

Preparing for Trial

Plan Your Case

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Plan your Case

When you are preparing for a trial it is important to be organized and plan your case. Most importantly, you will need to think about what facts you need to prove to the court and how you will prove them. This may involve some legal research, first to understand your rights and responsibilities and also so you can rely on case law to support your legal argument. To learn more see **Legal Research**. Once you have a list of facts you want to prove you can consider how you will prove it. This is typically done either by witness testimony or through documentary evidence.

Plan Your Witness Evidence

You need to think about whether you need anyone to come to the trial to give evidence. Witnesses can testify about facts that are relevant to the case. They may also testify about certain documents.

For example, if you need to prove a signature on a document, you may need to call that person to confirm that they signed the document.

If you decide that you need witnesses, contact them to ask them to attend the trial. If you are uncertain whether a particular witness will show up at the trial, serve them with a subpoena. A subpoena is a form that notifies a witness that they are required to attend in court to give evidence at a trial and that failure to do so may result in a charge of contempt of court. Prepare the subpoena using **Form 25**.



Find the Form

Form 25 Subpoena

According to Rule **12-5(35)**, the subpoena must be served together with the appropriate witness fees. See **Schedule 3 of Appendix C** of the Rules of Court to find out how much you must pay the witnesses.

When you are preparing your case for trial, you may want to go over the evidence with your witnesses beforehand to let them know the questions they will be asked. You may want to prepare a list of information for you and each of your witnesses to get ready for trial. This list should set out:

- The name, address, age, and occupation of the witness
- Their education, if necessary
- Their experience, if necessary and
- What they will testify about

Rule 7-4 states that you must file and serve on every other party a list of the witnesses you may call at trial (except expert witnesses and adverse parties).

Unless the court has made an order to the contrary, you must serve your witness list on the other party at least 28 days before the scheduled trial date. The list must include the full name and address of each listed witness. If you later find that the list is inaccurate or incomplete, you must amend your list and serve it on the other parties.

For more information on witness evidence at trial, see the **Evidence**.

Organizing materials

The most important thing to remember about getting ready for a trial is that you need to be organized. You need to organize

- Your documents
- Your witnesses, and
- All the law that you want the court to consider

It is a good idea to organize all your information for the trial and put it in one place so you can easily find things and can keep everything up to date. You could put it all in a three-ring binder or in a folder in your computer. At the very least, your central information source should include:

- **To do list with dates:** A list of all the things that you must file or do before the trial and the dates on which they must be done, including filing a trial record and trial certificate. (If your trial certificate is not filed in time, you will lose your trial date.)
- **Facts to prove:** A list of all the facts you will need to prove your claim or your defence and how you will prove each fact (for example, by getting a witness to testify about it or presenting a document to the court)
- **People involved:**
 - **Expert information:** The names, addresses, phone numbers, and schedules of any experts you plan to call
 - **Witness information:** The names, addresses, and phone numbers of your witnesses and the dates of when they will be called to testify
 - **Others:** The names, addresses, and phone numbers of everyone else involved, including defendants or plaintiffs, or the lawyers acting for them

Book of Documents

One of the most important things you will need to prepare before the trial is a book of documents. This book will contain all the documents that you will want to present to the court as evidence during the trial. Organize them according to date, separated by numbered tabs, to make them easy to find. In addition, if documents are more than one page long, number each page. You can enter this book of documents as an exhibit at trial.

Think about how you will prove each of the documents to the court. You may have to call witnesses to prove that certain documents are authentic – that they are what they say they are (for example, that a letter was signed and sent on a particular date). However, before you consider calling a witness to prove a document, you should ask the other party if they agree that you can present the document to prove a particular fact (for example, that the letter was sent on the date indicated). If they agree, then you may be able to present the document in court without needing to call a witness.

Notices to admit are useful in getting the other parties to agree to the authenticity of documents (see **Rule 7-7(1)**). For more information on Notices to Admit, see **Discovery**.

You may also want to set out in writing the various agreements you have made with the other parties about the documents. A written document agreement allows you to present your documents without objections about the validity of any of your documents and tells the court the basis upon which documents are being presented. A document agreement can be very simple but should include statements that:

- The documents included in the book are true copies of the originals
- The documents are signed and dated as indicated
- They were mailed or faxed or emailed as noted and
- They were received in good order

If possible, it helps the court if the parties can agree before the trial to prepare a joint book of documents so that all of the documents are in one place. If the parties agree, this joint book of documents can be entered as an exhibit at the trial. If there are some documents you want to present to the Court, but the other parties have objected to including them in the joint book of documents, you will have to deal with these documents separately during the trial.

While not strictly necessary, it is a very good idea to prepare one extra book of documents for the judge so that they can make notes and highlight the documents, if necessary.

Before Your Day in Court

Your day in Court will be a big day. Here are some ways to prepare:

- **Go court watching:** One of the best ways to find out what to expect is to take some time to visit Court while it is in session. The BC Supreme Court is open to the public, and you are allowed to walk into Court to watch and listen
- **Write out what you plan to say:** It is a good idea to try to write down what you plan to say. You can write an outline, or write every word. You probably will not end up saying exactly what you write, but trying to write it out is a good exercise

- **Practice:** Take the time to actually say what you plan to say out loud. Time yourself

At Court

When You Arrive to the Courthouse

- **Arrive at the courtroom at least 15 minutes early:** The courtroom will open up 15 minutes before your scheduled court time. You should be there when it opens
- **Find out what courtroom you are in:** There will be a Court list that tells you what courtroom to go to. If you cannot find it, ask a security guard and they can assist
- **Use the bathroom before you go to the courtroom:** You may not have another chance for an hour and a half or so once Court begins
- **Turn off your cellphone:** When you go into the courtroom, turn off your cell phone and make sure the sound is off on any laptop or tablet you are going to use
- **Be friendly to, or ignore, the other side:** You will see the other side to the case, or their lawyer, in or outside the courtroom. This may be the first time you have seen them in a while. You may feel cross towards them, but there is nothing to be gained by being rude or disrespectful. To the contrary, this may be a good opportunity to see if a solution can be worked out, and that will be much easier if you treat them with courtesy and respect. If you cannot speak to them with respect and courtesy, then just ignore them
- **Check in with the Court clerk:** Once the courtroom is open, there will be a man or a woman sitting near the front by a computer screen. That is the court clerk. You will need to “check in” with that person. That means telling them what case you are there for, your name, and your role (plaintiff, defendant, petitioner, respondent, etc.)
- **Set up, or sit in the gallery:** If yours is the only case being heard in that courtroom that day, then you can set up your material. You will see a podium in the centre of the front of the courtroom. If you are the plaintiff, petitioner, applicant, or appellant, then you should sit on the left side of that podium. If you are the defendant or respondent then you sit on the right side of the podium

If there is another matter that is being heard before yours, find a seat in the gallery (the audience section of the courtroom) and wait your turn. It will be the same judge or master who hears the first matter that hears yours, so take some time to observe them. What are they like? Does something the parties in the earlier case do seem to work? To not work?

When the Hearing Begins

- **Stand when the judge or master enters:** The Court clerk will say “Order in Court” when the judge or master is about to enter. Stand up. Stay standing until after the judge or master has sat down
- **Stand to introduce yourself:** The Court clerk will “call the case”. This will mean they will say something like “In the Supreme Court of British Columbia, this 11th day of February 2020, calling the matter of Smith v. Jones”
- You and the other side will then introduce yourselves. You should say your name, spell your last name, and say who you are (for example, you might say “John Jones, J-O-N-E-S, and I am the plaintiff”
- **Sit while the other side is talking, and stand while you are talking:** Unless you have a medical issue, you must stand when talking to the judge or master. When the other side is talking, remain sitting
- **Do not interrupt:** Always let a judge finish talking. A good tip is to wait at least 2 seconds after a judge has finished speaking to begin talking yourself. The judge may not have actually finished talking and just been taking a breath. Interrupting the other side is rude and improper, and will only hurt the impression you make to the Court
- **Take notes:** When the other side is speaking, it is best to keep your head down and make notes. You will want to remember what they said so you can respond to it. It is especially important to remember what the judge or master says in their questions. These can let you know parts of the case they may be having difficulty with

When It’s Your Turn to Talk

- **Breathe:** Stand up at the podium. Take a second and take a deep breath
- **Speak slowly:** You need to speak at a pace that the judge can follow. Watch the judge. If they are taking notes this is good. If they are writing something,

let them finish before moving on. If they are not taking notes, it may be that you are going too fast for them to keep up with

- **Speak to the judge or master:** Your job in Court is to tell the judge or master your story. Everything you say should be directed at them. You do not speak directly to the other side
- **Speak loudly:** Make sure that the judge can hear you
- **Follow your notes or your outline:** Generally, it is a good idea to go through the submissions you have practiced and outlined first. You can address anything unexpected that the other side said at the end
- **Answer the judge's questions:** If a judge asks you a question, try your best to answer it. If you cannot answer it, you may ask if you can come back to it after a break, if there is enough time. Sometimes you get a question that you will need to think about over the lunch break to answer fully. If you say you are going to come back to something, make sure you do
- **Speak formally:** Talk in a respectful and formal way. Call people Mr. X or Ms. X, rather than by their first names (For example, say "Mr. Jones has provided no evidence" instead of "John has provided no evidence") Do not use slang. Certainly do not use swear words
- **Take notes of the decision:** At the end of the hearing, the judge or master may give their decision. When they do this, take notes. Take notes even if you do not like what you are hearing. You want to know exactly what they ordered and exactly why

How to Address Judges and Court Staff

The ways to address members and staff of the court are set out below. Although they may seem awkward, addressing a judge or a master correctly will help you present your case in court.

Supreme Court Judges

- **In writing:** "The Honourable Justice", followed by their last name (e.g. The Honourable Justice Brown)
- **In court:** "Justice", "Madam Justice", or "Mr. Justice"

Trial Process

Part 12 of the Supreme Court Civil Rules deals with trial procedures.



Read the Rules

Part 12 Trial

Most trials happens in steps, as follows:

- 1. Plaintiff's opening:** The plaintiff outlines for the judge or jury the factual basis of the claims they expects to prove
- 2. Plaintiff's witnesses:** The plaintiff and the plaintiff's witnesses give their evidence (this is called direct examination), are cross-examined by the defendant, and then re-examined by the plaintiff, if necessary
- 3. Defendant's opening:** The defendant explains to the judge or jury what their evidence will show and what it means to the defence
- 4. Defendant's witnesses:** The defendant gives their evidence, calls defence witnesses who give their evidence (direct examination), are cross-examined by the plaintiff, and then re-examined by the defendant's lawyer (or the defendant if they are self-represented), if necessary
- 5. Rebuttal witnesses:** Once the defendant has finished with their witnesses, the plaintiff can call rebuttal witnesses who can give evidence on issues that came up for the first time in the evidence of the defendant's witnesses, but for nothing else. Then the defendant can cross-examine these witnesses

Once all of this has happened, your evidence is complete. Now it is time to sum up.

- 6. Plaintiff's argument:** The plaintiff presents arguments about the evidence, its relevance, the case authorities and the statutes that are relevant to the case (you should have copies of the case authorities and statutes available for the other party and the judge). The argument should include a request for costs in the event that your claim succeeds
- 7. Defendant's argument:** The defendant does the same
- 8. Reply:** The plaintiff may reply to the defendant's argument. Very infrequently the defendant may be allowed to give further reply (this is called surreply) to the plaintiff's reply

- 9. Judgment:** The judge may give judgment right away or, in many cases, will reserve (delay) judgment and provide written reasons for judgment at a later date

In complex cases, written summaries of your argument can be provided to the court. In some of these cases, the judge might ask the parties to submit written arguments instead of doing it in person or as well as doing it in person. The judge may set time limits for when written arguments are to be submitted.