MEMORANDUM FROM THE COURT TO SELF-REPRESENTED LITIGANTS
TRIAL PROCEDURE IN CIVIL AND FAMILY CASES

This memorandum is directed to a party in a civil or family case who is not represented by a lawyer. It provides a general overview of some of the procedures and rules that apply in a civil or family trial in the Supreme Court of British Columbia. Its purpose is to provide guidance and to promote a fair and orderly trial process.

This memorandum is not legal advice. It is not specific to your particular case and it is not a substitute for the advice you would receive from a lawyer. The trial judge is impartial and cannot give you legal advice.

You are responsible for the conduct of your case, including learning about court processes, the rules that you must follow, and the law that applies.

Sitting schedule

The court sits from 10:00 a.m. to 12:30 p.m., with a 15-minute break typically at around 11:15 a.m. The court adjourns for the lunch break between 12:30 p.m. and 2:00 p.m. The court then sits from 2:00 p.m. until 4:00 p.m., with a 15-minute break typically at around 3:00 p.m. The trial judge may vary or extend these times to accommodate witnesses, to finish the trial on schedule, or as otherwise required.

Court etiquette

There are certain customs and rules of conduct which are to be followed in the courtroom. These rules are in place to recognize the solemnity of court proceedings, to show respect for the institution of the Court and the other participants, and to promote an orderly, efficient and fair trial process.

As a self-represented party, you will sit at one of the tables at the front of the courtroom. It is customary for the plaintiff (the “claimant” in family proceedings) to sit at the table on the right of the centre lectern, and the defendant (the “respondent” in family proceedings) will sit at the table on the left.

It is important to arrive at the courtroom on time. You will check in with the court clerk, who is seated at the lower table at the front of the courtroom. The court clerk is the person who opens Court, takes the witnesses’ oaths or affirmations, and receives exhibits that go into evidence. You may address and refer to the clerk as “Court Clerk” or “Registrar”.

When a judge enters and exits the courtroom, the participants and everyone in the courtroom will stand if they are able to. The judge will bow and the parties will reciprocate. You should stand whenever you address the trial judge and when the trial judge addresses you, if you are able to.

You will introduce yourself at the beginning of the trial, stating your name, title (e.g., Mr./Ms./Mx., etc.) and your pronouns (e.g., he/him, she/her, they/them, etc.) for the court record.

You should refer to the trial judge as “Chief Justice, “Associate Chief Justice, “Justice”, “Madam Justice” or “Mr. Justice” as the context requires.

A party should not speak directly to another party while court is in session. You must address your submissions and your testimony to the judge. If necessary, a party may pass a note to another party or to the court clerk.

When another party is speaking, you should stay seated and refrain from speaking. The hearing is recorded and there must be a clear record of what is said.

The use of electronic devices is not permitted in the courtroom, except a party may use a personal laptop or tablet for the sole purpose of typing notes. Your cell phone must be turned off. Video or audio recording of the proceedings is prohibited. The Court’s policy on the use of electronic devices in courtrooms is available on the Court’s website:

> https://www.bccourts.ca/supreme_court/about_the_supreme_court/court_policies.aspx

Food and beverages, other than water, are not permitted in the courtroom.

Order of trial

Trials happen in stages. The plaintiff (the “claimant” in a family case) goes first, making an opening statement and then calling witnesses and presenting other evidence to the court. The defendant (the “respondent” in a family case) may make an opening statement and may call witnesses after the plaintiff’s case is closed. After the defendant closes its case, the plaintiff makes its closing argument, and then the defendant does the same. A more detailed overview of the order that most trials follow is attached at Appendix “A”.

The following sections of this memo provide more information about the purpose of each stage of the trial and the procedure to follow.

Opening statements

The purpose of an opening statement is to give the party making the statement an opportunity to introduce the trial judge to what the case is about. This usually includes providing an overview of the evidence that the party expects to show, setting out what orders are sought, and outlining how the evidence supports the party's case and the orders sought. An opening statement is not evidence and the court will not rely on it as proof of any facts. A party may provide a copy of their opening statement to the trial judge. Any time you give a copy of a document to the trial judge, you must also give a copy to the other party.

Remember to speak slowly, particularly if you are reading from a prepared statement, so that the trial judge can process what you are saying and make notes.

Evidence

Evidence is what you will present to the court to prove your claim or your defence.

Evidence includes what witnesses say when under oath or on affirmation in the witness box (testimony), as well as documents (such as letters, emails, photographs, audio and video recordings) that are entered as exhibits at trial. Sometimes, parties may introduce evidence by agreement.

What the parties say when not in the witness box is not evidence, including questions put to witnesses and what is said during opening statements and closing submissions.

The trial judge will determine whether evidence is admissible and will decide the case only on evidence that is admitted. There are many rules with respect to the admissibility of evidence. One important rule to remember is that the trial judge will only admit evidence that is relevant to the case. When considering what evidence to present, ask yourself whether the evidence will help you to prove or disprove the facts in issue in the case.

The trial judge will not consider affidavits filed before trial except where there is an order that a witness may give evidence by affidavit or where a witness is asked about something the witness said in an affidavit.

During the trial, you should take notes about the evidence that is admitted, so that you can accurately refer to it when you make your closing arguments at the end of trial.

a. Witness testimony

Witness testimony is given under oath or on affirmation, from the witness box. Generally, when giving testimony, a witness can only provide relevant evidence of what the witness saw or heard firsthand, and what the witness did or said. Witnesses must not give evidence that is irrelevant, make argument, or speculate. Usually, a witness cannot give evidence about what someone else may have seen or heard, even if that other person told the witness about it. This is the rule against hearsay evidence. There are many exceptions to this general rule. For example, a party may testify as to the statements of a child where the court has ruled that those statements are admissible.

A witness is generally not allowed to testify as to their opinion or what they think about what they have seen and heard, unless the witness is an expert witness. A witness who has been qualified as an expert can provide information and opinions that are relevant, necessary and outside the experience and knowledge of the court.

It is the responsibility of each party to ensure that every witness the party intends to call to testify at trial is available and at the courtroom at the appropriate time. You may need to subpoena witnesses. The procedure for doing so is set out in subrules 14-7(31) – (39) of the *Supreme Court Family Rules* (SCFR) and subrules 12-5(31) – (39) of the *Supreme Court Civil Rules* (SCCR). Information about witness fees is found in Schedule 3 of Appendix C to the SCFR and SCCR.

If a party seeks to have a witness testify by video, permission of the trial judge is required. The method of appearance of witnesses should be canvassed at the trial management conference.

b. Documents

You may also introduce evidence through documents. The rules that apply to admission of documents are complex. The rules against hearsay evidence and opinion evidence apply to documents. As above, there are exceptions to those rules. A document can become an exhibit only if the parties agree or a witness testifies about it.

You must have at least four copies of any document that you intend to ask the trial judge to make an exhibit in the trial: one for yourself, one for the witness (which will be stamped by the court clerk as the exhibit), one for the trial judge, and one for the other party. If a party objects to the admission of a document, the trial judge will rule on whether the document can be admitted into evidence and for what purpose.

c. Expert reports

Expert reports (for example, the opinions of doctors, section 211 reports about children in family law cases, and real estate appraisals) may be admitted a trial. The rules regarding expert reports are found in Part 13 of the SCFR and Part 11 of the SCCR. A party who seeks to rely on an expert report at trial must have provided the required notice to the other party.

Questioning witnesses

The party who calls a witness asks questions first (direct examination). Next, the other party will have the opportunity to cross-examine the witness. Then, the party who called the witness may ask questions solely about new matters that were raised in cross-examination (this is called re-examination, and it is usually very brief). This same procedure is followed for every witness who testifies at trial.

If there is a break during cross-examination of a witness, the witness who is under cross-examination (including the parties themselves) must not discuss the witness's evidence with anyone until after cross-examination is over.

It is up to you to decide what questions to ask a witness. Generally, the trial judge will not interfere with that process unless the questions are unfair, irrelevant, or otherwise inappropriate. The trial judge may also ask questions of a witness, usually to clarify the testimony.

If a party objects to a question that a witness is asked, the party should immediately stand and politely state the reason for the objection. The other party may be asked to respond to the objection. The witness will not be permitted to answer the question until the trial judge decides whether or not to allow the question.

a. Questioning your witnesses (direct examination)

When you call a witness to testify, your questions should be structured so that the witness's evidence is presented to the court in a logical way. For example, it may make sense to ask questions so that the witness gives evidence in chronological order. Or, you may wish to organize your questions by subject matter.

You are not allowed to ask your witness leading questions except on introductory matters (such as where a witness lives) and other matters that are not in dispute. Leading questions are questions that are not open-ended and that tend to suggest the answer to the witness. Leading questions often suggest a "yes" or "no" answer. For example, "The

car was speeding, wasn't it?" is a leading question. "How fast was the car going?" asks the same question in a way that is not leading. To avoid asking leading questions, it helps to ask questions that start with "who, what, when, where and how".

b. Questioning the other party's witnesses (cross-examination)

The purpose of cross-examination is to test and challenge evidence that the witness gave in direct examination that you disagree with, as well as to get evidence from the witness that supports your own case. Unlike when you are asking questions of your own witnesses, when you are cross-examining the other party's witnesses you may, and often will, ask leading questions.

If you plan to provide evidence that contradicts the evidence of a witness, you should challenge the witness about that aspect of their evidence. For example, if you plan to lead evidence that an accident occurred when it was dark out, and the other party's witness has testified that it was daylight, you could ask that witness the following questions in cross-examination:

> Question: Is it correct that you testified that when the accident happened it was daylight and you could see very well?
>
> Answer: Yes, I did say that.
>
> Question: I suggest that you are mistaken. I suggest that when the accident happened it was dark out, and you could not see very well.
>
> Answer: No, I am not mistaken (or some other response).

This allows the witness a fair chance to agree, explain, or deny what is suggested. You are not required to cross-examine a witness about something, but if you decide not to, the trial judge may accept the evidence of the witness as true because it was not challenged.

Similarly, you are not required to cross-examine every witness, but if you do not, the witness's evidence may be accepted if nothing has been introduced to contradict it.

c. Giving evidence yourself

If you are representing yourself and you decide to testify, you will not have anyone to ask you questions in direct examination. You will simply take the witness stand and talk about the facts that you want the court to know. As you are doing this, structure your evidence

in a logical way, such as chronologically, or by topic. If you intend to rely on documents during your testimony, introduce the documents in an order that reflects the way that you have organized your testimony. You should write down a list of headings or point form notes to ensure that you remember to testify about everything that is important in your case. If you seek to rely on your notes when you testify, the other party and the trial judge are entitled to look at your notes.

If you decide to testify, consider doing so at the beginning of your case, before calling other witnesses.

Examination for discovery evidence

Neither party may use their own examination for discovery evidence as evidence at trial. However, each may use the examination for discovery evidence given by the other party.

A plaintiff may read in the discovery evidence of the defendant. This usually happens after the plaintiff has called all of its witnesses. The plaintiff will let the defendant know what questions and answers are going to be read into the court record. The defendant may ask the court to consider other questions and answers too, if they provide needed context.

The plaintiff may use the transcript of the discovery of the defendant to cross-examine the defendant.

The defendant may also use the examination for discovery transcript of the plaintiff. Usually, a defendant will read to the plaintiff the portions of the plaintiff's transcript that the defendant wishes to rely upon during cross-examination of the plaintiff. The defendant will ask the plaintiff to confirm that they gave that answer and that the answer is true. The defendant can also use the plaintiff's examination for discovery evidence to cross-examine the plaintiff.

At the end of trial, the trial judge can only consider those portions of the examination for discovery transcripts that have been introduced into evidence.

Closing arguments

After all parties have finished presenting evidence, the parties will make closing arguments (also called "submissions"), starting with the plaintiff.

In closing argument, the plaintiff will review the evidence that was heard at trial and the relevant law in support of its submissions. The plaintiff will want to argue that it has proven

its case, on the evidence that was introduced at the trial, and in accordance with the applicable law.

The defendant will then have the opportunity to make a closing argument. The defendant may review the evidence and relevant law in support of its position. The defendant may also argue in support of its counterclaim, if any.

Finally, the plaintiff may reply to any new matters raised in the defendant's argument.

In their submissions, both parties may only refer to evidence that was admitted at trial. It can be helpful to provide the trial judge with written submissions (whether in paragraph or point form). If written submissions are provided to the trial judge, the party must also provide a copy to the other party.

Reasons for judgment

When the trial is over, the trial judge will give reasons for judgment. In some cases, the trial judge is able to deliver oral reasons right after all of the parties have made their closing submissions. Most often, the trial judge will reserve judgment, meaning the judge will either schedule a time to deliver oral reasons or the reasons for judgment will be provided in writing. In either case, the parties will be contacted when the reasons for judgment are ready. In more complex cases, it may be a matter of months before reasons for judgment are available.

Further assistance

If you require further clarification on any matters discussed in this memorandum, or any other procedural matter, you may raise them with the trial judge in open court at any time during the trial.

Accessibility

All courthouses have an accessibility coordinator to assist in navigating the courthouse by identifying accessible facilities, equipment, and services. Information about how to contact the accessibility coordinator for your courthouse is available on the Court's website, here:

https://www.bccourts.ca/supreme_court/court_locations_and_contacts.aspx

Resources

The Canadian Judicial Council (CJC) has published the *Civil Law Handbook for Self-Represented Litigants* and the *Family Law Handbook for Self-Represented Litigants*. You can find the handbooks on the CJC website, here:

https://cjc-ccm.ca/en/what-we-do/initiatives/representing-yourself-court

Additional resources are available on the Court's website, here:

https://www.bccourts.ca/supreme_court/self-represented_litigants/

APPENDIX A

Stages of a Civil or Family Trial

A trial has a number of stages. While the structure of a trial may vary, most trials follow the order described below:

1. **Plaintiff's opening statement** – the plaintiff gives an overview of their case and outlines the factual basis of the claims they expect to prove.
2. **Plaintiff's witnesses** – the plaintiff's witnesses give their evidence and are cross-examined by the defendant. The plaintiff may re-examine a witness on new matters that were raised in cross-examination.
3. **Defendant's opening statement** – the defendant may also make an opening statement to the court, if they choose to do so.
4. **Defendant's witnesses** – the defendant's witnesses give their evidence and are cross-examined by the plaintiff. The defendant may re-examine a witness on new matters that were raised in cross-examination.
5. **Plaintiff's reply evidence** – although not common, where the defendant's evidence raised relevant matters that the plaintiff could not reasonably have anticipated, the plaintiff may be permitted to present reply evidence. If the plaintiff calls a witness in reply, the defendant can cross-examine that witness.

At this stage, the evidence in the case is complete and it is time to sum up the case for the trial judge.

6. **Plaintiff's closing argument** – the plaintiff presents closing argument (submissions).
7. **Defendant's closing argument** – the defendant presents closing argument (submissions).
8. **Plaintiff's reply submissions** – the plaintiff may reply to any new matters raised in the defendant's submissions.

APPENDIX B

Resources for Self-Represented Litigants (Family Law Cases)

A. Finding a lawyer or legal advice:

1. **Family Duty Counsel, Family Advice Lawyers and FamilyLawLINE** is a family legal advice services mainly for lower income individuals provided through Legal Aid BC. Contact information: https://legalaid.bc.ca/legal_aid/familyLegalAdvice, 604-601-6000 for general inquiries and 604-408-2172 (Greater Vancouver) / 1-866-577-2525 (elsewhere in BC) for legal aid applications.

2. **Family Justice Counsellors** at Family Justice Centres and Justice Access Centres throughout British Columbia provide services for people going through separation and divorce at no charge. Services can be provided virtually. Contact information: https://www2.gov.bc.ca/gov/content/life-events/divorce/family-justice/who-can-help, 1-844-747-3963 / 1-800-663-7867 (toll free)

3. **Access Pro Bono** provides a variety of free legal services. Contact information: https://www.accessprobono.ca, 604-878-7400 / 1-877-762-6664 (toll free)

4. **BC Family Law Unbundling Roster** is an initiative hosted by Courthouse Libraries BC and supported by Access to Justice BC, the BC Family Justice Innovation Lab and Mediate BC. Unbundling of legal services lets clients pay for some assistance depending on when they want help and what they can afford: https://sites.google.com/view/bfur/home

5. **Legal Aid BC** provides free public legal information, advice and representation to people with low income. Contact information: https://family.legalaid.bc.ca/, familylawinquiries@lss.bc.ca

6. **Rise Women's Legal Centre** is a pro bono community legal clinic and teaching facility serving women and gender diverse people all over BC. Contact information: https://womenslegalcentre.ca, 604-451-7447, info@womenslegalcentre.ca

B. Legal information and resources:

7. **Courthouse Libraries BC** provide a variety of services, including referrals and assistance in accessing legal resources. Some locations also provide access to public computers. Contact information: https://www.courthouselibrary.ca, 604-660-2841 / 1-800-665-2570 (toll free), librarian@courthouselibrary.ca

8. **Clicklaw** has a number of resources including contacts for obtaining legal information and advice under “HelpMap” at https://www.clicklaw.bc.ca and family law information at http://wiki.clicklaw.bc.ca/index.php/JP_Boyd_on_Family_Law

9. **Justice Education Society** publishes an Online Help Guide with respect to proceedings in the Supreme Court of British Columbia, including a number of guidebooks about family proceedings. There is also a live chat feature that permits members of the public to ask legal questions: https://supremecourtbc.ca/index.php/

10. **CanLII** is a free database containing decisions of Canadian courts and tribunals. It also offers access to articles about legal topics**:** https://www.canlii.org/en/

APPENDIX C

Resources for Self-Represented Litigants (Civil Cases)

A. Finding a lawyer or legal advice:

1. **Access Pro Bono** provides a variety of free legal services and operates a lawyer referral service. Contact information: https://www.accessprobono.ca, 604-878-7400 / 1-877-762-6664 (toll free)

2. **Legal Aid** can provide free legal representation in serious family problems, child protection matters, criminal law issues, and some mental health and prison law issues. Contact information: https://lss.bc.ca/legal_aid, 1-866-577-2525

3. **Justice Access Centres** can assist with some civil matters and refer you to services and resources: https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/justice-access-centres

4. **Law students' legal advice programs** can provide advice in relation to some civil matters and refer you to resources:

    a. **The Law Centre**, Faculty of Law, University of Victoria. Contact information: https://www.uvic.ca/law/about/centre/index.php, 250-385-1221, reception@thelawcentre.ca

    b. **Law Student's Legal Advice Program**, Peter A. Allard School of Law, University of British Columbia. Contact information: https://www.lslap.bc.ca/, 604-822-5791

5. **Community Legal Services Society** provides free legal assistance to certain people facing housing rights, workers rights, human rights, and mental health rights issues. Contact information: https://clasbc.net/, 1-888-685-6222, contact@clasbc.net

B. Legal information and resources:

6. **Courthouse Libraries BC** provides a variety of services, including referrals and assistance in accessing legal resources. Some locations also provide access to public computers. Contact information: https://www.courthouselibrary.ca, 604-660-2841 / 1-800-665-2570 (toll free), librarian@courthouselibrary.ca

7. **Clicklaw** provides legal information and resources, as well as contacts for obtaining legal information and advice under “HelpMap”: https://www.clicklaw.bc.ca

8. **Justice Education Society** publishes an Online Help Guide with respect to proceedings in the Supreme Court of British Columbia, including a number of guidebooks about civil proceedings. There is also a live chat feature that permits members of the public to ask legal questions: https://supremecourtbc.ca/index.php/

9. **CanLII** is a free database containing decisions of Canadian courts and tribunals. It also offers access to articles about legal topics, as well as *The CanLII Manual to British Columbia Civil Litigation***:** https://www.canlii.org/en/