PROVINCIAL COURT OF SASKATCHEWAN - CIVIL DIVISION

PREPARING FOR TRIAL

Note: This material is for informational purposes only. It is not to be construed as legal advice. It is intended to give a general overview of matters involving civil claims in the Provincial Court (Civil Division).

Should you require advice specific to your situation, please consult a lawyer.

1. Trial date and place:

2. Conduct of trial:

- The plaintiff goes first and gives his or her evidence and then calls any additional witnesses in turn until his or her case is completed. The defendant would then follow the same procedure.

- Following the testimony of each witness, (including the evidence of the plaintiff and defendant) the other party has the immediate right to CROSS-EXAMINE on any relevant point within the knowledge of the witness. The trial judge will instruct you as to what is relevant, if necessary. It is important to keep in mind, however, that the purpose of cross-examination is to **question** the witness and NOT the time for making statements or giving evidence on your own. This will come in due course when you are called upon to do so. In preparing for trial you should make a list of points you wish to ask the other party or other witnesses about.

- Once both sides have finished, each party sums up his or her position to the judge. This is called "argument" and is based upon the evidence sworn before the court and any appropriate legal point you wish the court to consider. Again, it may be useful to make a list of points you wish to cover for argument.

3. Evidence:

- A case can only be proved or disproved by the use of evidence. This can take the form of testimony from you as well as from other witnesses, pictures, diagrams, and so forth, all used to support your case. Make sure you gather and prepare your evidence well in advance of your trial date.

- All evidence must be given by a witness himself or herself personally, from their own observations or involvement.

- Except in unusual circumstances in the discretion of the trial judge, witnesses are not permitted to testify as to what someone else told them nor can the parties produce letters, sworn affidavits or written reports authored by someone else. In all these examples, this would be "hearsay" evidence which is not permitted.

- On occasion, a party may wish to use an expert witness who will be allowed to give an opinion if the court accepts he or she is qualified to give such expert opinion evidence. An example might be a plaintiff calling an engineer on a faulty repair claim involving the structure of the house or a defendant calling an expert mechanic in a car repair claim to give evidence on the proper methods to be used in such repair.

- You should arrange to have your witnesses in court on time on the trial date. To ensure the attendance of a witness at trial you can serve a **subpoena** upon the witness. If you require a subpoena, you should attend to the Provincial Court Civil Division to obtain the form and pay the prescribed fee.

- In some circumstances the court might permit a witness to be heard by telephone. This would have to be approved by the court in advance however, and would depend upon the reasons for such request.

4. Burden of Proof

- In a civil case, the Plaintiff bears the burden of proving the case has been made. If the Defendant makes a counterclaim, he or she would have to prove this claim. Determining proof involves the trial judge weighing and considering the evidence from both sides, like balancing a scale. If the scale tips 51% in favour of your evidence, you win. If it is 50-50, you have not proved your case.

- It is important to remember that it is not the number of witnesses which gives weight to the outcome, but what the witness says, and whether the witness is believable. It may be that more than one witness confirming a point will add

weight and believability to that point. However, the quality of the case is not necessarily weakened by fewer witnesses.

5. Testifying in Court:

- Prior to testifying in Court, you must swear an oath to tell the truth or you must affirm that you will tell the truth. It is a criminal offence called perjury to give false evidence once you have been sworn or affirmed.

- The trial judge knows nothing about the details of your case. You should prepare a point form summary from which you can testify or answer the judge's questions that proceeds in a logical brief manner throughout. This should not simply be a "script" which you read into evidence but rather as suggested, a list of points or headings for you to refer to as you give your evidence.

- Start at the beginning. For example, if you are claiming faulty workmanship on your house, you might prepare as follows:

    1. Address of residence
    2. Repairs required to be done
    3. Date of first contact with the defendant
    4. Price agreed upon
    5. Details of work to be completed and by when
    6. Reasons why not satisfied
    7. Further dealings

- Or, if your case is about a motor vehicle accident, you would want to cover the following points:

    1. Ownership and registration of vehicle
    2. Make, model and year of vehicle
    3. Date, time and place of your accident
    4. Weather, road and lighting conditions
    5. Who, if anyone, was with you
    6. Direction and speed you were travelling
    7. Description of how accident occurred
    8. Damages sustained
    9. Prepare a detailed diagram of the accident scene.

- Similarly, if you are **defending** a claim, you would prepare your evidence in the same, logical manner, covering all of the points you feel essential to your case.

- If you have documents or exhibits (such as invoices or photographs) to support your claim, these would be presented in the course of testifying in the order they

came into existence according to your evidence.

- All exhibits entered into evidence are kept by the court until the appeal period has passed. If no appeal has been taken, the exhibits can be returned by court order. Otherwise, the exhibits will be kept until the case has been finally completed.

6. General Information

- Be on time for court and ready to proceed. If you are late, your claim may be dismissed or judgment granted in your absence, as the case may be.

- At the conclusion of the case, the judge may decide immediately or alternatively, may "reserve" his or her decision. In this event, you will receive a written judgment in the mail. Be sure the court clerk has your current mailing address if the case has been reserved.

- A decision may be appealed by either party up to 30 days from date of judgment so no steps can be taken to enforce the judgment until this period has expired. If you do wish to appeal, you should contact the Court of Queen's Bench immediately to ensure the appeal can be properly processed within the time frames. Appeal information on how to proceed is automatically forwarded with the Certificate of Judgment following trial.

- If the appeal period has passed and you have to take steps to enforce your judgment, you must contact the Court of Queen's Bench Local Registrar's Office for further information:

- A default judgment may be set aside in appropriate circumstances. An application must be made to the Court within 90 days of the judgment. In order to be successful you will need to convince the judge that your case has merit and you must also justify your reason for not appearing at the case management conference, or the trial, and the judge must conclude it is a reasonable excuse. In exceptional circumstances the judge may allow the judgment to be set aside after the 90 day period.

(Insert Local Court Address)