses.

The judge may be able to use a different procedure for your **trial**.

Relevant Facts

A.

Facts that may be relevant to an application to change (*or vary*) a Court order or separation agreement:

- What previous orders or agreements exist?
- What has changed since the order or agreement was made that has caused you to ask to change the order or agreement?
- See B.C. *Family Law Act* section 215 [Changing, suspending or terminating orders generally](#)

See [Evidence](#) for links to lists of facts that may be relevant to various applications.

B.

Facts that may be relevant to issues about guardianship, parenting responsibilities, parenting time or contact:

See B.C. *Family Law Act* [Division 1 — Best Interests of Child](#)
[Division 2 — Parenting Arrangements](#)
[Division 3 — Guardianship](#)
[Division 4 — Contact with a Child](#)

Background details

- The children's names, ages and birthdates.
- The parents' names and ages.
- When did you and the other parent move in together and/or get married?
- Where did you live when you were together?
- When did you separate?
- Have you and the other parent signed a separation agreement? If so, provide a copy unless it has already been filed.
- Have any court orders been made since the separation? If orders have been made in the B.C. Supreme Court or in another province or country, provide copies. If orders have been made in the B.C. Provincial Court give the date the order was made.
- Have you or the other parent been convicted of any criminal offences and not been pardoned?
- Where does each parent live now?
- Where do the children live? Describe your home and who lives there.
- What time do they spend with each parent?

The children

- The name of the children's daycare, preschool, or any other school.
- The grade each child is in and a brief description of each child's progress in school.
- The children's extracurricular activities or special interests, if any.
- Any medical problems or special needs the children have and how each parent deals with those needs.

Role of each parent during the relationship

- What were the typical parenting responsibilities and contributions of each parent before the separation? (Especially important if the separation is recent, and parenting time is an issue.)
 - Is the child being breastfed? Who made bottles/gave night feedings?
 - Who changed the diapers?
 - Who got the children up and off to school?
 - Who attended parent-teacher conferences?
 - Who took the children to doctors' appointments and extracurricular activities?
 - Who put them to bed?
 - Who prepared meals and did laundry?
- Did either or both parents work outside the home?
- Were the children in daycare?
- Was childcare shared, or did one parent do the bulk of the childcare?
- How did each parent interact with the children?

Roles since separation

- How have you divided parenting responsibilities since the separation?
 - Who attends parent-teacher conferences?
 - Who takes the children to doctors' appointments and extracurricular activities?
 - How are other parenting responsibilities divided or shared?
- Have you taken any steps since the separation to minimize disruption in the children's lives?

Extended family

- If extended family members are involved with the children, what extended family members have a close relationship with the children, and where do they live?
- What is your relationship to those family members — on both sides of the family?
- What are your plans, if any, to maintain those relationships for the children?

Family dynamics

- Any religious, spiritual, or cultural values that you think should be part of the children's upbringing, if you and the other parent disagree about this.
 - The children's religious and/or cultural activities before the separation.
 - Any additional languages the children know (for example, if the children speak another language as a result of spending time with one parent or a grandparent).
- Describe how you and the other party communicate. If there are problems, give recent examples.
- If there is family violence, describe it specifically, including any exposure the children may have had to violence or abuse.
- Describe any steps taken to help children deal with abuse or violence.
- Describe any drug or alcohol abuse by a parent or new partner that affects the children's safety.
- Describe any involvement of the Ministry of Children and Family Development with your family.

Parenting time and contact with a child

- What are both parents' current jobs and work hours?
- Does either parent's work or work shifts affect their ability to spend time with the children? If so, what childcare arrangements are in place or proposed?
- How much time have the children spent with each parent since the separation?
- Are there any special events or occasions that you and the other parent disagree about?

See [Evidence](#) for links to lists of facts that may be relevant to various applications.

C.

Facts that may be relevant to issues about child support (*also called child maintenance*):

See B.C. *Family Law Act* [Division 2 — Child Support](#) and [Division 1 — Definitions](#)

Financial Documents

- If you are claiming child support, you must file a sworn [Financial Statement](#) (available at Court registries or online) and provide the documents listed in the Form when you file your application or reply, including a list of all the expenses you deduct from your income for tax purposes if you are self-employed, if any of these circumstances apply:
 - the child(ren) spend at least 40% of the time with the other parent (a “shared parenting” arrangement); See [Child Support Guidelines](#) s. 9.
 - you are claiming “special or extraordinary expenses” in addition to basic child support; See [Child Support Guidelines](#) s. 7.
 - the other **party** has responded that paying the Guideline amount of child support would cause them “undue hardship”. See [Child Support Guidelines](#) s. 10.
- If you are responding to a claim for child support, you must file a sworn [Financial Statement](#) using Form 4 (available at Court registries or online) and provide the documents listed in the Form, including a list of all the expenses you deduct from your income for tax purposes if you are self-employed.
- If your financial situation changes between the time you file your Financial Statement (Form 4) and the trial, you must file an updated Financial Statement (Form 4).
- If there is a claim that paying the Guideline amount of child support would cause the debtor “undue hardship”, both **parties** must provide documents showing the

income of their current spouse or partner, including their last three income tax returns. See [Child Support Guidelines](#) s.10.

See also [Preparing Financial Documents for Family Court](#).

Background details

- When did you and the other parent move in together and/or get married?
- When did you separate?
- The children's names, ages and birthdates.
- Has either parent paid child support to the other since the separation? If so, how much?
- Have you and the other parent signed a separation agreement? If so, provide a copy unless it has already been filed.
- Have any court orders been made since the separation? In particular, has there been a court order or agreement for child support? If orders have been made in the B.C. Supreme Court or in another province or country, provide copies. If orders have been made in the B.C. Provincial Court give the date the order was made.

Financial circumstances

- What are all your sources of income?
- What are your hours of work?
- If you are not currently working, why not?
- If you are attending an educational or training program how will it help you support your children in the future?
- If you are claiming child support, you must file a sworn [Financial Statement](#) using Form 4 (available at Court registries or online) and provide the documents listed in the Form, including a list of all the expenses you deduct from your income for tax purposes if you are self-employed, if any of these circumstances apply:
 - the child(ren) spend at least 40% of the time with the other parent (a "shared parenting" arrangement); See [Child Support Guidelines](#) s. 9.
 - you are claiming "special or extraordinary expenses" in addition to basic child support; See [Child Support Guidelines](#) s. 7.
 - the other **party** has responded that paying the Guideline amount of child support would cause them "undue hardship". See [Child Support Guidelines](#) s. 10.

- If you are responding to an application for child support:
 - You must file a sworn [Financial Statement](#) using Form 4 (available at Court registries or online) and provide the documents in the Form.
 - If you are self-employed, include a list of all the expenses you deduct from your income for tax purposes.
- If you have reason to believe that the other parent isn't accurately disclosing his or her income, list the inaccuracies, give the reasons for your belief when you **testify**, and **cross examine** the other party on the inaccuracies.

If there is an application for special or extraordinary expenses:

See [Child Support Guidelines](#) s. 7.

- The name of the children's daycare, preschool, or school, and their grade in school.
- Each child's extracurricular activities or special interests, if any, and why you think they are important for the child.
- Any medical problems or special needs the children have that create extra expense.
- If medical, dental, or extended healthcare benefits are available through your employment or that of the other parent, identify the benefits and explain what's available.
- The children's living standard during the relationship:
 - Where did you live when you were together?
 - What extracurricular activities did the children participate in?
- If you are claiming special or extraordinary expenses, you must file a sworn [Financial Statement](#) using Form 4 (available at Court registries or online) and provide the documents listed in the Form, including a list of all the expenses you deduct from your income for tax purposes if you are self-employed.
- If you are claiming special or extraordinary expenses, prepare a list or chart that identifies each expense claimed, the child it's claimed for, and the amount. Provide proof of the expenses such as receipts.

- If you are responding to a claim for special or extraordinary expenses, you must file a sworn [Financial Statement](#) using Form 4 (available at Court registries or online) and provide the documents listed in the Form, including a list of all the expenses you deduct from your income for tax purposes if you are self-employed.

See [Evidence](#) for links to lists of facts that may be relevant to various applications.

D.

Facts that may be relevant to issues about spousal support:

See B.C. *Family Law Act* [Division 4 — Spousal Support](#)

See [Preparing Financial Documents for Family Court](#) .

If you're claiming or responding to an application for spousal support:

- File a sworn [Financial Statement](#) using Form 4 (available at Court registries or online) and provide the documents listed in the Form.
- If you are self-employed, include a list of all the expenses you deduct from your income for tax purposes.
- The **parties'** names and ages.
- When did you and the other **party** move in together and/or get married?
- Where did you live when you were together?
- When did you separate?
- The age of each **party** at the time you separated.
- Has either **party** paid support to the other since the separation? If so, how much?
- Have you and the other **party** signed a separation agreement? If so, provide a copy unless it has already been filed.
- Have any court orders been made since the separation? If orders have been made in the B.C. Supreme Court or in another province or country, provide copies. If orders have been made in the B.C. Provincial Court give the date the order was made.
- In particular, has there been a court order or agreement for spousal support and/or division of the family property? If so, provide a copy of it.
- A brief summary of your education and work history.
- List your absences, if any, from the workforce and describe the reasons (for example, illness, injury, training, children, staying at home to be a homemaker).
- Describe your current job and income and list the sources and amount of your income for the last three years.

- Identify your reasonable needs and how much more money you'd need to meet these needs.
- Identify anything that prevents you from earning a reasonable living. (For example, do you have a physical disability, are you caring for young children, or do you need to upgrade your skills?)
- Estimate how long it might take to upgrade job skills and what steps you need to take to be able to earn a reasonable living.
- Describe the other **party's** education, work history, current job, and present income level.
- Identify any assets that could be used for support (for example, an RSP in your spouse's name alone).
- If you have reason to believe that the other parent isn't accurately disclosing his or her income, list the inaccuracies, give the reasons for your belief when you **testify**, and **cross examine** the other party on the inaccuracies.

See [Evidence](#) for links to lists of facts that may be relevant to various applications.

E.

Facts that may be relevant to an application for a protection order:

See B.C. *Family Law Act* [Part 9 — Protection from Family Violence](#)

- Your name and birth date
- The name and birth date of the person you want protection from
- Your relationship with the other **party**
- When you married or started living together
- When you separated
 - The names and birth dates of any children you and the other **party** have or for whom you want protection
 - What are the terms of the protection order you are seeking? (*What do you want the order to say?*) See samples of [protection orders](#) that can be made under [Part 9 of the Family Law Act](#).
- Why you need an order for protection from the other party:
 - Do you fear for the safety or security of yourself, or the children, or someone else?
 - Family violence may include psychological and/or emotional abuse creating a pattern of coercive and controlling behaviour. What sort(s) of family violence do you fear?
 - Why do you fear family violence is likely to occur? Be specific about behaviour or threats that concern you - give dates as specifically as possible, starting with the most recent and continuing backwards as far as you think the history is relevant.
 - Is the person at risk vulnerable due to pregnancy, age, family circumstances, health or economic dependence?
- Do you or the other party have substance abuse, mental health, employment or financial problems, access to weapons, and/or a history of violence?
- Are there any criminal charges against the other party or against you?
- If so, are there any criminal court orders prohibiting contact between you?
- If so, provide a copy of the order.

- Are there any other divorce or family law proceedings between you and the other party?
- If so, in which court? Provide copies of any orders made about you and the other party and/or the children.
- Is the Ministry of Children and Family Development involved with your children? If so, provide copies of any court orders made about the children.
- Is there a home shared with the other party?
- If so, whose name(s) is or are on the lease or title to the property?
- How can the other party be served with a copy of any order made? (How and where can it be delivered to the **other party**?)

See [Evidence](#) for links to lists of facts that may be relevant to various applications.

F.

Facts relevant to an application made without notice to the other party

(sometimes called an “ex parte” application)

To be fair, judges must give both parties a chance to present evidence before making a court order. That is a basic rule of our justice system. To proceed without notice, you will have to satisfy the judge that there is a real risk if notice were required before your application is heard so that the judge should not follow the usual rule of fairness and hear from both parties at the same time.

If you are asking for an order without notice to the other party give the judge the following information before providing the facts that may be relevant to your application.

- Why do you say the risk in your case is that great? Be specific about behaviour or threats that concern you - give dates as specifically as possible, starting with the most recent and continuing backwards as far as you think the history is relevant.
- What do you fear will happen if the other party is given notice of your application and a chance to attend court so that you may both be heard at the same time?

See [Evidence](#) for links to lists of facts that may be relevant to various applications.