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## Provincial Court Civil Practice

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ISBN-10: 1-55093-739-1  
ISBN-13: 978-1-55093-739-8

# Provincial Court Trial Preparation and Conduct of a Trial

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Legal Education  
Society of Alberta

*Provincial Court Civil Practice*  
Calgary, Alberta – January 24, 2020  
Edmonton, Alberta – January 31, 2020

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## **INTRODUCTION**

Although this program is focused on the Civil Division of the Provincial Court of Alberta, my comments will not. Proper, efficient, and effective trial preparation and trial advocacy is not the exclusive domain of Section 96 courts. Sections 36 and 36.1 of the *Provincial Court Act* are significant provisions relating to evidence and trial procedures. However, a lawyer who approaches a trial in our Court as a “small claims matter” does so at his/her own peril.

The job of a trial lawyer is challenging and nerve racking. You have to make strategy calls, determine merits of a claim or defence when the answers may not be clear and give advice that your client is relying on and paying for. At trial, you have to make on the spot decisions and judgment calls relating to evidentiary issues, make objections, deal with the judge’s questions, determine what are effective questions on cross-examination, and calmly address unforeseen twists, all the while being observed and critiqued by everyone in the courtroom. It is a stressful job, conducted in a stressful environment.

Timely and productive trial preparation will do wonders in alleviating the stress of counsel. However, it is surprising when our Court hears of trial preparation, it is often in the context of a timeline of a few weeks prior to trial. Good luck to a lawyer who believes trial preparation starts a few weeks before trial.

## **TRIAL PREPARATION**

### **When Do You Start?**

Trial preparation begins when you first meet your client. Issue identification is the key element in all aspects of civil litigation. An objective and non-biased assessment of the positions of both parties is equally important. You are not your client’s cheerleader. You are and must be their candid legal advisor. Those are two very different roles. If you only perform the former, you are not performing your required role.

It is not difficult to find a cause of action in any set of facts. It is an easy exercise to fashion a Statement of Defence or Dispute Note to any claim. It is a far more challenging and time-consuming endeavour to carefully assess all elements of a claim or potential claim at the outset. You cannot properly advise your client on the merits and risks of an action, if you have not conducted a comprehensive and objective issue identification assessment.

### **What Steps Do You Need to Take?**

1. Obtain and review all documents relevant and material to the matter.