

Tips and Traps for the Family Law Advocate

Prepared for: Legal Education Society of Alberta

Family Law Trial Fundamentals

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TIPS AND TRAPS FOR THE FAMILY LAW ADVOCATE

REMEMBER, YOUR JOB IS TO HELP THE COURT

WHY?

The judge's role is to find the facts, apply the law, and make the decision. The easier these tasks are for the judge, the better the outcome for the parties, and the more quickly they will have a decision.

HOW?

I. Preparation

Begin with the end in mind and develop a plan. How and when will the issues get to adjudication?

A. What do you need to prove?

Think about the issues as if they were elements of a criminal offence.

E.g. If your client is seeking spousal support, you must prove the "elements" of entitlement, quantum, and duration. To establish each of these, you will require evidence to prove each element.

Use the relevant legislation to guide and structure your presentation of the case, in your written materials and throughout the trial.

E.g., To establish entitlement to spousal support, review section 15.2(4) of the *Divorce Act* and determine how you will bring forward the necessary evidence.

This structure will help clarify factual and legal issues, focus the evidentiary inquiry, encourage settlement, etc.

Most importantly, move the matter forward. Set a trial date and prepare for it. Avoid morning chambers, special chambers, affidavits, cross on affidavits, briefs, etc. – these are a monumental waste of time and money. Get an early interim order for support, maybe interim parenting, and then set a trial date by way of order after a case conference and work to settle. Having a trial date will improve chances of settling. Be realistic in setting the number of days for trial when dealing with SRLs.

B. How will you prove your case?

What evidence is necessary? Avoid spending time on evidence that is extraneous, unnecessary, and time consuming.

Have a pre-trial settlement meeting and try to agree on some issues.

Prepare and submit as many of the following as possible:

- A chronological outline of the relevant facts
- An agreed statement of facts and summary of facts in dispute
- Agreed exhibits for documents whose admissibility is not in dispute such as tax returns, property titles, etc.
- Expert reports, as early as possible, to allow the judge to read them prior to the expert giving testimony
- Agree that expert reports can be relied upon vocational calling the expert saving time and money.

These documents can help shorten the trial, reduce the research and preparation required AND allow counsel to know both the case to present and the case to meet.

II. Organization

Organize your information so that it is easy to follow and easy to find – do not just file a “shoebox” of material and expect the Court to dig through it.

A. Property

If the parties cannot agree on the value of property, create a joint list with one column for the plaintiff’s values and one column for the defendant’s values. Too often judges get separate lists of property, with property items listed in a different order and it is difficult to compare. Judges end up spending time creating their own list for comparison purposes. This is a poor use of resources, risks mistakes in transferring over values, etc.

Remember to provide supporting documentation for property values: appraisals (not a comparative analysis by a realtor), black book or Kijiji values for vehicle, etc.

Provide a proposed distribution of property with charts itemizing exemptions, gifts, inheritances, etc.

B. Support

Do the math! Provide clear financial and tax calculations.

Give numbers and amounts, not dates.