

TAB 9

Family Law Refresher 2020

Getting Ready for Trial: Strategies and Tips

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GETTING READY FOR TRIAL: STRATEGIES AND TIPS

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We have been tasked with providing strategies and tips to assist lawyers in preparation for Trial. Our materials are not meant to be exhaustive. We set out in a summary fashion tips to assist counsel in their practice, along with statutory references. We have included as a source of reference, the following schedules:

1. A sample Form 13C: Comparison of Net Family Property Statements (Schedule “A”);
2. Excerpts of:
 - a. Consolidated Practice Direction Concerning Family Cases in Central East Region (Schedule “B”);
 - b. Consolidated Practice Direction Concerning Family Cases in the Toronto Region (Schedule “C”); and
 - c. Consolidated Practice Direction for the Central West Region (Schedule “D”);
3. A draft Trial Scheduling Endorsement Form (Schedule “E”); and
4. A sample Form 20.2: Acknowledgement of Expert’s Duty (Schedule “F”).

Another excellent reference is the paper, “Severable Offers,” from the Summit in 2018, co-authored by Justice Sherr and Danny Melamed.

Financial Disclosure

Based on feedback we collected from various members of the Bench, it appears that a disproportionate amount of time at Motions and Conferences is taken up with disclosure issues. While a client likely fails to appreciate the importance of detailed financial disclosure from the outset, we can assure you that the delivery of detailed Financial Statements and Net Family Property Statements from the outset accomplishes several things for the client:

1. It reduces the concern of needing to defend an interim Motion for disclosure.

2. It reduces the risk of the client at Trial having to clarify during cross-examination why in previously sworn versions of the client's Financial Statements there were countless inconsistencies – this weakens the client's stance on the substantive point.
3. It helps build your client's case from an early stage.
4. It identifies weaknesses and strategies if there are property issues in your client's case.

A. Updated Financial Statement

Given the significant time that elapses between Conferences in most jurisdictions, it is not practical to serve an Affidavit updating your client's Financial Statement pursuant to **Rule 13(12.1)** of the *Family Law Rules* (especially if the previously sworn Financial Statement contains initial estimates only). Counsel should consider the benefits of delivering a fresh Financial Statement:

1. In preparation for Trial, **Rule 13(12)(a)** of the *Rules* requires an updated Financial Statement that is prepared less than 30 days prior to the Trial.
2. Specifically, **Rule 13(12.2).4** requires the Applicant to serve and file an updated Financial Statement at least seven days before Trial and the Respondent to serve and file an updated Financial Statement at least four days before Trial.
3. If relevant to an issue at Trial, **Rule 23(1)3** requires the Applicant to serve and file a Trial Record with Financial Statements and Net Family Property Statements of all parties, that are not more than 30 days old when the Trial Record is served.

Additional considerations when completing Financial Statements:

1. The Respondent has until 7 days before Trial to serve and file his or her Trial Record. (**Rule 23(2)**).
2. Identify inconsistencies in your client's previous Financial Statements which may be exposed by cross-examination at Trial by effective opposing counsel.

3. Use notes in the Financial Statement to reference estimates, or provide an explanation of expenses, or the methodology of how the expense was calculated, so that the client is not left guessing during his or her cross-examination at Trial.

Tips from the Bench Re: Financial Statements:

1. Make sure to complete the special expenses schedule annexed to the Financial Statement.
2. If the issue of spousal support is live, ensure that you complete in detail the section of the Financial Statement labeled “other income earners,” as well as set out the contributions they are making to the household.
3. Review your client’s income as compared to the expenses he or she is claiming. For example, with income of \$70,000.00 and monthly expenses and supporting debt of \$100,000.00, there may be a disconnect. If the budget cannot be supported by the income and/or the debts are too high, your client may be exposed in cross-examination.
4. Do not inflate your client’s budget; ensure the client brings his or her bills when they meet with you.
5. Judges comment that in many Financial Statements, counsel miss the opportunity to insert notes, either at the relevant section of the Financial Statement or at the conclusion to set out how certain valuations or calculations were made.
6. Even though Rule 13(12.2).4 requires the Applicant to serve and file an updated Financial Statement at least seven days before Trial and the Respondent to serve and file an updated Financial Statement at least four days before Trial, Financial Statements that are not more than 30 days old when the Trial Record is served need to form part of the Trial Record: Waiting 7 or 4 days before Trial to deliver an updated Financial Statement is too late; Rule 13(12.2).4 is for changes that occur immediately prior to Trial.

B. Net Family Property Statement

We are all aware that **Rule 13(14)** requires the delivery of a Net Family Property Statement prior to the Settlement Conference in cases involving property claims under Part 1 of the *Family Law Act*. We suggest that counsel develop the habit of creating a Net Family Property Statement and Net Property Statement Financial Disclosure Brief early on in the retainer and serving it on opposing counsel, possibly with your client's pleadings.

Clients, at times, have terrible memories and we have all experienced instances where the client is adamant that they had thousands upon thousands of dollars of RRSPs at the date of marriage to which the other side claims that your client was an impoverished student. Work with the principle "prove it or lose it". Abandon early on in litigation fruitless property claims that cannot be supported with documentation. If the client is adamant they possess the documentation to support the above example and despite numerous requests to provide same, report to the client on the issue and set out the implications of advancing that claim at trial without the paper back up and the likely exposure to costs.

Prepare Net Family Property Statements based on ownership and consider setting out in the "Comments" section of Net Family Property Statement any trust claims being made with respect to property:

Don't take your client's word for property ownership:

1. This is especially important if you have erroneously set out legal ownership of an asset (most commonly the Matrimonial Home or vacation property) and the pleading may need to be amended to make a trust claim.
2. We have commonly seen Financial Statements being completed where a non-titled spouse is setting out a 50% legal ownership in the family residence or matrimonial home where it is clear the property is solely owned by the other party. In practice, consider pulling an Abstract to ensure you are clear with respect to ownership.

Reminder:

Section 2(1)(a) of the *Limitations Act, 2002* provides that the *Limitations Act, 2002* does not apply to a proceeding to which the *Real Property Limitations Act*, R.S.O. 1990, c. L-15 (the “*RPLA*”) applies. Under the *RPLA*, there is a ten year limitation period (*RPLA*, s. 4) for an action to claim an interest in land.

Accordingly, the right of a beneficiary of a constructive trust to enforce his or her title to land as against the trustee is governed by the *RPLA*: *McConnell v Huxtable*, 2014 ONCA 86 (CanLII).

C. Comparison of Net Family Property Statements

The trend in litigation is for counsel to complete a Comparison of Net Family Property Statements at Conferences (as required pursuant to **Rule 13(14.2)** and **Rule 13(14.3)**) and at Trial to assist Judges in identifying the property issues in the litigation.

Many Judges remark that counsel who are thorough in their Conference preparation deliver more focused and concise material including highlighted Comparison of Net Family Property Statements. This provides a great service to the Court and the client, and allows the client at the Conference to become an active listener as they are well aware of the property issues in dispute.

Note:

1. Request a Net Family Property Statement with supporting documentation from opposing counsel early in the case. If opposed, seek that relief at the Case Conference.
2. Create a practice whereby your client’s Comparison of Net Family Property Statements is being updated continuously to narrow disputed Net Family Property Statement issues.
3. Consider circulating via email with opposing counsel a ‘working draft’ Comparison of Net Family Property Statement.
4. Highlight in colour disputed items in the Comparison of Net Family Property Statements for the benefit of the Conference Judge and Trial Judge (See Schedule ‘A’). This easily

identifies to the Court the property issues to be conferenced or litigated. Judges want to provide judicial feedback at conferences to effect settlement or to narrow issues prior to Trial.

5. Counsel should cross-reference all previously sworn Financial Statements with the Net Family Property Statements and Comparison of Net Family Property Statements to ensure accuracy and consistency of information.

Tips from the Bench:

1. **Print Net Family Property Statements in colour and use highlights for each party to identify issues.**
2. **Use the comments section in the Comparison of Net Family Property Statements to set out each side's position so that it is easily identifiable for the Court.**
3. **Completing the Comparison of Net Family Property Statements early increases the chances of the client receiving money and the lawyer getting paid. It is a smart business decision – you can't bill 100% of the time you spend in Court, but you can bill for 100% of time spent in the office working on the Comparison of Net Family Property Statements.**
4. **Contents: Is there a contents appraisal? If not, forget about it! Judges do not litigate pots and pans.**

Affidavit of Documents

In family law, the Affidavit of Documents is a lost tool:

1. **Rule 19(1)** of the *Rules*: Within 10 days of a party's request, the other party shall provide an Affidavit listing every document that is relevant to any issue in the case and is in that party's control or available to him/her upon request.
2. **Rule 19(2)** of the *Rules*: A party has right to examine any document listed in the Affidavit and obtain a copy of it so long as it is not legally privileged.
3. **Rule 19(8)** of the *Rules*: A party has an obligation to immediately serve a new Affidavit if he/she later finds omitted, incomplete or incorrect documents.

Tips from the Bench:

1. Judges rarely see Affidavits of Documents anymore.
2. Judges suggests that the Affidavit of Documents has been replaced by the Form 13A: Certificate of Documents.
3. HOWEVER, it is still a very useful litigation tool. Form 13A only confirms which documents were served on the other party; an Affidavit of Documents discloses to your client all relevant documents in the case, whether served or not. Your client has the right to examine any listed document not protected by a legal privilege and get a copy of same.
4. A tool to obtain documents a party may not otherwise voluntarily provide!
5. Can be beneficial to request of the other party prior to questioning.

Expert Reports

Is your client's expert a participant expert (non-party witness) or a litigation expert? Know the difference: Review *Westerhof v. Gee Estate*, 2015 ONCA 206.

The previous Rule 20.1: Experts was revoked on September 1, 2019 and substituted with Rule 20.1: Duty of Experts; Rule 20.2: Expert Opinion Evidence; and 20.3: Court-Appointed Experts. A non-exhaustive summary of some of the key revisions are as follows:

1. Litigation experts' reports are due at least 6 days before the Settlement Conference (**Rule 20.2(2)**).
2. Any supplementary expert reports are due at least 14 days before the start of Trial in child protection cases and 30 days before start of Trial in all other cases (**Rule 20.2(4)**).
3. Litigation experts also have to complete a **Form 20.2**.
4. Need more than just a description of any research conducted (**Rule 20.2(2)6**); now require a description of any test or independent observations that led to the expert's opinion, and for each test, the expert must provide:
 - a. An explanation of the scientific principles underlying the test as well as the meaning of the test results; and
 - b. A description of any substantial influence of a person's gender, socio-economic status, culture or race had or may have had on the test results or on the expert's assessment of the test results.
5. Need more than a list of every document the expert relied upon; need a description and explanation of every document or other source of information.
6. A joint litigation expert is required for:
 - a. Claims for custody or access; or
 - b. Any other matters specified by the Court (**Rule 20.2(8)**).

Traditionally, parties were still considering whether or not to retain an expert at the time of the Settlement Conference. The *Rules* now provide the expert reports are due at least 6 days prior to the Settlement Conference. How often this is enforced may depend on the jurisdiction.

Note:

1. No more than three expert witnesses may be called by a party without leave of the presiding Judge (section 12 of *Evidence Act*, R.S.O. 1990, c. E.23).
2. Be wary of critiques when determining timelines.
3. Ensure your client's expert discloses all of his or her notes and records.
4. Seek to have experts' qualifications accepted in advance. This is an issue that should be significantly canvassed and reviewed at the Trial Scheduling Conference.

Tips from the Bench:

1. **Do not assume that because a joint litigation expert is retained that the parties will be equally sharing the expert's fees and expenses: Submissions need to be made and the Court will decide the proportions or amounts each party needs to pay.**
2. **If a joint expert provides opinion evidence on an issue for a party, no other litigation expert may present opinion evidence for the party unless the Court orders otherwise Rule 20.2(13) – this seeks to prevent a disgruntled litigant from shopping around for a more pliable expert. – the expert's duty is to the Court!**
3. **Rule 1(7.2)(k) gives a Judge discretion to order experts to meet at any time to discuss the issues and provide the Court with a joint summary of agreed upon and disputed issues.**
 - a. **At the Settlement Conference, counsel can request this joint expert report be deemed the experts' evidence in chief and can also request that the experts' qualifications be admitted or deemed admitted by a certain date.**

- b. This Rule can be relied upon at the Case Conference, Settlement Conference, or at any time thereafter, without the need to bring a Motion for this relief.**
- c. Very useful tool to effect positive and productive communication between experts to narrow issues and curtail “battles of the experts.” There are no circumstances where it is inappropriate.**
- d. The goal is not to settle the case but to determine assumptions made by each expert. The parties can then file the joint summary and conduct a Trial on the disputed issues.**

Settlement Conferences

Do not book a Settlement Conference at the conclusion of a Case Conference by rote – try to hold a Settlement Conference after disclosure issues have resolved. A common fault is to book a Settlement Conference when the case is not ready to proceed (disclosure, or expert reports not completed). Many Judges remark that there is increasing pressure for them to limit the number of conferences that are allotted to them for each family, so do not waste the opportunity.

Also, at times, before a matter is ready to settle, parties need time to ‘live interim orders’.

Issues to consider with respect to Settlement Conferences:

1. Identify and focus on the specific issues in dispute. Where possible, set out each party’s position and try to give the Judge options. This is valuable in various jurisdictions where the Court is conducting in excess of eight (8) Conferences per day.
2. Don’t waste time disparaging the other party from the date of cohabitation to separation.
3. Don’t let clients write the Brief.
4. Don’t cut and paste from the pleading or Case Conference Brief.
5. If an issue turns on a point of law – attach the case law.

6. Think outside the box – investigate online communication tools such as “OFW”, family counselling, AACI valuator.
7. Consider discussing with opposing counsel if competing experts would attend the Settlement Conference to conference the narrow issues in dispute.
8. Don’t show up 5 minutes before the Conference time and tell the CSO that counsel need to talk and then try to rush into Court at 12:55 p.m., before the lunch time break, to have the matter heard.
9. Focus your client’s Brief on contested issues. Refer back to our comments on the Net Family Property Statements.

A. Confirmations

Form 17F: Confirmations are your first impression to the Court. They create a road map:

1. Identify what you want the Judge to read by volume and tab number.
2. Consider setting out what has already been settled.
3. Do not direct the Judge to read the entire Continuing Record.
4. If there are narrow or discrete issues to conference identify them here.

B. Offers to Settle at Settlement Conferences

It is important to note that an Offer to Settle that forms part of a Settlement Conference Brief cannot be relied upon at Trial (*Entwistle v. MacArthur*, [2007] O.J. No. 1958).

Settlement Conferences are a great opportunity to solve minor issues early in the case:

1. Make all of your client’s Offers to Settle severable.
 - a. an Offer to Settle intended for a self-represented party that is non-severable could extend litigation. Consider serving several narrow offers.
2. Use a well-crafted Offer to Settle to put pressure on the other side.

C. Managing your Client's Expectations at the Settlement Conference

Managing your client's expectations throughout the Court process is critical. The following is some advice to keep in mind:

1. Get a retainer.
 - a. There is a concern, where counsel is neglectful in topping up retainers at each stage, that the clients do not appreciate the actual cost of the positions they take within the litigation.
2. Involve the client through the property process and the completion of the Net Family Property Statement, in developing the case and narrowing the outstanding issues.
3. Be frank about strengths and weaknesses in your client's case and report to them regularly.
4. If you strongly disagree with your client's position, report to them in writing that you disagree with the strategy in advance of the Conference and the potential pitfalls that may occur and suggest alternatives.
 - a. Most of us have been in the position where we attend a Conference and are required to advance a position we strongly do not support. Where possible, try to discuss these issues with counsel and seek to speak with His or Her Honour in Chambers or use what Judges refer to as identifiers such as "these are my client's instructions".
5. Focusing your client's Conference Brief on narrow or defined issues allows the client to be an active listener at the Conference, and less concerned about defending all the disparaging allegations from the opposing party.

Tips from the Bench:

1. Counsel should be prepared for Trial *before* the Settlement Conference.
2. Parties and their counsel should not be speaking for the first time at the Conference.
3. Conduct a focused Conference - alert the Judge to communication between counsel in advance to increase productivity.
4. Essential in preparation for Trial and the Settlement Conference is the completion of Comparison of Net Family Property Statements to identify contested issues. Until this step is completed the Conference is essentially a waste.
5. Avoid using hyperbole in Settlement Conference Briefs – the goal is to promote settlement, not to inflame tensions.

Request to Admit

Use this tool to narrow issues for Trial and to have documents admitted (for authentication purposes):

1. **Rule 22(2)** – At any time, by serving a Request to Admit (**Form 22**) on the other party, a party may ask the other party to admit, for the purposes of the case only, that a fact is true or that a document is genuine.
2. **Rule 22(3)** – A copy of any document mentioned in the Request to Admit must be attached to it, unless the other party already has a copy or it is impractical to attach.
3. **Rule 22(4)** – The other party must respond within 20 days of being served or risk admitting, for the purposes of the case, that the fact is true or that the document is genuine (**Form 22A**).

4. **Rule 22(5)** – The admission, however obtained, may only be withdrawn with the other party’s consent or the Court’s permission.

Note:

1. Try to serve Request(s) to Admit immediately after the Settlement Conference.
2. Valuable tool to use after the exchange of Financial Statements early in the proceeding.
3. Also a valuable tool to use to have documents admitted (authenticate documents).
4. Consider serving Request(s) to Admit on agreed-upon and even contested values of the Net Family Property Statements.
5. Remember to draft simple statements – don’t write *War and Peace* – and no legal conclusions.
6. If your client’s case involves a claim for spousal support, a Request to Admit where the other side has not conceded entitlement, can be used as a powerful tool.
7. A self-rep will likely not know how to respond – Judges are unlikely to punish a self-rep if a response is not forthcoming.

Tips from the Bench:

1. **While a Judge can grant a party’s request to withdraw an admission, absent clear evidence that the admission was an error or just plain wrong, a Judge is likely to be skeptical of any such request.**
2. **However, Judges want to “get it right” and will try to get the appropriate evidence before the Court if evidence exists to contradict an admission.**
3. **Requests to Admit can influence cost awards depending on how proportional and reasonable they are.**

4. **But, since self-reps often do not know how to respond to Requests to Admit, Requests to Admit in these cases will probably be less of a factor in costs awards.**
5. **Be wary of drafting mischievous Requests to Admit.**

Statement of Agreed Facts

Judges are encouraging counsel at the Trial Scheduling Conference stage to complete Statements of Agreed Facts to reduce Trial time as Trial time is at a premium in most jurisdictions.

Tips from the Bench:

- 1. Reduce time of parties giving evidence in chief by setting out the following in Statements of Agreed Fact:**
 - a. Employment history;**
 - b. Relationship dates;**
 - c. Incomes of the parties (likely only in circumstances where only income is Income Tax Return employment income);**
 - d. Agreed upon s.7 expenses;**
 - e. Parenting arrangement (if resolved);**
 - f. Court Orders;**
 - g. Spousal support entitlement; and**
 - h. Agreed-upon charts (incomes, expenses, payments); and**
- 2. Great tool for Judge as a starting point;**
- 3. Valuable tool in CAS matters;**
- 4. If time does not permit or counsel cannot agree on a Statement of Agreed Facts, this can be cured by detailed mutual opening Trial statements.**

Trial Scheduling Conference

Counsel may likely have a more detailed and fruitful Trial Scheduling Conference should both counsel identify legal, procedural, or evidentiary issues in advance of the Trial Scheduling Conference.

Note:

1. Consider working with opposing counsel to complete the Trial Scheduling Endorsement Form and file a joint document. If there are issues in dispute highlight them.
2. Consider giving evidence in chief of 3rd party witnesses by Affidavit to reduce Trial time and costs. Receiving an Affidavit will assist you in preparing for the cross-examination.
3. Solidify your retainer with the client in advance of the Trial Scheduling Conference as the Trial Scheduling Endorsement Form addresses which lawyers are retained for Trial. In some jurisdictions, it becomes increasingly difficult to remove yourself as counsel of record the closer you get to Trial.
4. When completing the Trial Scheduling Endorsement Form be wary of:
 - a. Pleading deficiencies – are amendments needed?
 - b. Disclosure deficiencies;
 - c. Issues for Trial:
 - i. Evidentiary;
 - ii. Remote locations for witnesses;
 - iii. Procedural.
5. Lastly, once the Trial Scheduling Endorsement Form has been executed, be wary of obligations such as no further Motions before Trial without judicial approval.
6. Some jurisdictions, i.e., Central West Region and Toronto Region, do not hold Trial Scheduling Conferences. In Toronto Region, if the matter does not settle at the Settlement Conference, the Trial Scheduling Endorsement Form must be endorsed in advance of the matter being scheduled for Trial. In Central West Region, parties must file Trial Scheduling Endorsement Forms with their Settlement Conference Briefs.

Tip from the Bench:

1. **Attach draft Trial Record table of contents and trial-ready Financial Statements and Comparison of Net Family Property Statements to Trial Scheduling Endorsement Form.**
2. **Complete a joint TSEF where possible in advance and highlight issues in dispute for the Case Management Justice.**

Trial Record

Judges tend to see the Trial Record as outdated since the Trial Scheduling Endorsement Form sets out the key information for Trial.

Remember to read **Rule 23(1)**:

1. **Rule 23(1)** – The Applicant’s Trial Record is to be served at least 30 days before Trial.
2. **Rule 23(2)** – The Respondent’s Trial Record is to be served not later than 7 days before Trial (only documents not already included in Applicant’s Trial Record).

Don’t simply file everything:

Include in the Trial Record	Do Not Include in the Trial Record
<ul style="list-style-type: none">• Table of Contents• All documents listed in Rule 23(1)• Trial Scheduling Endorsement Form (counts as an Order under Rule 23(1)6.)• Comparison of Net Family Property Statements• Trial-ready Financial Statement	<ul style="list-style-type: none">• Expert witness reports (other than assessments)• Exhibits

Note:

1. If the other party is self-represented and is the Applicant, consider preparing the Trial Record.
2. It is important when completing a Trial Record that throughout the litigation you are having your client's Orders issued and entered. Don't show up to Trial with Endorsements in the place of issued and entered Orders.

Offers to Settle for Trial

Offers to Settle must be made at least 7 days before commencement of Trial to incur cost consequences for failure to accept within timelines. **(Rule 18(14))**

Ideally, the client's final Offer to Settle should be made prior to preparing for Trial so that costs of Trial preparation can be recovered on a full or substantial recovery basis.

It is essential that the Offer to Settle is severable if your client's matter reaches Trial and costs must be argued: This allows the client to be successful on some, but not all issues, for the purpose of costs awards. Refer to Summit in 2018 – Recent Ontario Cases about Severable Offers, co-authored by Justice Sherr and Danny Melamed:

1. You should state specifically which paragraphs of a severable Offer to Settle are severable:

39 In his July 21 and July 31 offers to settle, the Respondent offered to discontinue the motions of June 27, July 4 and August 1, on a without cost basis. Although the Respondent's offer stated that "Any part of this offer may be severed and accepted by Ms. Bernard", it is unclear to me whether or not the Respondent's offer to discontinue the motion was tied to his offer on the sharing of the net proceeds (whether it was a condition precedent), but I cannot assume that it was.

Bernard v. Fuhgeh, 2017 ONSC 5432

2. Choosing not to accept a non-severable Offer to Settle that includes some favourable terms may not negatively impact your client when costs are awarded:

54 While I agree with the applicant that he made a reasonable offer to settle, this does not mean that the respondent acted unreasonably in failing to accept the offer. The offer was not severable and the terms proposed for spousal support were limited and less than ideal. In addition and in the result, the final negotiated settlement was more advantageous to the respondent than the applicant's offer.

Shute v. Shute, 2017 ONCJ 533

3. Terms regarding costs should be included in severable Offers to Settle with caution:

24 An offer to settle substantive terms which also includes a predetermination of costs perverts the Rule 18(14) analysis, because the party ends up trying to claim credit for accurately predicting a costs determination a Judge has not yet made.

Chomos v. Hamilton, 2016 ONSC 6232

Tips from the Bench:

1. **Get Offers to Settle out early.**
2. **Make Offers to Settle severable.**
3. **Make Offers to Settle clear – don't leave it up to Judge to figure out what issues remain.**
 - a. **E.g. identify issues in Offer to Settle by heading**
4. **Conduct: Offers to Settle must pass the "smell test".**
5. **Avoid "poison-pill offers."**
6. **When dealing with a self-rep, it's even more important to have severable Offers to Settle or multiple Offers to Settle on discrete issues.**

Exit Pre-Trials/Trial Management Conference

The availability of Exit Pre-Trials/Trial Management Conferences are driven by resource availability from jurisdiction to jurisdiction.

If you feel the case could benefit from an Exit Pre-Trial/Trial Management Conference, book one at the time of the Trial Scheduling Conference (may be specific to Central East Region)

Set your client's expectations so that he or she knows that the role of the Judge is not to simply affirm that you have the better position for Trial. Tell your client to attend with an open mind and be willing to compromise and that it is better to craft a resolution that you are a part of than to have one imposed on you by the Court.

Tips from the Bench:

- 1. Two days prior to the Exit Pre-Trial, deliver a concise two-page summary of outstanding issues.**
- 2. Do not consume your client's summary by complaining about the other party!**
- 3. Deliver SSAGs and highlighted Comparison of Net Family Property Statements with the summary to direct the Judge where possible.**
- 4. Enclose your client's most recent Offer to Settle.**

Brief of Authorities

Consider providing electronic Briefs of Authorities via USB. Settled law that will not be argued does not necessarily require a paper copy.

Legal research should be done at the beginning of a file, i.e., before drafting your client's pleadings, so your authorities should be updated as your client's case progresses.

Consider setting timelines for the exchange of Briefs of Authorities in the Trial Scheduling Endorsement Form.

Exhibit Books

Tips from the Bench:

1. Number the pages (don't ask Judge to count 78 pages in for a tab).
2. Only photocopy the Exhibit Book after it has been numbered.
3. Remember that you need multiple copies of the Exhibit Book (witness, Court, opposing counsel).
4. Exhibits – need to be wary of 'hearsay'.
5. Colour coding is helpful – bold, NOT red.
6. Do not bind the Exhibit Book – use binders.
7. Keep communicating with opposing counsel – work on a joint document brief.
8. Don't use the Exhibit Book as a document dump; focus your examinations and cross-examinations to include documents you need.
9. If you are going to refer to an email, include the entire chain – brownie points – within a long email chain identify where the chain starts by using (a), (b).

Costs and Managing Client's Trial Expectations

Start managing your client's expectations from the initial retainer and report to the client as early as the conferencing process starts. Write to your client after the Settlement Conference as to what is needed for Trial and what work still needs to be done.

Judges are speaking directly to parties from the Case Conference as to what each side can expect to pay in legal fees for each day of trial, as well as what the potential risks are for each party should they not succeed at trial – re: exposure to costs. This can be a persuasive tool in managing your client’s expectations throughout the litigation and when requesting a trial retainer. Try to report at the conclusion of the Conference to the client setting out the Court’s view of the costs of their case up to and including trial.

Prepare the client with a diagram of the courtroom – it will help them with their nerves – and consider a mock cross-examination of your client.

With respect to costs:

1. Warn the client that if he or she has a difficult position there is a risk that he or she may be paying the costs of both lawyers.
2. From your initial retainer, educate the client on the cost of a Trial – and get enough funds with the retainer for a Trial.
3. Let your client know that if there is a settlement, there is some control of the result.
4. Consider alternative dispute resolution (ADR) to narrow issues within the litigation, such as mediation or arbitration.
5. Severable Offers to Settle will reduce your client’s exposure to costs.

Tip from the Bench:

1. **Ensure your client’s decorum is appropriate while sitting at the counsel table.**

Conclusion

Getting ready for Trial “strategies and tips” start at the commencement of your retainer and indeed many of the strategies that we suggest will play an important role in a smooth-running

case prior to trial and make settlement more attainable and potentially consolidate costs for the client throughout the litigation.

Getting Ready for Trial: Strategies and Tips
Raymond A. Goddard and Erika R. Jacobs

Schedule "A":
Comparison of Net Family Property Statements

Superior Court of Justice, Family Court

(Name of Court)

Court File Number

FC-XX-XXX

at

(Court office address)

**Form 13C: Comparison
of Net Family Property Statements**

This document must be completed once both parties have completed and exchanged Net Family Property Statements (Form 13B). This document can be completed jointly by the parties and filed with the court seven days before the settlement conference. If you and the other party are not able to agree on this document, then you each must prepare one, and serve it on the other party and file it with the court before the settlement conference. If you requested the settlement conference, you must serve and file the document seven days before the settlement conference, even if it is a joint statement. If no joint statement has been filed, the other party must serve and file the document four days before the settlement conference.

This form is being prepared by ☐ the Applicant
☐ the Respondent
☒ the Applicant and Respondent jointly

APPLICANT

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

MARGE SIMPSON

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e mail address (if any).

RESPONDENT

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

HOMER SIMPSON

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e mail address (if any).

Valuation Date: _____

Statement Date: _____

1. VALUE OF ASSETS OWNED ON VALUATION DATE**(a) LAND**

NATURE & TYPE OF OWNERSHIP (State percentage interest where relevant)	NATURE & ADDRESS OF OWNERSHIP	COMMENTS	Document number ¹	Wife's Position		Husband's Position	
				WIFE	HUSBAND	WIFE	HUSBAND
Matrimonial Home – joint tenants 50% interest	11 Springfield Crescent, Oshawa, ON	Sold for \$800,000.00. Net proceeds are \$650,000.00.		\$400,000.00	\$400,000.00	\$325,000.00	\$325,000.00
Rental property – Property registered with parties as joint tenants.	123 Shelbyville Drive, Toronto, ON	Husband's position is that an opinion of value was obtained on the date of separation in the amount of \$800,000.00 Wife does not believe the parties obtained a value of the property at date of separation. Parties agreed to obtain an opinion of value after first case conference (approximately two years post-separation). Value obtained was \$1,000,000.00		\$500,000.00	\$500,000.00	\$400,000.00	\$400,000.00
(A) TOTALS: Value of Land				\$900,000.00	\$900,000.00	\$725,000.00	\$725,000.00

¹ Please use the number that you used for the document in your Certificate of Financial Disclosure (Form 13A)

(b) GENERAL HOUSEHOLD ITEMS AND VEHICLES

ITEM	DESCRIPTION	COMMENTS	Document number	Wife's Position		Husband's Position	
				WIFE	HUSBAND	WIFE	HUSBAND
Household goods & furniture	To be divided						
Cars, boats, vehicles	1999 Mazda RX8				\$500.00		\$500.00
Jewellery, art, electronics, tools, sports & hobby, equipment							
Other special items							
(B) TOTALS: Value of General Household Items and Vehicles				\$0.00	\$500.00	\$0.00	\$500.00

(c) BANK ACCOUNTS AND SAVINGS, SECURITIES AND PENSIONS

CATEGORY (Savings, Checking, GIC, RRSP, Pensions, etc.)	INSTITUTION	ACCOUNT NUMBER	COMMENTS	Document number	Wife's Position		Husband's Position	
					WIFE	HUSBAND	WIFE	HUSBAND
Joint chequing	First Bank of Springfield Total value on separation: \$2,000.00	***1234			\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
Joint savings	First Bank of Springfield Total value on separation: \$20,000.00	***5678			\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00

RRSP	First Bank of Springfield	***9101				\$100,000.00		\$100,000.00
TFSA	First Bank of Springfield	***1213				\$200,000.00		\$200,000.00
LIRA	First Bank of Springfield	***1415				\$10,000.00		\$10,000.00
Savings	Nuclear Credit Union	**333			\$10,000.00		\$10,000.00	
Chequing	Nuclear Credit Union	**222			\$200.00		\$200.00	
RRSP	Nuclear Credit Union	**111			\$20,000.00		\$20,000.00	
RESP (Bart)	First Bank of Springfield Total value: \$20,000.00 as of Date of Separation	**6543						
RESP (Lisa)	First Bank of Springfield Total value: \$14,000.00 as of Date of Separation	**0987						
(C) TOTALS: Value of Accounts and Savings						\$41,200.00	\$321,000.00	\$41,200.00
								\$321,000.00

(d) LIFE AND DISABILITY INSURANCE

COMPANY TYPE & POLICY NO.	OWNER	BENEFICIARY	FACE AMOUNT (\$)	COMMENTS	Document number	Wife's Position		Husband's Position	
						WIFE	HUSBAND	WIFE	HUSBAND
(D) TOTALS: Cash Surrender Value of Insurance Policies						\$0.00	\$0.00	\$0.00	\$0.00

(e) BUSINESS INTERESTS

NAME OF FIRM OR COMPANY	INTERESTS	COMMENTS	Document number	Wife's Position		Husband's Position	
				WIFE	HUSBAND	WIFE	HUSBAND
(E) TOTALS: Value of Business Interests				\$0.00	\$0.00	\$0.00	\$0.00

(f) MONEY OWED TO YOU

DETAILS	COMMENTS	Document number	Wife's Position		Husband's Position	
			WIFE	HUSBAND	WIFE	HUSBAND
(F) TOTALS: Money Owed to You			\$0.00	\$0.00	\$0.00	\$0.00

(g) OTHER PROPERTY

CATEGORY	DETAILS	COMMENTS	Document number	Wife's Position		Husband's Position	
				WIFE	HUSBAND	WIFE	HUSBAND
(G) TOTALS: Value of Other Property				\$0.00	\$0.00	\$0.00	\$0.00

VALUE OF PROPERTY OWNED ON THE VALUATION DATE, (TOTAL 1) <i>(Add: item A to item G inclusive)</i>	\$941,200.00	\$1,221,500.00	\$766,200.00	\$1,046,500.00
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2. VALUE OF DEBTS AND OTHER LIABILITIES ON VALUATION DATE**DEBTS AND OTHER LIABILITIES**

CATEGORY	DETAILS	COMMENTS	Document number	Wife's Position		Husband's Position	
				WIFE	HUSBAND	WIFE	HUSBAND
Matrimonial Home							
Joint Mortgage (rental property)	123 Shelbyville Drive, Toronto, ON			\$300,000.00	\$300,000.00	\$300,000.00	\$300,000.00
Credit Card	Visa			\$500.00	\$500.00	\$500.00	\$500.00
Credit Card	Mastercard			\$100.00		\$1,000.00	
Tax Liability	Costs of disposition of RRSPs, LIRA	Wife used 21% Husband used 23%		\$4,000.00	\$23,100.00	\$4,600.00	\$25,000.00
Contingent Liability	Costs of disposition of rental property	Wife's calculation is based on date of separation value, real estate commission at 4% and legal fees of \$1,500, total of \$41,500.00		\$20,750.00	\$20,750.00	\$18,150.00	\$18,150.00
TOTALS: Value of Debts and Other Liabilities, (TOTAL 2)				\$325,350.00	\$344,350.00	\$324,250.00	\$343,650.00

3. NET VALUE OF PROPERTY (Other than a Matrimonial Home) AND DEBTS ON DATE OF MARRIAGE**PROPERTY, DEBTS AND OTHER LIABILITIES ON DATE OF MARRIAGE**

CATEGORY AND DETAILS	COMMENTS	Document number	Wife's Position		Husband's Position	
			WIFE	HUSBAND	WIFE	HUSBAND
Land: General household items & vehicles Bank accounts, savings, securities, pensions Life & disability insurance Business interests Money owed to you Other property (Specify.)						\$0.00 \$0.00 \$0.00 \$0.00 \$0.00
TOTAL OF PROPERTY ITEMS			\$0.00	\$0.00	\$0.00	\$0.00
Debts and other liabilities (Specify.) Disposition costs						
TOTAL OF DEBTS ITEMS			\$0.00	\$0.00	\$0.00	\$0.00
NET VALUE OF PROPERTY OWNED ON DATE OF MARRIAGE (NET TOTAL 3)			\$0.00	\$0.00	\$0.00	\$0.00

VALUE OF PROPERTY EXCLUDED UNDER SUBS. 4(2) OF "FAMILY LAW ACT"

ITEM	COMMENTS	Document number	Wife's Position		Husband's Position	
			WIFE	HUSBAND	WIFE	HUSBAND
Gift or inheritance from third person Income from property expressly excluded by donor/testator Damages and settlements for personal injuries, etc. Life insurance proceeds Traced property Excluded property by spousal agreement Other Excluded Property						
TOTALS: Value of Excluded Property (TOTAL 4)			\$0.00	\$0.00	\$0.00	\$0.00

TOTAL 2: Debts and Other Liabilities	\$325,350.00	\$344,350.00	\$324,250.00	\$343,650.00
TOTAL 3: Value of Property Owned on the Date of Marriage	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL 4: Value of Excluded Property	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL 5: (TOTAL 2 + TOTAL 3 + TOTAL 4)	\$325,350.00	\$344,350.00	\$324,250.00	\$343,650.00

TOTAL 1: Value of Property Owned on Valuation Date	\$941,200.00	\$1,221,500.00	\$766,200.00	\$1,046,500.00
TOTAL 5: (from above)	\$325,350.00	\$344,350.00	\$324,250.00	\$343,650.00
TOTAL 6: NET FAMILY PROPERTY (Subtract: TOTAL 1 minus TOTAL 5)	\$615,850.00	\$877,150.00	\$441,950.00	\$702,850.00

EQUALIZATION PAYMENTS

Wife's Position		Husband's Position	
Wife Pays To Husband	Husband Pays To Wife	Wife Pays To Husband	Husband Pays To Wife
\$0.00	\$130,650.00	\$0.00	\$130,450.00

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Schedule “B”:

Excerpts from the Consolidated Practice Direction Concerning Family Cases in Central East Region

Part 4: Conferences

A. Case Conferences and Settlement Conferences

14. The parties may obtain a case conference date at their first appearance date or, if permitted by the Family Law Rules, by serving and filing a Notice of Case Conference with a date that has been obtained from the Trial Coordinator. To avoid unnecessary adjournment requests, the other side should be consulted before scheduling a date for any conference wherever possible.
15. Counsel or the parties are required to communicate before any conference in order to attempt to narrow or resolve the issues that are in dispute, unless the parties are self-represented **and** prohibited from communicating by court order.
16. Parties should serve and file a case conference brief (Form 17A) for case conferences and a settlement conference brief (Form 17C) for settlement conferences with any necessary attachments. The purposes of a case conference are set out in Rule 17(4) and the purposes of a settlement conference are set out in Rule 17(5). Parties should prepare their briefs with a view to a realistic agenda that can be completed in the time that has been scheduled for the conference.
17. Conference briefs were designed to replace adversarial pleadings and affidavits. Absent exceptional circumstances, the briefs should be prepared in a manner that will promote a climate for settlement and can realistically be read by the conference judge in the time scheduled that day. The briefs should also set out the party's proposal for any unresolved issues. **Case conference briefs should be limited to the four page form set out in the *Family Law Rules* with a maximum of two additional pages of narrative and proposals**, other than supporting material such as lists of outstanding disclosure or professional reports. Case conference briefs that exceed the six page maximum may be returned to the parties, and the matter may be placed at the bottom of the list. Lengthy or unduly adversarial case or settlement conference briefs may not be read. The matter may also be placed at the bottom of the list and costs may be awarded.
18. At the conclusion of the case conference, the presiding judge will either schedule a settlement conference or give directions to the parties about scheduling their next step. If a motion is required, the parties should agree to deadlines to file their material, so that all material will be filed no later than 2 p.m. three business days before the motion is scheduled to be heard.

Teleconferences

19. Parties may arrange for a conference to occur by teleconference with permission obtained in advance from the judge who is scheduled to conduct the conference. The request should indicate whether the other side is consenting and, if not, the reasons. If the other party will not consent, a request for a teleconference may be made by filing a [Form 14B Motion](#) or by faxing a letter to the Trial Coordinator to be considered by the conference judge.

Motions to Change

20. A request to change a final order is made by filing a motion to change under Rule 15. The first case conference on a motion to change a final order or agreement shall be scheduled before a Dispute Resolution Officer (DRO) for those centres that have a DRO program (Barrie, Newmarket and Oshawa) in accordance with Part I of the Consolidated Provincial Practice Direction.
21. A DRO conference can be held on matters other than motions to change only as directed by the court. This may be requested by a [Form 14B Motion](#) or at another court event.

B. Trial Scheduling Conferences

22. If the matter is not resolved at a settlement conference, the next event will be a trial scheduling conference. Where possible, the trial scheduling conference will be heard within 30 days of the settlement conference by the same judge. A trial scheduling conference will normally be scheduled by the settlement conference judge at the conclusion of the settlement conference, unless a judge has directed that the settlement conference and trial scheduling conference be combined. If the settlement conference and trial scheduling conference have been combined, the court will ensure that the Trial Scheduling Endorsement Form is completed prior to the conclusion of the combined conference.
23. The purposes of a trial scheduling conference are to ensure trial readiness and make directions regarding how the trial will proceed. The parties should serve and file a Trial Scheduling Endorsement Form in advance of the trial scheduling conference in accordance with the timelines in Rule 17(13.1), with the appropriate portions completed by each party, in lieu of the Trial Management Conference Brief (Form 17E).
24. Prior to a matter being scheduled for trial, the Trial Scheduling Endorsement Form must be fully completed and endorsed by the trial scheduling conference judge. In exceptional cases of urgency, a judge may place a matter on the trial list to secure a trial date before the Trial Scheduling Endorsement Form is completed. In those cases, specific directions will be given about when the Trial Scheduling Endorsement Form is to be completed and when the trial management conference is to be held.
25. At the conclusion of the trial scheduling conference, a trial management conference will generally be scheduled by the presiding judge. Parties are required to advise the Trial Coordinator immediately if a matter settles so that this date can be made available to other matters.

C. Trial Management Conferences

26. Unless otherwise ordered, a trial management conference will be held for any case that has not resolved 30 days prior to the scheduled trial date. Where possible, this event will be held within 2 weeks of the scheduled trial date. The purpose of the trial management conference is to confirm that parties are ready for trial, have filed their Trial Record and exchanged all other material required by the Trial Scheduling Endorsement Form, provide any further directions or revisions to the Trial Scheduling Endorsement Form and to explore any final possibilities for settlement to resolve the trial.
27. Additional requirements relating to the trial management conference are contained in paragraphs 47 to 50 below.

Part 6 – Trials and Trial Records

47. The Applicant must file a completed Trial Record, no later than **7 days before the trial management conference**, containing the documents set out in Rule 23(1) and the completed Trial Scheduling Endorsement Form. The Respondent may add any documents that should have been included in the Trial Record, as set out in Rule 23(2), up to 2 p.m. **two** business days before the trial management conference. A current financial statement for each party and comparative net family property statement shall be included in the Trial Record. **The parties do not need to update their financial statements and net family property statements again prior to trial unless there is a change or an updated statement has been requested by the court.**

48. No later than 2 p.m. two business days before the trial management conference, each party must also serve and file an Offer to Settle, an outline of their Opening Trial Statement and a Draft Order.
49. If the trial record has not been filed by the trial management conference, an order may be made requiring that the trial record be prepared on an urgent basis and that costs are to be paid or alternatively the matter may be removed from the trial list.
50. Any requests to adjourn the trial should be dealt with at the trial management conference in accordance with paragraph 10 above.

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Schedule “C”:

Excerpt from the Consolidated Practice Direction Concerning Family Cases in Toronto Region

I. Case Conferences and Settlement Conferences

19. Parties may request that a conference occur by teleconference with or without the consent of both parties or their counsel by filing a [Form 14B Motion](#) Form.
20. Counsel or the parties should communicate before any conference in order to attempt to resolve the issues that are in dispute, unless the parties are self-represented and prohibited from communicating by court order.
21. The first case conference on a motion to change a final order or agreement shall be scheduled before a Dispute Resolution Officer (DRO) in accordance with Part I of the Consolidated Provincial Practice Direction.
22. A DRO conference can be held on matters other than motions to change only as directed by the court upon request by a 14B Motion or at another court event.
23. If the matter is not resolved at a settlement conference, a [Trial Scheduling Endorsement Form](#), endorsed by the Court) must be completed prior to the matter being scheduled for trial.

J. Trial Management Conferences

24. A trial management conference will normally be scheduled by the family court office for the week before the assigned trial date.
25. The completed Trial Scheduling Endorsement Form must be filed by one of the parties in advance of the Trial Management Conference and each party must file an Offer to Settle and Outline of Opening Statement, in lieu of the Trial Management Conference Brief.

K. Trial Records

26. The Applicant must file a Trial Record at least 30 days prior to the scheduled trial date. Failure to do so will result in the matter being removed from the trial list, unless the court orders otherwise.

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Schedule “D”:

Excerpt from the Consolidated Practice Direction for the Central West Region

J. Case Conferences and Settlement Conferences

26.1

Counsel and parties are expected to attend all conferences in person.

26.2

Parties may arrange for a conference to occur by teleconference with the consent of both parties and their counsel. If the other party will not consent, a request for a teleconference may be made by filing a Form 14B Motion Form.

26.3

Counsel or the parties should communicate before any conference in order to attempt to resolve the issues that are in dispute unless the parties are self-represented and prohibited from communication by court order.

26.4

A date for a case conference may only be obtained upon one side filing a case conference brief.

26.5

Parties shall serve and file a case conference brief (Form 17A) for case conferences and a settlement conference brief (Form 17C) for settlement conferences with any necessary attachments. The purposes of a case conference are set out in Rule 17(4) and the purposes of a settlement conference are set out in Rule 17(5). Parties should prepare their briefs with a view to a realistic agenda that can be completed in the time that has been scheduled for the conference.

26.6

Conference briefs were designed to replace adversarial pleadings and affidavits. These briefs shall be prepared in a manner that will promote settlement and shall include the party's proposal for any unresolved issues. They should also be prepared so that they can realistically be read by the conference judge in the time scheduled for the event that day.

26.7

Conference briefs shall be limited to the 4 page form set out in the Family Law Rules. In addition to the standard form, briefs must contain documents mandated by the rules (including for example Net Family Property Statements) and may contain attachments that are necessary to facilitate settlement, such as expert reports, proposed parenting plans and lists of outstanding disclosure.

26.8

In exceptional circumstances, a conference brief may include necessary and additional facts that will assist in resolving the outstanding issues. However, in no case shall a conference brief exceed 6 double spaced pages (excluding the attachments referred to in paragraph 26.7 above).

26.9

Conference briefs that exceed the length set out above may be returned to the parties. Lengthy or unduly adversarial conference briefs may not be read. The matter may also be placed at the bottom of the list and costs may be awarded.

26.10

Once a case or settlement conference has been scheduled no adjournments will be permitted except in **exceptional** circumstances. If exceptional circumstances arise, the party requesting the adjournment must obtain the permission, in writing, of a Superior Court Justice.

26.11

Trial management conferences may not be adjourned without a judge's order, which must be obtained either by 14B motion or by appearing before the court. The adjournment request must set out compelling reasons why the parties are not ready to go ahead, along with a proposed timetable to move the case forward.

27. Parties must serve and file a [Trial Scheduling Endorsement Form](#) with their Settlement Conference briefs, so that if the matter does not settle at the Settlement Conference a trial date can be scheduled.

K. Dispute Resolution Officer Program – Brampton and Milton

28. If the matter is not resolved at a Settlement Conference, a Trial Scheduling Endorsement Form must be completed prior to the matter being scheduled for trial.
29. The first Case Conference on a motion to change a final order or agreement in Brampton or Milton shall be scheduled before a Dispute Resolution Officer (DRO) in accordance with Part I of the Consolidated Provincial Practice Direction. Counsel and parties are advised to refer to Part I of the Provincial Practice Direction for further direction.
30. A DRO conference may be held on matters other than motions to change only as directed by the court upon request by a 14B Motion or at another court event.

L. Early Case Conferences – Brampton and Milton

31. Litigants who are represented by counsel, and those who are self-represented, can participate in an early case conference.
32. The case conferences will be held on Mondays. They will be listed as "Early Case Conference" (ECC) and are available only if a case conference has not already been held.
33. Fifteen ECCs will be scheduled for 10 a.m.
34. Both parties must certify they have fully discussed the issues to be litigated with the other side before their attendance at court for the ECC, or have attended court not later than 9 a.m. on the scheduled date to fully discuss the issues. If the parties have not discussed the issues fully in advance of 10 a.m., the conference will be rescheduled.
35. Litigants are required to attend the ECC.

36. Each ECC will be *limited to a total of 15 minutes* for all submissions, discussion and endorsements.
37. The litigants must file updated financial statements. Case Conference Briefs *must not exceed five double spaced pages* setting out their positions and *must not include lengthy schedules*.
38. The parties are limited to factual assertions contained in the written material, and will not be permitted to add additional facts in submissions.

M. Trial Records

39. If the matter is not resolved at a case conference, a completed [Trial Scheduling Endorsement Form](#) must be completed by the parties and endorsed by the court prior to the matter being scheduled for trial.
40. The Applicant must file a Trial Record at least 30 days prior to the scheduled Trial date. Failure to do so will result in the matter being removed from the Trial list, unless the court orders otherwise.

Getting Ready for Trial
Raymond A. Goddard

Schedule “E”:
Joint Trial Scheduling Endorsement Form



ONTARIO

Superior Court of Justice

(Name of Court)

(Court office address)

Court File # **FC-XX-XXXX**

Date

Judge

**JOINT TRIAL SCHEDULING
ENDORSEMENT FORM**RE: Marge Simpson v. Homer Simpson**Applicant** Marge Simpson

Contact #'s if unrepresented	Counsel
Work	
Home	
Cell	
Fax	
E-mail	

Respondent Homer Simpson

Contact #'s if unrepresented	Counsel
Work	
Home	
Cell	
Fax	
E-mail	

TRIAL SCHEDULING ENDORSEMENT FORM**Instructions**

- Each party must carefully complete all applicable portions of this document as directed below. **This includes Part 1 for the applicant and Part 2 for the respondent.**
- Once the judge has reviewed Parts 1 and 2 of this form, he or she will complete and add Part 3 of the form. All three portions of the documents will form the completed trial scheduling endorsement form.
- Barring unusual circumstances, a trial date will not be assigned unless the form has been fully completed as set out above.

Part 1 – Applicant's Information**[1] ISSUES**

1. Spousal Support – Quantum and Duration	3. Restraining Order
2. Equalization	4. Costs

[2] WITNESSES – Must be completed fully.

By naming a witness below, the party undertakes to make the witness available to the other party without summons even if the party decides not to call the witness. Include all proposed expert witnesses in this list, including yourself.

Estimates for cross-examinations should be provided by the other party.

Name of Witnesses	Issue to be addressed (from section 1 above)	Specific topic(s) the witness will address	Time estimate	
			In chief	In cross
Montgomery Burns	1	Respondent's income	½ day	30 minutes
Waylon Smithers	2	Applicant's income	2 hours	1 hour
Patty Bouvier	2	Property	2 hours	1 hour
Moe Szyslack and Barney Gumble		Respondent's income	3 hours	1 hour
Ned Flanders	1	Respondent's income	2 hours	45 minutes
Marge Simpson	All issues	All issues	1 day	1 day

Subtotal 27.5 hours

EXPERTS

Name of Expert	Report served on (YYYY-MM-DD)	Witness to be qualified to give an opinion on (be specific):	Qualifications admitted?
1)			<input type="checkbox"/> No <input type="checkbox"/> Yes or to advise by (Date)
2)			<input type="checkbox"/> No <input type="checkbox"/> Yes or to advise by (Date)
3)			<input type="checkbox"/> No <input type="checkbox"/> Yes or to advise by (Date)

If the expert's qualifications are not admitted, the approval of the trial judge will be required.

Opening Statement: : 30 minutes
(time estimate if to be provided orally)

Closing Statement: 2 : 00 hours
(time estimate)

TOTAL TIME ESTIMATED 5 : 00 days

☐

This list is approved by the court except as follows (pursuant to rule 1(7.2) of the Family Law Rules):

Part 2 – Respondent's Information

[3] ISSUES

1. Equalization	3.
2. Costs	4.

[4] WITNESSES – Must be completed fully.

By naming a witness below, the party undertakes to make the witness available to the other party without summons even if the party decides not to call the witness. Include all proposed witnesses in this list, including yourself.

Estimates for cross-examinations should be provided by the other party.

NOTE - Respondent seeks to finalize witness list at conference.

Name of Witnesses	Issue to be addressed (from section 3 above)	Specific topic(s) the witness will address	Time estimate	
			In chief	In cross
Homer Simpson	All Issues	All Issues	1 day	1 day
Lenny Leonard	All Issues	Property	Affidavit	30 minutes
Carl Carlson	All Issues	Support	Affidavit	30 minutes
Abe Simpson	All Issues	Support and Restraining Order	Affidavit	30 Minutes

Subtotal 2 days

EXPERTS

Name of Expert	Report served on (YYYY-MM-DD)	Witness to be qualified to give an opinion on (be specific):	Qualifications admitted?
1)			<input type="checkbox"/> No <input type="checkbox"/> Yes or to advise by (Date)
2)			<input type="checkbox"/> No <input type="checkbox"/> Yes or to advise by (Date)
3)			<input type="checkbox"/> No <input type="checkbox"/> Yes or to advise by (Date)

If the expert's qualifications are not admitted, the approval of the trial judge will be required.

Opening Statement: _____ : 30 min
(time estimate if to be provided orally)

Closing Statement: 2 : hrs
(time estimate)

TOTAL TIME ESTIMATED 2.5 : days

☐ This list is approved by the court except as follows (pursuant to rule 1(7.2) of the Family Law Rules):

Part 3

[5] PRELIMINARY MATTERS

- ☒ Disclosure completed If not: Applicant's undertakings from questioning remain outstanding. _____
- ☐ Assessments completed If not: _____
- ☐ Valuations completed If not: _____
- ☐ The parties are able to travel to the following locations in the region if necessary:

[6] PLEADINGS

Amendment needed? ☒ No ☐ Yes If yes, which party? _____

Date to amend _____

Date for response _____

[7] FINANCIAL STATEMENTS AND NET FAMILY PROPERTY STATEMENTS

Have updated financial statements been exchanged? ☐ No ☒ Yes

If no, time limits for: Applicant's _____

Respondent's _____

Where the equalization payment is at issue, have net family property statements and comparative net family property statements been exchanged? ☐ No ☒ Yes

If no, time limits for: Applicant's _____

Respondent's _____

Rule 13(12) of the Family Law Rules requires these documents to be updated by the Applicant at least seven days before trial and by the Respondent at least 4 days before trial (not including weekends or holidays).

☒ Further updates to these statements will not be required unless requested by the Court.

[8] ADMISSIONS (summarize or attach list of admitted facts)

Have requests to admit been served? ☒ No ☐ Yes

If no, time limits for: Applicant's January 31, 2019
 Response by February 20, 2019
 Respondent's _____
 Response by _____

Statement of agreed facts (SAF) to be served and filed by (party) Applicant

by (date) Start of Trial **SAF must be put into or with trial record.**

[9] EXHIBITS PROPOSED

All *documentary evidence* to be relied upon at trial will be served by the following dates:

Applicant January 31, 2019 Respondent February 8, 2019

Proposed exhibits **not** to be coil bound as there may be questions of admissibility by other party or court. Consider whether any/all exhibits should also be provided in **electronic form**

Reports or business records to be relied on? No ☐ Yes ☒

If yes, may they be introduced without calling of record keeper? No ☐ Yes ☒

Medical reports with notice of intent served? No ☐ Yes ☒

If no, by what date? _____

[10] PRESENTATION AT TRIAL

(Refer to the Court's endorsement of the proposed issues, witnesses and time estimate for each witness in sections 2 and 4 of this form.)

Will any witnesses' evidence in chief be provided by affidavit? If so, which witness and by when?

All Respondent's third party witnesses are to provide evidence in chief via Affidavit.

If affidavits are to be filed, they should be vetted by the other party no later than
February 18, 2019

Order of presentation if multiple parties or Children's Lawyer
Applicant, Respondent

Written opening statements ☒ or oral ☐

If written, to be served by: Applicant February 18, 2019
 Respondent February 20, 2019

Will written opening statements be put into trial record? ☐ No ☒ Yes

If not, when will written opening statement be available for judge? February 23, 2019

[11] PROPOSED DRAFT ORDER to be provided by each party at beginning of trial.

[12] SPECIAL ARRANGEMENTS RE WITNESSES

i. Amplification devices _____

- ii. Interpreters (provided by court or party?)
- iii. Wheel chair access
- iv. Judges' order as incarcerated

For Abe Simpson

[13] CHILDREN'S EVIDENCE

Is there any evidence being sought from a child?

No ☒

Yes ☐

Age _____

How will the evidence be introduced?

- (a) ☐ Statement of agreed facts
- (b) ☐ Through Children's Lawyer
- (c) ☐ Khan *voir dire*
- (d) ☐ Other (*specify*)

[14] OTHER ISSUES to flag for trial scheduling purposes

[15] ANY SPECIAL EQUIPMENT NEEDS (audio visual, screens, real time reporting etc)

If yes, court support notified

☐

No

☒

Yes

[16] POSSIBLE PROBLEMS TO FLAG FOR TRIAL JUDGE

Evidentiary issues

Legal issues

Have support payments been assigned to the Ministry of Community and Social Services or any other institution?

Other

Ned Flanders will provide evidence via Skype. Arrangements premade with TC.

[17] TRIAL RECORD already served and filed?

No ☒

Yes ☐

If not: Applicant to serve and file by February 4, 2019

Respondent to serve and file by February 11, 2019

Pursuant to Rule 23(1)(5), Trial Records must include any temporary order relating to a matter still in dispute and any order relating to the trial. If endorsements have not been turned into formal orders, consider whether a copy of the endorsements should go into the Trial Record.

Note: The Trial Record should contain updated Financial Statements and Net Family Property Statements (where required) for each party.

[18] CASE BOOKS to be filed by the following dates:

Applicant(s) At trial.

Respondent(s) At trial.

☒ Paper Copies☒ In electronic format**[19] TRIAL INFORMATION**

Trial management conference fixed for:

Trial fixed for:

Total trial time required, including opening and closing statements for each party:

Urgency (if any) and why:

PARTIES INFORMED☒ To inform Trial Coordinator of any changes in address or phone # or any change in representation immediately.☒ If a party does not provide disclosure or reports as required above, the trial may proceed regardless and an adverse inference may be made against them.☒ If a party does not attend trial, an order may be made in the party's absence.☒ Failure to comply with the terms of this endorsement could result in cost consequences.**[20] TRIAL SCHEDULING ORDER:**

It is ordered that:

☒ For the TMC, no Trial Management Conference briefs (Form 17E) are required.☒ For the TMC, offers to settle and draft opening statements are required by each party, and should be filed with a complete copy of this endorsement form.☒ Parties shall comply with directions and dates set out above. Consent changes may be requested by motion form (14B).☒ There shall be no further motions without permission obtained from the case management judge.☒ No exhibits may be relied on at trial other than those disclosed as above **without a court order** obtained from the case management judge or trial judge.☒ No witnesses shall be called other than the witnesses on the witness list as outlined above unless a court order is obtained from the case management judge or the trial judge.☒ Any changes requested regarding scheduling of trial (including an adjournment of the trial date) or expanded time required for trial – **must make appointment to attend in person or by teleconference before Justice**☐☐



A copy of this complete endorsement must be put into the Trial Record as it is an order relating to the trial (see Rule 23(1)(6)). Offers to settle shall not be attached to the endorsement when it is included in the Trial Record.

Date: _____

Judge's signature

CONFIRMATION BY COUNSEL/PARTIES

We, the undersigned, confirm that we have read and understand this trial scheduling endorsement.

Applicant

Respondent

Counsel for Applicant

Counsel for Respondent

Other Party

Counsel for Other Party

Dated: _____

Getting Ready for Trial: Strategies and Tips
Raymond A. Goddard and Erika R. Jacobs

Schedule “F”:
Form 20.2: Acknowledgment of Expert’s Duty

Superior Court of Justice, Family Court

(Name of court)

Court File Number

FC-XX-XXXX

Form 20.2: Acknowledgement
of Expert's Duty

at

Court office address

Applicant(s)

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Marge Simpson

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Respondent(s)

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Homer Simpson

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Children's Lawyer

Name & address of Children's Lawyer's agent for service (street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any)) and name of person represented.

1. My name is (full legal name) Dr. Julius M. Hibbert .

2. I live in (municipality & province) Toronto, Ontario .

3. I have been

☒ engaged by or on behalf of (name of party/parties)

The Applicant, Marge Simpson, and the Respondent,
Homer Simpson

☐ appointed by the court

to provide evidence in relation to this court proceeding.

4. I acknowledge that in relation to this proceeding, it is my duty to provide:

- (a) opinion evidence that is fair, objective and non-partisan;
- (b) opinion evidence that is related only to matters that are within my area of expertise; and
- (c) such additional assistance as the court may reasonably require, to determine a matter in issue.

5. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date

Signature

NOTE: This form must be attached to any report signed by a litigation expert or court-appointed expert and provided for the purpose of rules 20.1 to 20.3 of the *Family Law Rules*.