

Getting to Trial

Scheduling a Trial

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Scheduling a Trial

Trials have to be scheduled well in advance. How long it will take to set a trial varies with how long the trial will be, and what registry your claim is filed in. You therefore may wish to make your request for a trial date as soon as you can, even if all the pre-trial steps are not yet completed. Usually, it is the plaintiff that schedules the trial date but any party to the action can do so. There are a few steps to take to schedule your trial date.

Step 1: Estimate the time you need for trial

You need to have an accurate estimate of how long the entire trial will take before you schedule the trial date with the court.

Accurately guessing how long a trial will take is hard. If you estimate too little time, you will not finish, and you may have to wait a long time to complete the trial. Further, judges often get annoyed when not enough time is set aside for a matter.

Consider realistically how long you think the trial will take:

- How many witnesses will testify for you?
- How many witnesses will testify for the other side?
- How long will each witness speak?
- How long will it take to cross-examine witnesses?
- How long will it take you to present your evidence?
- How long will it take you to sum up your case for the judge?
- How long will it take you to make arguments about the law applicable to your case?

- How much time will the other party need for their witnesses and case presentation?

The court moves slowly. Things often take more time than you would expect. Unexpected things happen. A “day” in Court is only four hours of actual Court time (10:00 am to 12:30, with a 15-minute break, and 2:00 pm to 4:00 pm, with a 15-minute break). Additionally, it takes time between witnesses for one to leave and the next to get settled in and then swear or affirm.

Step 2 Get agreement from other parties

Once you have an idea of how long you think the trial will take, you need to consult with the other parties (and their lawyers). You need to find out if they agree with your estimate. If not, how long do they think it will take? Can you come to an agreement on trial length?

If you cannot come to an agreement on a time estimate or are otherwise having trouble setting the matter for trial, you may wish to request a Case Planning Conference. See [Case Planning Conferences](#).

You also need to find out when the other side is available for trial. If you go through all the trouble of setting a trial but then the other side cannot attend and needs to adjourn the trial, then all that effort is wasted. It will also needlessly annoy both the other side and the Court to set dates without confirming the other party is available.

Usually, you check the other side’s availability by asking them to list the days that they are *not* available for trial. Because the Court is busy and has limited trial dates, parties need to be as flexible as possible as to dates and prioritize the trial over other commitments.

Step 3 Set a date with the courts

Once you know the parties’ availability and the time estimate, contact the Supreme Court scheduler in the registry where the Notice of Civil Claim was filed. They will assist you with scheduling a trial date. Each registry has a different practice for booking trial dates, and different documentation is required for trials of different trial lengths, so it is a good idea to contact the Supreme Court scheduler as soon as you can to find out what you need to do to book a trial date. You can find contact information for the right Supreme Court Scheduling office for your claim [here](#).

Trial dates can also be assigned at a Case Planning Conference. See [Case Planning Conferences](#) for more information.

Step 4 File and serve a Notice of Trial

Once you have a trial date, either set at a Case Planning Conference or reserved from the Registry, then you can complete a Notice of Trial (**Form 40**). If you are the plaintiff, you must serve your notice of trial on all other parties of record promptly after filing it. The notice of trial must include the date set out in a case plan order for the trial or, if no trial date is set out in a case plan order, the trial date obtained from the registry.



Find the Form

Form 40 Notice of Trial

Changing the Date

If you object to a trial date set by another party, you must, within 21 days of receiving the notice of trial, either request a case planning conference (see **Case Planning Conferences**) or file an application to have the trial rescheduled (see **Chambers Applications**). If you are the party who filed the notice of trial you will also have to prepare and file a document called a trial record, discussed below.

Jury Trials

In an action started with a notice of civil claim, any party can choose to have the trial heard by a judge and jury, except in certain cases. The rules set out certain matters that cannot be heard by a jury (see **Rule 12-6(2)**). Jury trials are not common in civil matters, and they are far more complicated than trials without a jury. Jury trials are not available in fast track litigation. For more information see **Fast Track Litigation**.

Jury trials tend to take longer than trials by judge alone and require that you pay additional costs to the court for the jury. If you are considering a jury, you should get advice from a lawyer about whether this is an appropriate option for your case.

See **Get Help**

If you choose to have a jury trial, review **Rule 12-6(3)** which sets out how you tell the court and the other parties that you want a jury trial.

Trial Management Conferences

A trial management conference (sometimes called a TMC) is a meeting with a judge or master to discuss how the trial of your case will proceed (**Rule 12-2**).



Read the Rules

Rule 12-2 Trial Management Conference

The trial management conference must take place at least 28 days before the scheduled trial date at a time and place fixed by the registrar (**Rule 12-2(1)**).

However, if all parties agree that a trial management conference is not required, the parties may apply for a “consent order” that no trial management conference need occur (**Rule 12-2(3.4)**) When applying for that order, all parties must have prepared a trial brief, and all trial briefs must be attached to the application for a consent order. If a judge or master is satisfied that the matter is ready to proceed to trial and can be completed in the time estimated, then no trial management conference needs to occur.

Who Attends

The parties and their lawyers must attend the conference. If a party is represented by a lawyer, they do not have to attend provided they are readily available for consultation during the conference either in person or by telephone. If you are required to attend but fail to do so, the judge or master may proceed without you, adjourn the conference, or order you to pay costs to another party.

Possible Orders

At the trial management conference, the judge or master may consider and make orders on many issues under **Rule 12-2(9)**, including:

- A plan for how the trial should be conducted

- Amendment of pleadings
- Facts to be admitted at trial
- Documents to be admitted at trial, including agreements as to the purpose for using the documents at trial or preparing a common book of documents;
- Limits on how long witnesses can be examined and cross-examined
- That the evidence of witnesses be presented at trial in affidavit form
- Adjournment of the trial
- That the opening statements and final submissions be presented in writing and
- That the number of days set aside for trial should be changed

The judge or master cannot hear any application by which affidavit evidence is required or make a final order in the case unless the parties consent.

The Court tries to make sure that the same judge hearing the trial management conference will hear the trial. This is not always possible so you may have a different judge or master at your trial management conference.

Learn More



For more guidance on this consent order process, see [**Practice Direction 51 – Consent Order to Dispense with Trial Management Conference in Civil Cases.**](#)

Prepare a Trial Brief

The plaintiff, the party starting the claim, must file a trial brief (**Form 41**) at least 28 days before the trial management conference and serve it on the other parties. The other parties must file their own trial brief (**Form 41**) at least 21 days before the trial management conference, and serve it on all other parties.



Find the Form

[**Form 41**](#) Trial Brief

The trial brief summarizes the positions of the parties on unresolved issues, identifies the witnesses who will give evidence at trial, the time required for the witnesses' testimonies, as well as the expert reports and other documents that will be put into evidence. You must also list the legal authorities that you will be relying on to present your case to the judge.

Trial Record and Certificate

Prepare a Trial Record

A trial record is a bound book that contains all the pleadings and other documents to be put before the court at the trial. The party who filed the notice of trial must file a trial record at **least 14 days**, but **not more than 28 days, before** the first day of trial.



Read the Rules

Rule 12-3 Trial Record

A trial record must include:

- **The pleadings:** (e.g, the notice of civil claim, response, as well as any third party notice or counterclaim). If any of these documents have been amended, include only the amended pleadings
- **Particulars:** Any particulars served under a demand for particulars, together with the demand. (A demand for particulars is a request that a party provides more information about a matter set out in their pleadings. See **Rule 3-7(23)**)
- **The case plan order**, if any
- **Court orders:** Any court order that relates to the conduct of the trial (for example, a court order that the trial be heard in a different registry)

Steps for a Trial Record

1. **Collect Documents.** Make sure you have all the necessary documents
2. **Prepare a cover and an index.** On the cover put the style of proceeding, the title TRIAL RECORD, and the names, addresses, and phone numbers of all

parties or their lawyers. Include the date and place of trial in the bottom right-hand corner of the cover page. In the index, set out the name of each document, the date the document was filed, and the page number of the document in the trial record

3. **Number Pages.** Number each page of each document in the top right-hand corner
4. **Date and Location.** Under the page number on the first page of each document in the trial record, including the registry office and the date the document was filed, prepared, completed, or made
5. **Bind.** Have the trial record bound
6. **File.** File the trial record with the court registry
7. **Deliver copies.** Once you have filed the trial record, deliver copies to all other parties to the action

Prepare a Trial Certificate

A trial certificate (**Form 42**) is a **very important** document. If no party files a trial certificate, your case will be removed from the trial list and you will have to schedule a new trial date.



Find The Form

Form 42 Trial Certificate

A trial certificate is a short document that sets out:

- That the party submitting the form will be ready to proceed with the trial on the date scheduled
- That the party submitting the form has completed all examinations for discovery
- The current estimate of the length of the trial and
- A statement that a trial management conference has been conducted in the action

All parties must file and serve a trial certificate at least **14 days but not more than 28 days** before the first day of trial.



Read the Rules

Rule 12-4 Trial Certificate

Trial Deadlines

After the Notice of Trial has been served, there are some very important deadlines to keep in mind. If you do not follow these deadlines, you may lose your trial date. It is a good idea to mark them down on your calendar.

<p>At least 21 days after receiving notice of trial <u>Rule 12-1(7)</u></p>	<p>If you object to trial date set by party request a case planning conference or file application to have the trial ruled</p>
<p>At least 84 days before first day of trial <u>Rule 11-6(3)</u></p>	<p>Must deliver expert reports you will trial to all parties</p>
<p>At least 42 days before first day of trial <u>Rule 11-6(4)</u></p>	<p>Serve expert reports written in e to another's report.</p>
<p>At least 28 days before first day of trial (and no more than 120 days before first day of trial <u>Rule 12-2(1)</u></p>	<p>Hold a trial management conference</p>
<p>Plaintiff: At least 28 days before trial management conference</p>	<p>File trial brief.</p>
<p>All parties of record <i>except</i> the plaintiff: At least 21 days before the trial management conference <u>Rule 12-2(3)</u></p>	
<p>14 – 28 days before first day of trial <u>Rule 12-4(2)</u></p>	<p>File a trial certificate.</p>



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