

Client Trial Prep Checklist



This document should be adapted to suit your practice and The matter for which it is being used. See endnote.

1. Discuss with the client where, when, what, and how:

- Manage your client's emotions. Advise your client it is normal to be stressed.
- Describe the life of a trial. Unpredictable things happen. A good day on examination in chief can lead to a bad day on cross-examination. Be ready for the ups and downs of a trial.
- Give your client directions to court and a daily schedule.
- Walk through which side goes first and the order of witnesses.
- Inform client how long the trial will take, and how long will each day be.
- Advise what your availability will be like during trial.
- If your client will give testimony, show your client the courtroom. Have your client sit and speak on the stand a day or two before giving testimony.
- Advise your client you cannot give advice while your client is giving testimony, even when on a short break.

2. Discuss outcomes, risks, and fees and costs awards:

- Review trial outcomes from best to worst, and assess risk involved with each outcome.
- Discuss the risks of losing and the consequences of an adverse costs award. Calculate the full breakdown (damages, disbursements, fees, HST, etc.) involved with both losing and winning scenarios.
- Advise your client if there is an increase in fees (e.g., on contingency) for going to trial.
- What has the other side offered? Review the reasons to accept or not accept.
- If relevant, discuss the effects of adverse cost insurance. How much

adverse cost insurance has been obtained? Will it fully cover a potential adverse cost award, including a substantial indemnity award? Is there a false sense of security simply because there is adverse cost insurance?

- Document your advice and recommendations.
- Document the client's instructions, including offers to settle, counter-offers, and instructions to go to trial.

3. Review evidence:

- Review the theory of the case and relevant law. What's the theory for liability and damages, and what are the strengths and weaknesses?
- Review the client's prior testimony – statements, affidavits, discovery, etc. Is there any evidence that needs correction or further investigation?
- Review any evidence that harms the case. Does the client have any further thoughts on harmful evidence?
- Consider full mock examination-in-chief and cross-examination, and videotaping client.

I confirm my lawyer has prepared me for trial in accordance with this checklist:

Client Lawyer Date

NOTE & DISCLAIMER: This checklist may not be complete and should be carefully reviewed and adapted to the specific circumstances of a trial file. Its suitability will depend upon a number of factors, such as the specific needs and preferences of your client, and the circumstances surrounding the trial. It is provided by LAWPRO for your consideration and use when you draft your own documents. It is NOT meant to be used "as is". It may need to be modified to correspond to current law and practice. This checklist does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.