

Guide to Drafting a Litigation Plan Order (Family) for Self-Represented Family Law Litigants

Purpose of the Litigation Plan Order (Family)

A Litigation Plan Order outlines the steps and deadlines parties must follow to prepare for trial. It ensures the case progresses efficiently and fairly.

The following information is a brief overview of the steps involved in preparing for a trial. It does not contain any legal advice. If you require legal advice or additional information, the following resources may be helpful:

- <https://www.albertacourts.ca/kb/resources/legal-resources-useful-links>;
- [CJC Guides for Self-Represented Litigants](#); and
- Alberta [Rules of Court](#).

Key Definitions

Alternative Dispute Resolution (“ADR”): ADR is a mandatory step parties must undertake on all issues before proceeding to most court processes, including a trial. Parties must try to resolve all outstanding issues by agreement. ADR can occur with a mediator, arbitrator, lawyers in a 4-way meeting, or, with the Court’s permission, Resolution Counsel or a Justice. Even if parties are unable to resolve all of their issues through ADR, the Court expects them to make their best efforts to resolve as many issues as possible.

Affidavit of Records: A sworn document listing all relevant documents a party has in their possession or control. Any documents on which you intend to rely for ADR, or trial must be included in the Affidavit of Records.

Agreed Exhibit Book: A collection of documents that the parties agree to use as evidence at trial. If a party wishes to rely on a document that is not in the Agreed Exhibit Book, they must also prove that it is authentic by introducing it through a witness and then asking the Justice to enter it as an exhibit.

Agreed Statement of Fact: A document in which the parties confirm their agreement on certain facts to avoid having to give evidence to prove them during the trial. This document is given to the trial Justice prior to trial or at the start of the trial. This may make the trial more efficient and often is about non-contentious issues.

Mandatory Intake Triage (MIT) Conference/Case Conference: The MIT/Case Conference Justice will conduct any Conference required by the Litigation Plan Order unless they direct otherwise. A Case Conference is often a hearing that takes place after the initial MIT Conference and is designed to manage other issues that subsequently arise in the litigation, including resolving procedural issues or varying deadlines, hearing interim applications on new issues or where there has been a material changes in circumstances, and directing next steps. Please also see Pre-Trial Conference and Settlement Conference.

Expert Witness: A person with specialized knowledge (e.g., psychologists, doctors, accountants, appraisers) who provides opinion evidence to assist the Court. The Court remains the gatekeeper of the expert(s) that a party wishes to rely on and may accept or reject their involvement, any opinion they provide, or their proposed qualifications. Both parties can agree to share an expert. (e.g., a PN7 or PN8 expert appointed by the Court).

Pleadings: The documents that start a court proceeding, or the documents that respond to the document(s) that start a court proceeding. Pleadings outline what the party filing the document is asking for. For example, an action under the *Divorce Act* and/or the *Family Property Act* is started with a Statement of Claim and can be responded to with a Statement of Defence and possibly a Counterclaim. An action under the *Family Law Act* is started with a Claim (Form FL-10) and can be responded to with a Response (Form FL-11) and Statements. Other types of pleadings can be found in the *Alberta Rules of Court*.

Pre-Trial Conference: A meeting with your Case Conference Justice to ensure that you are ready to proceed with your trial. At this meeting you will confirm your witness lists, a schedule for trial, and discuss the possibility of an Agreed Exhibit book and Agreed Statement of Facts. Depending on the issue(s) for trial and your Litigation Plan Order, you may be required to provide updated financial disclosure and other updated information. Please also see Case Conference, above.

Questioning: Questioning is a formal process where one party asks the other party questions under oath in the presence of a Court reporter who transcribes the proceeding. Questioning happens before trial. A party who uses this process is responsible for arranging and paying for a court reporter to attend the Questioning and to prepare a transcript. Another option is to request information by way of written questions – also referred to as “Written Interrogatories”. Please see Written Interrogatories below.

Settlement Conference: A hearing before a Justice where the goal is to resolve all outstanding issues between the parties. The parties may agree to have a binding or a non-binding Settlement Conference; however, only some judges will agree to conducting a binding Settlement Conference. Unless the parties and the MIT/Case Conference Justice agree, the MIT/Case Conference Justice will not conduct the Settlement Conference. If both parties consent, they may ask their MIT/Case Conference Justice to conduct the Settlement Conference. In any binding Settlement Conference, the presiding Justice will make final decisions if they consider it appropriate to do so; this gives the parties final decisions without having to go to trial. Please also see Case Conference, above.

Streamlined Trial: This is a type of trial where the parties typically rely mostly or entirely on written sworn evidence in the form of an affidavit instead of oral evidence. With permission from the Court, limited oral evidence can be led in a Streamlined Trial. It is usually scheduled for fewer days than a trial. Not all issues are appropriate for a streamlined trial.

Trial Confirmation: A step where parties confirm to the Court in writing that they are ready for trial and have completed all required steps.

Undertakings: Agreements made during Questioning to provide additional information or documents as soon as is practicable

Witness: A person who provides evidence in court. This can include the parties themselves, family members, other individuals with first-hand knowledge of relevant facts, and experts (e.g. psychologists, appraisers, and doctors).

Written Interrogatories: These can be used as an alternative to Questioning. They are written questions sent by one party to another, to be answered under oath in the form of an affidavit.

Litigation Steps

If you are unable to resolve your issues by agreement, you may require a trial. Where one or both of the parties have lawyers, they may agree upon litigation steps to prepare for trial. Otherwise, the parties can work with the Court (Resolution Counsel or a Justice of the Court) to determine the best steps to prepare you for trial. These required litigation steps are then formalized in a Litigation Plan Order (Family) (“Order”), a sample of which can be found [here](#) for

your review.

All deadlines in the Order work backwards from the trial date if one has already been set by the Court. If the trial date has not yet been set, the Order will include a step requiring parties to schedule the trial.

The steps to trial can vary based on various factors but the typical steps taken are:

	Step	Description
1	Identify the issues to be determined	In identifying the issues to be decided by the Court, be very specific and include the sub-issues that the Court will have to decide. For example, instead of “retroactive child support”, identify what aspects of retroactive child support are in issue, such as the period of time in dispute, the payor’s income, where the Child lived during the relevant period, and any other specific questions that are preventing the parties from resolving each issue.
2	Complete pleadings	Ensure that you have filed any necessary pleadings, as pleadings frame the issues for the Court. For example, if a plaintiff has filed a Statement of Claim for Divorce and the defendant wants to claim spousal support, they will need to file a Counterclaim to raise the spousal support issue.
3	Disclosure of information	The processes for providing information about your position and obtaining information about the other party’s position include: • Serving a Notice to Disclose or Notice to Provide a Financial Disclosure Statement on the other party to request financial information; • Exchanging Financial Disclosure Statements, which provide information about income, assets, and debts; • Exchanging Affidavits of Records or a list of relevant and material documents and other records; • Questioning (oral) or Interrogatories (written); • Responding to any undertakings given at Questioning or providing written responses to Interrogatories; • If required, follow-up questions on answers given to undertakings or to Interrogatories. In developing your Litigation Plan Order, you will need to consider the disclosure processes that are appropriate for your matter.
4	Exchange witness lists, including the names of	Who will your witness(es) be, in addition to yourself?

	proposed expert witnesses	Where both parties intend to call an expert witness on the same topic (for instance, a court-appointed psychologist for a PN7 Voice of the Child Report or a PN8 Parenting Assessment) they should, where possible, consider retaining a single jointly instructed expert. The parties should also agree on: • the manner in which the expert will be retained; • the handling and exchange of expert reports; and • whether the expert's written report will be sufficient for trial or whether the expert will be required to testify. If the expert is required to testify, the parties should further agree on the arrangements for the expert's compensation to testify at trial. Where the parties do not agree to retain the same expert (e.g., they disagree on the appraisal of a house), they may each retain a separate expert and should provide the anticipated date of their report
	Exchange brief summaries of witnesses' evidence	Often parties will be required to exchange "will-say" statements, which provide a brief description of why each witness is being called and what each witness is expected to testify about.
	Exchange expert reports (if any)	The <i>Alberta Rules of Court</i> identify steps to be taken if a party will be seeking to rely on an expert report as opinion evidence at trial and whether the expert witness will be required to testify at trial. Deadlines to exchange reports and the form of the Expert report must be followed. There is a limited ability to cross-examine the expert in advance of trial.
5	Any interim or interlocutory application(s), as permitted by the Court	If required, the Court may permit you to bring an application regarding trial preparation issues or matters that cannot wait for the conclusion of the trial. (For example, if there are disputes about the completeness of an undertaking request or the appropriateness of a question asked during Questioning). These matters will be heard by the MIT/Case Conference Justice assigned to your matter, unless otherwise directed by the Court.
6	Attend ADR	Parties are required to attempt resolution of all issues by an ADR process before proceeding to trial. The Court may order the parties to try ADR again later in the process.
7	Set Trial Date and other Pre-Trial Requirements including Witness Lists, Expert Witnesses, Witness Statements and applicable deadlines.	Trial dates are set by the Court Coordinator based on the Court's schedule and will depend on an estimated duration of the trial, whether there are any judges who cannot hear the matter (referred to as a conflict), and the availability of the parties and their lawyers. The parties will have to pay a trial fee to book the trial. They usually share the cost of the trial fee equally, subject to the Court directing

		otherwise. After trial, one party may be required to reimburse the other party for their share of the fee as part of a Costs order.
8	Agreed Statement of Facts	An Agreed Statement of Facts lists the facts the parties agree on. Usually, each party prepares and exchanges a draft, then the parties identify the agreed facts to include in the final document provided to the Court.
9	Agreed Exhibit Book	This is a binder with all the documents the parties agree to use as evidence at Trial without the need to call the author of the document to authenticate it. It is usually in the form of a binder with tabs separating and identifying each document/exhibit. It is common for there to be multiple copies at trial – one for the judge, one for the Clerk to be put on the Court record, and one for each party.
10	Trial Confirmation	Use Form 39 unless otherwise ordered by the Court. This must be filed 3 months before trial, or you may lose your scheduled trial date.
11	Schedule Pre-Trial Conference as directed by the Court	This usually occurs approximately 3 months before trial and must take place before your assigned MIT/Case Conference Justice.

Reminders for before your meeting with Resolution Counsel to Prepare a Proposed Litigation Plan Order

Before you meet with Resolution Counsel to prepare a proposed Litigation Plan Order, make sure you:

- know your availability for trial. All timelines/deadlines work backwards from the date of trial, if known, or you will schedule your eventual trial for dates that will allow you to accomplish all litigation steps within the timelines/deadlines set;
- know what the issues are;
- know who your witnesses and experts might be, and confirm that they have agreed to be witnesses and will be available to testify on the date of trial;
- review your documents and records;
- understand the estimated trial length. The Court sits 5 hours per day for trial, with two 15-minute breaks and a lunch break;
- are ready to discuss any anticipated delays or special circumstances;
- know which Justices may have a potential conflict that prevents them from hearing your Trial. For instance, a Justice who has conducted a settlement meeting with the parties or has been involved in the management of your file may have a conflict;
- consider the cost of proceeding to trial and the potential of a Costs award against you;

- are prepared to consider whether a streamlined trial might be appropriate in your circumstances; and,
- review the template Litigation Plan Order (Family) [here](#) so that you will be ready to discuss your Litigation Plan Order.