



New Lawyers Update

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Assignment Court or Trial Scheduling Court is, for many articling students, their first chance to appear in open court and speak before a judge. Though the issues may appear trivial, simply traversing a matter for a few months so that discoveries and/or mediation can be sorted out or arguing over which Trial Sitting the matter should be placed on, it is at this very court that for most files, the beginning of trial preparation starts. We are all aware that in today's era of civil litigation, not many files proceed to trial. Therefore, as students and new lawyers, we must take whatever opportunity we are given to get even a little taste of trial; even if it ends up being two whole months spent preparing a file for trial only for it to settle right before opening statements.

I am slowly approaching my two-year mark of being Called to the Ontario Bar and have been lucky enough to assist directly on a trial that went ahead and one that almost proceeded but ended up settling on the eve of its opening. As such, I would like to share some tips that I hope other new lawyers and students will find helpful if they find themselves in the midst of assisting a lawyer with trial preparation during the upcoming trial sittings.

Tip No. 1. Read the file from start to finish, then read it again, and again, and then once more.

I cannot stress this point enough. The senior lawyer that I was assisting this past summer told me that every time he sits down to prepare for trial, he will read every single page of the entire file before he begins doing anything. Not the summaries or the reports that have been prepared by his clerks and paralegals condensing the file, but the actual entire file, from start to finish. Why? Because there will ALWAYS be something that was missed the first time around, and it is always best to personally review all of the documents. I found that details were sometimes overlooked or pieces of information that did not seem relevant early on in the stage of a file became quite important in the end. With preparing a file for trial, you are helping to write a story and put together a puzzle that you will present to the trier of fact, so knowing all of the details, dates and documents that make up that story is crucial. It is also quite possible that certain bits of information or evidence will be interpreted differently by you than it has by the other lawyer and they will appreciate being presented with a different point of view or opinion. Such discussions led to some of the more productive trial preparation meetings I had with the senior lawyer as it was interesting to work through

our individual understandings of facts and only helped make our case stronger in the end.

Tip No. 2. Make an effort to get to know the client.

Although the first point of contact for the client will typically be the lawyer in charge of the file, it is helpful for you to build your own relationship with the client. Leading up to the trial, it is important to keep the client updated on almost everything you and the other lawyer on the file are doing. Every angle that is being investigating, every witness you are meeting and every point that you think may hinder their case should be communicated to the client on a regular basis. They will appreciate knowing what is happening and being updated on the work and hours that you are putting in. During the trial, try and make some time to take the client out over the lunch break and provide a quick update on the events of the day to put their mind at ease and explain to them what has gone on throughout that day's proceeding.

Tip No. 3. Draft memos on everything - even the little things.

As a student or junior lawyer assisting on a trial, research on any anticipated topic of contention during the trial on rules of law or evidence will fall to you. By this I mean standard topics that may arise in almost every trial, including such topics as the use of demonstrative evidence, the scope of expert testimony or excluding certain reports from evidence. It is important to have individual memos on each of these topics as it is very possible (speaking from experience) that you will find yourself having to put a factum together in the HLA Library in 30 minutes over the morning break as the judge is expecting arguments as soon as court resumes. In order to

save yourself a lot of time and stress, it is helpful to have this research done ahead of time. I also found it beneficial to draft memos for the lawyer I was assisting on almost every issue that I was asked to look into, no matter how small. Sometimes it was simply listing all of the documents that mentioned a certain fact or creating a timeline listing events in chronological order. Most times, the contents of these memos were directly copied and pasted into the lawyer's own notes for their reference and saved them a lot of time.

Tip No. 4. Sit in and conduct in-person Expert Witness preparation meetings.

Although it may require some travel time and sometimes meetings that are at a ridiculous time of night or early morning because the expert doctor, investigator or engineer could not meet with you until they were done with their daily appointments, I recommend attending these meetings in-person instead of conducting them via telephone. This is for a variety of reasons. Firstly, not only is it a good chance to get out of the office, but it is a great opportunity to see how the expert whose report you have read inside out will present in court. I found it very interesting to meet with the actual authors of the reports that we were relying on and have them explain and teach me about their findings and how they came to their conclusions, because let's face it, not many of us have an extensive science or engineering background. A face-to-face meeting forces the experts to refresh their memory and teach you the basics about how they came to certain conclusions. Experts love talking about their particular interest areas and most times things come out of these meetings that will help you better under-

stand certain evidence as it relates to your file and will directly help in preparing cross-examination questions for opposing counsel's experts.

Tip No. 5. Take really detailed notes and stay organized.

Assisting with a trial means an extra responsibility to help keep things organized in the midst of the mayhem that is trial preparation, especially in the week or two leading up to the trial. There will be A LOT of papers and notes and memos and cases by the end of it. Work with the clerks and legal assistants in your office to make sure trial binders are organized in a manner that any document that the lawyer needs can be found in under ten seconds. Have multiple copies of all exhibits ready to be handed out and ensure that your own notes are detailed and organized. Take detailed notes on everything that is said and put into evidence during the actual day of trial because your notes are most likely what the lawyer will be relying on throughout the duration of trial. At the end of each day, take some time to go over your notes and clean them up so that if you have to return to them in two weeks' time when the lawyer is working on his closing submissions, they are clear and concise.

Tip No. 6. Try and enjoy the learning experience - irrespective of all the late hours and stress.

Each lawyer will have their own individual style of running a case and it is interesting to watch and learn from them. It is a great opportunity to adopt certain techniques and shape your own way of preparing for trial. I strongly encourage every new associate and student to help out on a trial if given the chance. It is a rewarding experience, even if the trial does not end up proceeding. I found that the trial preparation work in itself will teach you some important points about the running of a file from start to finish and help shift your focus on how you handle future files.

If you do find yourself in the middle of intense trial preparation or even a trial, don't forget to take a little break and join the New Lawyers' Subcommittee for its annual HLA Winter Social being held on February 23rd, 2017 at *Serve*. No RSVP required; hope to see you there and at all future New Lawyers' events! ■

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