



PRACTICE AREA Step-by-step CHECKLIST

Litigation

. 1 .

File reference:

DISCLAIMER This Checklist is only intended to provide a general overview of the matters that should be considered in managing your case/transaction. The information provided in this Checklist is not intended to be legal advice. Many factors may affect the applicability of any steps or procedures set out here to your case and consequently you should apply your own discretion or seek appropriate advice (where applicable) before relying on these procedures.

		Date DUE	Date DONE	Remarks
1.	INITIAL CONTACT			
1.1	Ensure there is no existing or potential conflict of interest. <i>That no conflict exists among multiple clients; the firm does not act for or possess confidential information of any potential opposing parties, or if such a party is a corporation, for its directors, shareholders, or related corporations; that an existing client of the firm is not likely to be brought into the action through third party proceedings or otherwise.</i>			
1.2	Obtain warrant to act, confirm the identity of person authorised to give instructions and obtain a written authorisation for that individual to give instructions and/or to sign affidavits. The authorisation should define the extent of your authority. <i>In the case of a corporate client consider requirements under the Companies Act, 1965. Also consider form of retainer and who will give instructions and to whom progress reports are to be sent. Consider obtaining personal guarantees from principals if solvency of corporate client is an issue. Consider also conducting a search with the Registrar of Companies to ensure that client is in good standing and not in receivership or subject to winding-up proceedings.</i>			
1.3	Consider an agreement with client on fees chargeable.			



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		Date DUE	Date DONE	Remarks
1.4	Consider any immediate action required or recommended of/by the client. <i>Advise client to attend hospital or see a doctor if client is injured and has not already received treatment. In appropriate circumstances, advise client to make a police report, ensuring that the client makes a record of what is written in the narrative section of the police report. Ensure client has promptly reported accident to insurer.</i>			
1.5	Ask client to produce all relevant evidence. <i>Notes, memorandum of the facts, sketches, photographs, where appropriate. Ask client to prepare and keep a daily diary of symptoms, medication, and doctor's visits.</i>			
1.6	Ask client to identify and provide details of potential witnesses. <i>Advise client to make note of all potential witnesses and, if possible, to obtain full names, addresses, and telephone numbers.</i>			
1.7	Advise client to keep a record of all losses or expenses to be claimed. <i>Eg medical expenses, taxi charges, any expense that can be claimed as loss, damage or expense.</i>			
1.8	Ensure that client has not engaged another lawyer.			
1.9	Advise client to consult you before speaking to any party involved in the matter or their appointed servants or agents. <i>Where applicable, advise client not to speak with insurance adjusters, investigators, experts etc.</i>			
1.10	Establish the proper forum and jurisdiction in which to adjudicate the claim. <i>Find out when and where the cause of action arose and determine whether there are any jurisdiction or limitation problems.</i>			
1.11	If representing a defendant against whom action has been commenced:			
a.	Find out name of plaintiff's lawyer.			
b.	Check the Writ and confirm the date it was served.			





		Date DUE	Date DONE	Remarks
	Also check the manner of service of Writ. Check date Writ was issued in relation to service, to ensure Writ has not expired. <u>Identify any other irregularity that may render the issuance or service of the Writ null and void.</u>			
c.	Obtain warrant to act, confirm the identity of person authorised to give instructions and obtain a written authorisation for that individual to give instructions and/or to sign affidavits. The authorisation should define the extent of your authority. <i>In the case of a corporate client consider requirements under the Companies Act, 1965. Also consider form of retainer and who will give instructions and to whom progress reports are to be sent. Consider obtaining personal guarantees from principals if solvency of corporate client is an issue. Consider also conducting a search with the Registrar of Companies to ensure that client is in good standing and not in receivership or subject to winding-up proceedings.</i>			
d.	Contact plaintiff's lawyer and advise of your appointment. <i>Seek agreement to refrain from taking steps in default before an agreed date or without first notifying you. If the period/days for entering an Appearance has expired, seek agreement to an extension. Diarise any extensions and confirm in writing.</i>			
e.	Advise client to give prompt notice to insurer if coverage is available.			
f.	Obtain copies of all pleadings.			
g.	Enter appearance. <i>Check the type and form of appearance especially if client is a partnership.</i>			
1.12	Prepare a brief of the relevant law and provide client with a written opinion on his case as well as next course of action.			





		Date DUE	Date DONE	Remarks
2. INITIAL INTERVIEW				
2.1	Keep a record of the interview, either by taking notes or by taping (obtain client's consent).			
2.2	Determine client's objectives and expectations. Discuss whether his expectations are realistic.			
2.3	Discuss and explain the litigation process. <i>The various stages (reasons for each step, information required, timing etc), the overall length and the estimated costs of the case. Advise there is no guarantee of success and of risk of paying other party's costs if unsuccessful. If representing the plaintiff, discuss the risk of not being able to collect from the defendant even if the action is successful. If representing the plaintiff in a personal injury matter, advise of the need to obtain clinical records, and to produce personal medical records. Discuss alternative dispute resolution possibilities, ie mediation, arbitration, conciliation, expert determination etc.</i>			
2.4	Advise client regarding your charges and collect initial disbursements. <i>Method of billing, method and timing of payment, and the conditions upon which you undertake to act. It is advisable to finalise a fee arrangement early, and in writing. If possible and appropriate, have the client sign a retainer and fee agreement at an early stage.</i>			
2.5	Satisfy yourself again that client is competent to give instructions. <i>If client is an infant or mentally incapacitated person, a litigation guardian may be required.</i>			
2.6	If the case is complex, unusual, or outside your usual area of practice, consider appointing or consulting other Counsel, or decline to act.			
2.7	Get particulars of any settlement proposals made by the potential opposing party, insurance adjuster or their Counsel.			
2.8	Get particulars of all dealings with insurance adjusters and copies of correspondence, statements given, authorisations signed etc.			





		Date DUE	Date DONE	Remarks
2.9	Find out if there are any related criminal or other proceedings, which are pending or might arise.			
2.10	Find out about any pending coroner's inquests or inquiries.			
2.11	Complete an initial interview checklist appropriate for the type of action. Get information on matters such as:			
.1	Client:			
	a Name, address, telephone numbers, occupation, age.			
	b Any other details relevant to the type of action.			
	c Insurance.			
.2	Fact pattern that gave rise to the action:			
	a Full particulars of what happened, when, where, why and how.			
	b Parties to the action. <i>If representing the plaintiff, identify all potential defendants. Determine whether there is a right of indemnity or contribution, or some other right to add others as third parties.</i>			
	c Identify witnesses.			
	d Obtain all available evidence, such as: statements, sketches, photographs, videos, copy of police report.			
.3	Enquire what damages sustained by the plaintiff:			
	a Physical injury.			
	b Economic loss (past or anticipated future).			
	c Incidental expenses.			
	d Damage to property.			
	e Others. <i>Consider the type of relief that you may want to seek: compensation, specific relief, statutory damages, punitive damages etc.</i>			
.4	Enquire what damages sustained by the defendant, and any right of set-off, or counterclaim.			
.5	Whether criminal or quasi-criminal charges have been or may be laid against any of the parties.			





		Date DUE	Date DONE	Remarks
2.12	Consider the relevant facts in the context of the applicable law. <i>Give client a preliminary opinion whether there is a cause of action and, if so, an estimate of damages. If representing the defendant, give a preliminary opinion whether there is a good defence.</i>			
2.13	Discuss settlement, future strategy, and the risks of litigation.			
2.14	Consider the need for retaining experts; discuss expense with client and emphasise the necessity of expert assistance in appropriate cases.			
2.15	Obtain executed authorisation for release of client's information to the expert.			
2.16	Advise client that he must disclose both evidence for and against him in discovery. <i>Explain duty to disclose all relevant or potentially relevant, documents.</i>			
2.17	Discuss employing an investigator, if required.			
2.18	Advise client regarding preservation of evidence. <i>All physical evidence should be preserved, as soon as possible and advise client to keep expense receipts. Consider giving notice to opposing party to ensure physical evidence in that party's possession is preserved.</i>			
2.19	In certain kinds of action (eg personal injury), advise client to keep a diary of pain and suffering. Also advise client to notify you of any change in current condition.			
3. FOLLOW-UP FROM INITIAL INTERVIEW				
3.1	Determine limitation period/days and diarise the date.			
3.2	Send letter to client:			
.1	Confirm the retainer and set out the manner in which fee will be determined.			
.2	Enclose a copy of the record of the interview (or summary).			
.3	Confirm your instructions from client.			
.4	Give or confirm recommendations and advice to client.			





		Date DUE	Date DONE	Remarks
.5	Request clients to sign and return a copy of the retainer/warrant to act.			
.6	Ask client to provide an immediate update of future developments.			
3.3	Send letter to opposing party or their Counsel:			
.1	Advise of your appointment.			
.2	Request copies of any pleadings or other documents.			
.3	Ask if there are any outstanding matters.			
3.4	Open file: Diarise relevant dates and place checklist(s) in file.			
3.5	Conduct searches and obtain certified copies of documents, as required. May include:			
.1	Company searches for all corporate parties.			
.2	Land Title Office ("LTO") searches.			
.3	Record of previous convictions.			
.4	Vehicle records searches at JPJ.			
.5	Bankruptcy searches on all individual parties.			
4. COMMENCEMENT OF PROCEEDINGS – PLAINTIFF				
4.1	Before issuance of originating process and as early as possible after seeing the client:			
.1	Determine whether there are any conditions precedent to filing the action. <i>Eg contractual condition precedent, arbitration clause, need for consent to sue, assignment of cause of action or giving of notice. Ensure that these are fulfilled. If a contract claim, check provisions for choice of law and jurisdiction clause.</i>			
.2	Consider need for bankruptcy search (Official Assignee) to determine if leave to bring action is required.			
.3	Send demand letters to potential defendants, if appropriate.			
.4	Send letters to other involved parties, if appropriate.			





		Date DUE	Date DONE	Remarks
.5	Start collecting and verifying all the facts. Consult every source, including every document that may be relevant and any person who may have information. Specific steps may include:			
a	Sending letters, with authorisation forms where required, requesting information.			
b	Collecting and reviewing witness statements and any statements made by the potential defendants.			
c	For a personal injury case, arrange interviews with doctors treating the plaintiff, if necessary. Consider whether necessary to obtain clinical records.			
d	For a tort action, consider attending the scene of the tort.			
e	Arrange for any photographs needed to preserve evidence.			
f	Request police to retain any evidence.			
g	Consider making a request or seeking an order for detention, preservation or recovery of hard evidence.			
h	Appoint necessary experts.			
.6	Study the relevant law in sufficient detail to enable you to identify all causes of action.			
4.2	Commence proceedings and exchange pleadings:			
.1	Determine who will be the defendants and identify them clearly. Determine, if possible, the defendant's ability to pay a judgment.			
.2	Decide in which Court to bring action (both in terms of jurisdiction and strategy):			
a	Magistrate Court			
b	Sessions Court			
c	High Court			



My notes...





		Date DUE	Date DONE	Remarks
.3	<p>Determine all possible causes of action.</p> <p><i>Consider whether evidence will be available to support them. If instructed to allege fraud, have client confirm facts giving rise to allegations and obtain instructions, in writing. Counsel must be slow to allege fraud unless there is clear evidence of such conduct.</i></p>			
.4	<p>Determine the proper form of proceeding: Writ, Petition, Originating Summons or Originating Motion.</p> <p>Consider interlocutory injunction (prohibitory, mandatory, Mareva, Anton Pillar).</p> <p><i>Urgency may require an ex-parte application for injunction simultaneously with the commencement of the action. Advise client of requirement to give an undertaking to pay damages if the injunction is granted at the interlocutory stage and the Court subsequently finds that it ought not have been granted.</i></p>			
.5	<p>Draft and file the originating process.</p> <p><i>Consult references on Court Forms and Pleadings. Draft and issue Statement of Claim (if not already done as endorsement to Writ) within period/days set by the Rules. Ensure it complies with rules on pleadings.</i></p>			
.6	Diarise expiry date of Writ.			
Note: The following procedures are in regard to a Writ endorsed with Statement of Claim.				
.7	Serve defendants and anyone else required to be served:			
a	Comply with requirements of service.			
b	If substituted service is required, get order, effect service, and file affidavit substituted service in Court.			
c	If service out of jurisdiction is required, obtain leave of court and effect service stated in the court order. Note that (1) leave to issue and (2) leave to serve a writ out of jurisdiction is required.			





		Date DUE	Date DONE	Remarks
.8	Diarise date for entering an Appearance.			
.9	If defendant fails to enter an Appearance, and no extension has been requested, consider applying for default judgment. Note: Bear in mind nature of claim, ie whether liquidated, unliquidated or mixed claim.			
.10	Diarise date for filing Defence and Counterclaim. <i>Consider professional obligation to notify opposing Counsel of intention to file for default judgment.</i>			
.11	Consider applying for summary judgment.			
.12	Examine the Defence and consider:			
a	Whether Defence is sound in law. Otherwise, consider application to strike out or enter summary judgment.			
b	Any admissions made by defendant. Consider judgement by admissions.			
c	What evidence will be needed to rebut the defendant's allegations, and whether it is available.			
.13	If the Defence raises new facts that call for an answer, consider filing a Reply. Diarise the date for filing a Reply.			
.14	Consider amending the pleadings; add, substitute, or remove parties as required.			
.15	Serve notice for further and better particulars or to produce documents referred to in the pleadings, if it is necessary before you could render a proper Reply and follow up with an application , if necessary.			

5 COMMENCEMENT OF PROCEEDINGS – DEFENDANT

5.1	Advise client of options and obtain instructions to defend the action. Also determine whether liability should be admitted. If an insurer is involved, confirm extent of coverage. If admitting liability, get prior agreement of insured in writing.			
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		Date DUE	Date DONE	Remarks
5.2	Ensure that defendant is correctly named in Writ. <i>Particularly important if defendant is a company. Consider advising plaintiff if defendant is not correctly named. Ensure that service is properly effected.</i>			
5.3	Consider whether Court has jurisdiction over the defendant. <i>As a result of contractual provisions, subject matter, and monetary amount. Otherwise, consider an application to set aside the writ or service of the writ. If there is an Arbitration clause, consider applying for a stay. Note risk of filing Appearance before applying to set aside especially on jurisdictional issues.</i>			
5.4	Draft and issue Conditional or Unconditional Appearance within specified time period. Diarise the date for filing Appearance. <i>If an extension was granted, confirm in writing. Consider risk of submitting to jurisdiction and consequences of not defending, if client is a foreign defendant.</i>			
5.5	If necessary, send a letter to plaintiff's Counsel stating that you are investigating the matter in order to be able to prepare the Defence. Obtain agreement that default judgment will not be taken without reasonable notice.			
5.6	Examine Statement of Claim and consider:			
.1	Whether an application to strike out part or all of it is appropriate.			
.2	Whether there is sufficient information to enable you to respond properly. Otherwise, consider requesting for further and better particulars, following up with an application if necessary.			
.3	Any admissions made by plaintiff.			
.4	What evidence will be needed to rebut the plaintiff's allegations, and whether it is available.			
.5	Any presumptions of law that work for or against you.			
.6	Whether to apply for security for costs.			
5.7	If at all possible, the Defence should respond to each issue and not simply deny everything. Consider the following when drafting its content:			





		Date DUE	Date DONE	Remarks
.1	Risk of providing a basis for an application for summary judgment or an application to strike out.			
.2	All possible defence (including contributory negligence, failure to mitigate, limitation should be pleaded).			
.3	Whether the Defence is sufficient in law and any matters that must be specifically pleaded (eg estoppel, failure to mitigate).			
.4	Whether evidence is or will be available to support the Defence.			
.5	Whether it is necessary to specifically plead statutory provisions.			
.6	Whether negligence of others, including unknown parties, should be pleaded.			
5.8	<p>Consider whether there is a Counterclaim against the plaintiff. If so, file together with the Defence. Diarise the date for Defence to Counterclaim.</p> <p>Consider interlocutory injunction (prohibitory, mandatory, Mareva).</p> <p><i>Urgency may require an ex-parte application for injunction simultaneously with the commencement of the action. Advise client of requirement to give an undertaking to pay damages if the injunction is granted at the interlocutory stage and the Court subsequently finds that it ought not have been granted.</i></p>			
5.9	Consider whether there is a claim against a third party. If so, consider third party proceedings and time limit for commencing.			
5.10	Prepare, file, and serve the Defence within specified time period.			
5.11	Prepare, file, and serve third party notice if any. Note that leave is required.			
5.12	Prepare brief of law and make copies of any authorities you anticipate relying on during trial.			



My notes...





		Date DUE	Date DONE	Remarks
6	PRE-TRIAL PREPARATION AND CASE MANAGEMENT			
6.1	If you are acting for the plaintiff, within 14 days from the close of pleadings you must take out a notice for pre-trial case management. Under the said notice, the Judge can give such orders as to the future conduct of the matter to ensure its just, expeditious and economical disposal. The powers are not limited and are only circumscribed what is required to meet the ends of justice. Consider if you need to move the Court to grant any of the following orders (<i>in any event, generally those item(s) in red mark * below are customary orders given without the need for specific request</i>):			
.1	Direct parties to deliver particulars of their pleadings.			
.2	Direct parties to answer interrogatories.			
.3	Direct parties to formulate and settle principle issues to be tried with the concurrence of the Judge. *			
.4	Direct parties to deliver their list of documents that may be used at trial.			
.5	Direct parties to exchange bundles of each party's documents. *			
.6	Direct parties to furnish expert report and fix time for delivery and exchange.			
.7	Direct parties to give summary of their case before trial.			
.8	Direct parties to prepare and exchange agreed and non-agreed bundles of documents. *			
.9	Direct parties to file agreed statement of facts. *			
.10	Direct parties to disclose or provide any document or information deemed relevant to the issues in contention (subject to privilege).			
.11	Limit the number of witnesses to be adduced at trial.			
.12	Direct joinder or removal of parties.			





		Date DUE	Date DONE	Remarks
.13	Direct addition of third party and give consequential directions.			
.14	Fix a date for trial. *			
.15	Deal with any application to amend pleadings.			
.16	<p>Set out a timetable for compliance with any of the above directions. *</p> <p>Note: The directions may be given in stages. The Judge may fix as many pre-trial conferences as required to dispose of pre-trial issues. The directions may be broken up and given on different dates. Some directions, for instance, further and better particulars, discovery and interrogatories; amendment of pleadings may have been dealt with earlier by application of parties or could be raised and dealt with during pre-trial case management.</p> <p>You should be prepared to deal with as many aspects of the case as possible at the first pre-trial conference. The following steps guide you as to issues to be considered during your case preparation. As mentioned, some of those issues may be dealt with prior to pre-trial case management.</p>			
6.2	Throughout preparation of case, ensure that you periodically review the thoroughness of your preparation and its results, for example:			
a.	Check for new case law.			
b.	Consider need for additional investigation on any aspect of case.			
c.	Reconsider relationship between various aspects of case.			
d.	Consider any possible change in the position of the parties (eg based on pleadings and discovered documents).			
e.	Consider what evidence will be needed at trial and how evidence will be lead.			
f.	Confirm availability of witnesses or locate original documents.			





		Date DUE	Date DONE	Remarks
	In light of the information and evidence gathered after inception, consider whether action commenced in appropriate Courts and whether a transfer is necessary.			
6.3	Report to client on a regular basis.			
6.4	Consider necessity or desirability of any of the following before or during pre-trial case management:			
.1	Notice to admit facts.			
.2	Disposal of the cause or matter on a point of law.			
.3	Trial of a preliminary issue that would dispose the entire cause or matter.			
.4	Inquiry, assessment or accounting before Registrar.			
.5	Production, inspection, detention, preservation or recovery of property.			
.6	Appointment of a receiver.			
.7	Interim payment.			
.8	Withdrawal or Discontinuance.			
.9	Consent Orders.			
6.5	Research the law. Prepare memorandum of law, including basis of action, defence, possible arguments, damages etc.			
6.6	Organise documents:			
.1	Collect all documents (and all copies of them) including electronic documents from client. <i>Ensure client understands the scope of disclosure required. Note their receipt, and mark all documents and copies with a serial number for identification and retrieval. If client needs documents back, make copies.</i>			
.2	Review documents and determine relevance. Segregate documents that appear to be irrelevant.			
.3	File documents using a logical classification system, but consider integrity of client's files (ie it may be best not to rearrange client's files but to make copies and use that to reconstruct the order of documents as you deem appropriate).			





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.4	If documents are extensive, consider a software document management system.			
.5	Make summary list, indicating file location and general description of documents.			
.6	Make chronological list, indicating file location of documents.			
.7	Determine, which documents are privileged; segregate them; and make list.			
.8	Preserve originals of disputed documents (authenticity) that may become exhibits at trial (ie do not hole punch or mark).			
6.7	Review documents:			
.1	Obtain originals if possible. Check authenticity. Get verification if necessary.			
.2	Follow-up any leads coming from documents. Consider search for follow-up documents. <i>Eg answer to a letter, receipt evidencing a payment.</i>			
.3	Consider all possible inferences that can be made from them.			
.4	Decide which documents you want to use at trial, which your opponent will likely use, and which may be inadmissible.			
.5	Determine how you will prove and introduce key documents at trial. Decide which witness will identify each of your disputed documents.			
6.8	Discovery of documents:			
.1	Discovery of documents of other parties:			
a	Serve demands for discovery on all other parties, if necessary.			
b	Diarise the deadline. If not received by then, consider application for discovery . If received, study list of documents and affidavit verifying list.			
c	Send copies of list(s) received to client.			
d	Review list(s), possibly with client, to see if there are any omissions. Compare lists, including client's list, to see if there are any obvious omissions.			





	Date DUE	Date DONE	Remarks
e It is not appropriate to test sufficiency of list by use of interrogatories. An application for specific discovery should be made.			
f If list is not complete, make application for further discovery of other documents.			
g Inspect documents. Check originals for such things as authenticity, written notes, and backs of pages.			
h Obtain copies where needed.			
i If supplementary list of documents is received, inspect documents and obtain copies.			
j Keep a set of copies for marking up, making Counsel notes etc.			
k Remember that opponent's documents may only be used for purposes of case for which they were obtained (you may be found in contempt of Court if documents are used for some other, improper purpose).			
.2 Documents in possession or control of non-party. Request for copies and consider application for third party discovery, if necessary.			
.3 Upon receipt of a demand for discovery of documents:			
a If not already done, ensure that client understands importance of disclosing all documents (consider use of standard form letter). Get all of client's documents and make decision yourself as to which are relevant, or possibly relevant.			
b Keep record of all documents received from client.			
c Consider making a claim of privilege, or resisting because of trade secrets. Consider whether portions of documents should be edited for confidential or personal information, unrelated to matter in question.			
d Prepare draft list of documents and send to client for check on accuracy and completeness.			





		Date DUE	Date DONE	Remarks
	e	Send list within the prescribed time limit.		
	f	Prepare and send affidavit verifying list, if required and warranted.		
	g	Advise client of requirement for on-going disclosure.		
	h	Prepare and send supplementary list of documents if required.		
.4		An appointment to examine for discovery includes a requirement that the party bring all relevant documents to the examination, even in the absence of a demand for discovery of documents.		
.5		Note ongoing obligation to produce documents. Produce supplemental list if aware of further documents.		
6.9	Admissions			
.1		Consider sending notice to admit truth of facts or authenticity of documents to opponent.		
.2		If you receive a notice to admit, respond within the period/days. Note costs consideration where there is an unreasonable refusal to admit.		
6.10	Witnesses			
.1		List all prospective witnesses. <i>You may be able to interview and get a statement from a witness, but not from a witness represented by a Counsel except through or with the consent of that Counsel and no contact may be made with any party except through or with the consent of that Counsel. Before contacting an opposing party's expert, you must notify the opposing party's Counsel, so that the Counsel can advise their expert on the matters, which are covered by legal professional privilege, and matters, which the expert may not disclose.</i>		



My notes...





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.2	Consider who you will interview, or attend the interview of, prospective witnesses, bearing in mind the risk that if you interview alone and the witness changes their story at trial, you will have no way of cross-examining on this. Consider having an associate or legal assistant conduct the interview or be present at the interview; consider using an investigator or adjuster.			
.3	Contact each person and attempt to arrange an interview.			
.4	If the witness refuses to talk to interviewer, consider sending written request, noting refusal, and indicating that you may issue subpoena to attend trial to testify or produce documents.			
.5	Prepare for interview:			
a	Collect any previous statements and any documents in relation to which witness may be able to give evidence.			
b	Review pleadings and issues.			
c	Prepare outline of questions to cover.			
d	If you are not going to conduct the interview yourself, instruct the interviewer.			
.6	If the witness refuses to cooperate:			
a	Serve subpoena on witness and all parties on record.			
b	Request for an interview again by stating that it may eliminate necessity to attend trial.			
.7	Interview or examine witness. Interviewer/ examiner should question thoroughly and also:			
a	Find out if witness has made any previous statements.			
b	Try to identify other potential witnesses.			
.8	After interview/examination, interviewer/ examiner should, in consultation with you:			
a	Record an assessment of the person's strengths and weaknesses as a witness.			





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b	If there was an interview, consider preparing a written statement (eg Statutory Declaration) and having witness review and sign it.			
.9	Review statement. Note inconsistencies, compare to other statements and to documents. Consider how statement affects the case.			
.10	Determine whether further interviews are required.			
.11	Determine who you are going to call as witnesses, and for what purpose. Consider whether you will be calling an adverse party as a witness.			
.12	For those who will be witnesses:			
a	Discuss courtroom procedures, how to dress, how to answer questions.			
b	Advise them of areas you intend to examine on, and go over the areas on which he may be cross-examined. Note: You are not permitted to coach the witness.			
c	Ask them to advise of change of address.			
d	Advise them of trial date, and diarise to send reminders. Ensure that you notify them of any changes, settlement, withdrawal of defence etc.			
e	For witnesses overseas, consider obtaining leave to take evidence by deposition.			
6.11	Experts:			
.1	At the outset confirm that the expert does not have conflict. If an expert opinion has already been given, write to ensure expert is aware that an action has been commenced, informing of your involvement, and advising to retain records. Ensure at outset expert knows he would need to be available to attend trial.			
.2	Determine need for expert evidence on any issue.			
.3	Select experts.			
.4	Discuss expert's fees with client, including who is responsible for the expert's account (See Section 6.11.5(h)).			





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.5	Initial interview with expert:			
a	Discuss expert's qualifications, publications, court experience.			
b	Discuss the case and the issues.			
c	Set out the expert's terms of reference. Be clear as to what you want, set parameters, indicate assumptions you want the expert to make. Ensure expert has all necessary facts, documents and reports; keeping in mind expert's entire file may have to be produced at trial.			
d	Ensure that expert understands need to write report or give testimony in ordinary words, rather than technical language where possible. Advise expert of the trial date.			
e	Discuss the expert's role in the case. <i>Make sure expert understands that expert is not an advocate or a finder of fact, but is tasked to provide independent and objective expert opinion on areas within expertise. Make sure it is known that the expert will be cross-examined and may be compelled to produce entire file. Consider carefully what should be in the expert's file. Inform of possibility of being served with a subpoena and discuss privilege. Advise expert not to speak about the action with opposing Counsel, or anyone else, without first contacting you so that you may advise the expert which matters are covered by legal professional privilege.</i>			
f	Obtain suggestions for reading that will improve your knowledge of the area or literature that may be used to cross-examine opposing party's expert.			
g	Determine whether other experts will be needed.			
h	Get an estimate of fees. Set clear parameters as to what can be charged. Make arrangements regarding payment, including who will be responsible for the expert's account (you or your client).			
i	Assess the expert's strengths and weaknesses as a witness.			





		Date DUE	Date DONE	Remarks
.6	Furnish expert with all relevant reports and records, which might impact the opinion, whether supportive or contrary/contradictory.			
.7	Monitor progress if appropriate (eg if report will be completed in stages).			
.8	Obtain report or prepare summary of opinion evidence and review with expert in detail, considering how it will affect case. Cross-examine expert on it to ensure the weakness in the reports are addressed.			
.9	Decide whether you will use expert's report or use the expert as a witness.			
.10	If you intend to submit the report in evidence, furnish a copy of it to the other parties, along with the expert's qualifications. Consider making an agreement with opposing Counsel to exchange expert reports at an earlier date.			
.11	Advise the expert of the trial date when the date is set (See Section 6.11.5(d)).			
.12	If using the expert as a witness:			
a	If the expert is inexperienced as a witness, discuss courtroom procedure, how to dress, and how to answer questions.			
b	Advise of areas you intend to examine on. Go over examination questions and sample cross-examination questions. Advise of possibility of re-examination and circumstances that may give rise to this.			
.13	When you find out what experts your opponent intends to call, do some research on them. Look at publications and compare to statement. You cannot contact your opponent's experts without giving notice to your opponent first so that the expert can be advised as to which matters cannot be disclosed because they are subject to legal professional privilege. Use your expert to give you ideas or provide literature for cross-examination.			
.14	Consider the need for a site visit.			





		Date DUE	Date DONE	Remarks
6.12	Medical evidence (in a personal injury action):			
.1	For plaintiff:			
	a Consider sending client to specialists; advise specialists that they may be required to give evidence.			
	b Consider whether necessary to obtain report from each doctor and medical practitioner (eg physiotherapist, chiropractor) whom client has seen. Get medical records as required.			
	c Get updated reports periodically, the last as close to the trial date as possible.			
	d Get hospital records and ensure they are admissible.			
	e If the defendant requests an independent medical examination, consider whether the request is reasonable. If it is, request a copy of the report as a condition of the exam, noting you will likely have to produce your expert reports at the same time.			
	f If using doctors as witnesses, see <u>Section 6.11 above</u> .			
.2	For defendant:			
	a Get all doctor and medical practitioner records. Consider whether full medical records are required.			
	b Consider an independent medical examination. Direct expert's attention to specific areas of concern. Study report and supply copy of narrative or whole report to opponent, usually in exchange for plaintiff's reports.			
	c Decide whether to use doctor as witness and, if so, see <u>Section 6.11 above</u> .			
6.13	Other evidence.			
.1	Depositions to preserve evidence that may not be available at trial (eg due to absence, infirmity, possible death).			





		Date DUE	Date DONE	Remarks
.2	Evidence regarding damages:			
a	Collect all evidence as to existence and quantum.			
b	Consider using an accountant and/or other expert.			
.3	Valuation:			
a	Where valuation of property is an issue, prepare thoroughly by studying the law, considering all possible bases of claim and the strengths and weaknesses of both you and your opposing Counsel's theories respectively.			
b	Consider using an expert.			
.4	Statistical and other studies. Consider the use of these to prove the existence of an economic situation or fact.			
.5	Visual presentations. Consider preparing:			
a	Photographs. Ensure that a witness will be available at trial that will be able to verify that it is a reasonable representation of the subject as of the time in question.			
b	Records (eg hospital records).			
c	Sketches, diagrams, models, computer reconstructions. Ensure they will assist the witness and the court.			
d	Demonstration of plaintiff's injuries (eg scars, impaired functioning).			
e	Film/videotape. Be prepared to give evidence about the taking, development and projection of the film. Ensure witness will be able to verify it as accurately depicting events as seen. Have opposing Counsel preview.			
6.14	Interrogatories			
.1	Consider timing (before or after discovery and inspection of documents).			
.2	Consider what parties to serve with interrogatories. Carefully consider questions, which may be answered effectively by this method, and draft precisely.			





		Date DUE	Date DONE	Remarks
.3	Obtain an order and serve interrogatories on other parties, notifying all parties on record.			
.4	Consider whether further interrogatories would be useful.			
.5	When served with interrogatories, consult with client and respond through affidavit within specified period/days.			

7. NEGOTIATION AND SETTLEMENT

Note: Fiduciary duty requires you to always bear in mind and promote the possibility of settlement at any stage of litigation

7.1	<u>For plaintiff:</u> Consider whether it is appropriate to settle even if client has not fully recovered his losses.			
7.2	Continually evaluate and consider all relevant factors relating to liability and quantum.			
7.3	Evaluate case (law, facts, evidence, parties, witnesses, contributory negligence, injuries etc).			
7.4	Form an opinion on liability and contributory negligence and arrive at a consensus of minimum settlement you consider to be acceptable.			
7.5	Interview client and explain the case in detail, discussing advantages and disadvantages of settlement. When you reach an agreement as to a figure or range, get written instructions.			
7.6	Decide on negotiation strategy, including use of mediation.			
7.7	<u>For plaintiff :</u> Send demand letter on a “without prejudice” basis to all defendants or try to get defendants to make an offer.			
7.8	<u>For defendant :</u> Make a proposal on a “without prejudice” basis or wait for a demand.			
7.9	Keep client informed as negotiations continue and obtain further instructions, when necessary.			
7.10	Be clear on agreement reached (ie does it cover all aspects of claim including costs, and does it include all parties (or potential parties)).			





		Date DUE	Date DONE	Remarks
7.11	If agreement is reached:			
.1	Inform client.			
.2	Send written confirmation to other party's lawyer.			
.3	Advise Court registry, witnesses, and experts that the matter has been settled.			
.4	Prepare settlement documents — usually a consent order and a release.			
.5	Prepare bill of costs, if part of settlement agreement.			
.6	Proceed to tax the bill of Costs if an agreement cannot be reached			
7.12	If unsuccessful, consider:			
.1	Offer to settle (<i>Calderbank letter</i>):			
a	<u>For plaintiff</u> : Serve offer to settle.			
b	<u>For defendant</u> : Serve offer to settle.			
c	Discuss offer to settle with client and costs consequences.			
d	The offer may be withdrawn before it is accepted.			
.2	If offer is accepted:			
a	Obtain any special approval required for settlement involving infants or persons under a disability.			
b	Advise Court registry of settlement.			
c	Advise other parties, witnesses, and experts that the matter has been settled.			
8. SET DOWN FOR TRIAL – [Final Stage Of Pre-Trial Case Management]				
8.1	Prepare list of witnesses (or witness statements, if directed) with time estimates for direct and cross examination. Obtain opposing Counsel estimates.			
8.2	Contact Court registry and enquire if they can advise on available dates (<i>if they are unable to provide exact dates, you will usually get an indication as to when the matter is likely to be heard</i>), then consult with client, witnesses and opposing Counsel.			





		Date DUE	Date DONE	Remarks
8.3	During case management, inform Judge of the list of witnesses and the estimated number of days required for trial. Fix trial dates.			
8.4	Inform clients and witnesses of the trial date (as soon as you know).			
8.5	Review the file and ensure all trial records have been exchanged and all other directions given during the pre-trial case management have been complied with.			
8.6	Send out notices and subpoenas as required, including:			
.1	Subpoena to appear and testify at trial and bring documents or physical object.			
.2	Notice to produce document or physical object at trial. <i>Once all pre-trial matters are concluded, the matter may proceed to trial.</i>			
9. PREPARATION FOR TRIAL				
9.1	Make final arrangements:			
.1	Arrange for witnesses: timing, arrival, order of testimony.			
.2	Arrange for translators.			
.3	Arrange for physical evidence (eg videos, television, chart stand etc).			
9.2	Conduct final interviews with client and witnesses.			
9.3	Prepare trial brief for Counsel for trial (this is strongly recommended). Review and ensure completeness of the trial brief. <i>Prepare a trial brief even if you would be conducting trial. You can use the brief to refresh your memory if the matter is adjourned and it also provides for contingency, if you are unable to attend Court.</i>			
.1	Collect, review and arrange exhibits.			
.2	Collect and arrange bundle of pleadings, document (agreed and non-agreed), statement of agreed facts, statement of disputed facts, statement of issues to be tried and witness statements.			





		Date DUE	Date DONE	Remarks
.3	Consider preparing a layperson's glossary of any technical terms that will be used. Make copies for judge and opposing Counsel; send to opposing Counsel prior to trial to ensure that there are no objections.			
.4	Prepare opening address; consider closing address (written is best).			
.5	Prepare for examination-in-chief and cross-examination.			
.6	Consider any evidentiary issues that may arise during course of trial.			
.7	Prepare an outline of your proposed submission (or proposed written argument) to guide you as to the matters that need to be elicited or proven at trial.			
.8	Prepare brief of authorities and make copies of any authorities you anticipate relying on during trial.			
9.4	At the end of trial obtain directions on timeline for exchange of written submissions and date for decision.			
9.5	Diarise the dates.			

If the judgment/decision at the High Court is not favourable to your client, consider an appeal to the Court of Appeal against all or part of the decision, see Appendix III.





APPENDIX I		Date DUE	Date DONE	Remarks
1	Appeals to Judge In Chambers			
	Upon completion of any interlocutory application, ie summary judgment, application for further and better particulars, discovery, security for cost etc, if the decision is not favourable to your client.			
1.1	Consider filing an appeal.			
1.2	Diarise deadline for filing appeal (10 days).			
1.3	Consider an application for stay of execution or stay of proceedings.			
1.4	Write to client and advise on merits of appeal and advise on application for stay. Note: Ensure the client has been given a deadline to respond so you have sufficient time to file the appeal before time lapses.			
1.5	Prepare draft order for filing.			
1.6	KIV extraction of sealed order.			
1.7	Obtain instructions to appeal where appropriate.			
1.8	File and serve Notice of Appeal within 10 days of decision.			
1.9	KIV extraction of sealed Notice of Appeal.			
1.10	Consider whether an application to adduce further evidence is necessary and file and serve application where necessary (See O56 r1(3A) Rules of High Court 1980).			
1.11	KIV extraction and service of sealed application to adduce further evidence.			
1.12	Diarise date of hearing once sealed Notice of Appeal is extracted.			
1.13	Serve sealed Notice of Appeal at latest within 5 days of hearing date (See O56 r1(3) Rules of High Court 1980).			
1.14	KIV preparation for hearing (ie submissions and authorities) at least two weeks before hearing date.			
Upon completion of Appeal, if a further appeal to Court of Appeal is necessary, see Appendix III.				



APPENDIX II		Date DUE	Date DONE	Remarks
2 Appeals to High Court (After Trial)				
2.1	File Notice of Appeal (Form 140) within 14 days of decision/judgment (O49 r2(3) Subordinate Court Rules 1980). Note: Seven copies of the Notice of Appeal to be filed at the lower court Registry.			
2.2	Serve Notice of Appeal within time limited for the filing of appeal.			
2.3	Upon making payment to court, the court appealed from shall supply a certified copy of the notes of evidence, a certified copy of the judgement and written judgement or ground of decision.			
2.4	Within 14 days after being notified the above is ready, to lodge RM250.00 for security for costs of the appeal (O49 r2(5)(b) Subordinate Court Rules 1980).			
2.5	File in the High Court in duplicate a Memorandum of Appeal within 14 days of the receipt of the notice that the notes of proceedings and the grounds of judgment are ready. (O55 r2(1) Rules High Court 1980).			
2.6	Prepare the appeal record (O49 r3A(1)(a)-(f) Subordinate Court Rules 1980).			
2.7	Two copies of the appeal record to be filed at High Court within six weeks upon being notified that the notes of evidence, a certified copy of the judgement and written judgement or ground of decision (O49 r3A(3) Subordinate Court Rules 1980).			
2.8	Serve Memorandum of Appeal and appeal record within time limited on all parties served with the Notice of Appeal (O49 r3A(4) Subordinate Court Rules 1980 and O55 r2(2) Rules High Court 1980).			
3 Appeals to High Court (Interlocutory Application)				
3.1	File Notice of Appeal within 14 days of decision/order (O49 r2(3) Subordinate Court Rules 1980). Note: Six copies of the Notice of Appeal to be filed at the lower court Registry and one copy to the registry of the High Court.			



APPENDIX II (continued)		Date DUE	Date DONE	Remarks
3.2	Serve Notice of Appeal within time limited for the filing of appeal to the respondent.			
3.3	To file Record of Appeal in the High Court within three weeks of filing the Notice of Appeal (O49 r6(3) Subordinate Court Rules 1980).			
3.4	Serve Record of Appeal on all parties together with the Notice of Appeal.			
3.5	Await notification of hearing date.			





APPENDIX III		Date DUE	Date DONE	Remarks
4. Appeals to Court of Appeal				
4.1	Consider if decision is appealable under Section 68 Courts of Judicature Act 1964.			
4.2	Consider if leave to appeal is necessary. (See also Practice Direction 2/96). Note: When uncertain, file both a Notice of Appeal and an Application for Leave to Appeal simultaneously and then later withdraw whichever one proves unnecessary.			
4.3	File draft order and KIV extraction of sealed order.			
4.4	File Notice of Appeal within one month of decision/order/judgment together with court deposit (Rule 12, Rules of Court of Appeal). Note: Ensure sufficient disbursements are in hand or request a top-up.			
4.5	Serve Notice of Appeal within time limited and send one copy of Notice of Appeal by registered post to the Registry of the Court of Appeal. If appeal is urgent, write to the President of Court of Appeal under Rule 22, Rules of Court of Appeal for an urgent hearing date.			
4.6	Consider application for leave to adduce further evidence.			
4.7	KIV filing the Record of Appeal within eight weeks of filing the Notice of Appeal (Rule 18(7), Rules of Court of Appeal).			
4.8	Prepare and send draft index of Record of Appeal to Respondent(s). Note: Ask for a response within 48 hours.			
4.9	Within one week of filing the Notice of Appeal, write to the Secretary of the High Court Judge to request the notes of evidence (See Practice Direction 2/91).			
4.10	If the notes of evidence are NOT provided within one month of the date of Notice of Appeal was filed, write to the President of the Court of Appeal for an extension of time to file the Record of Appeal.			
4.11	Prepare Memorandum of Appeal.			





APPENDIX III (continued)		Date DUE	Date DONE	Remarks
4.12	File Record of Appeal once notes of evidence are available (with or without Grounds of Judgment). Also file Chronology of Events (Rule 19(10), Rules of Court of Appeal). Note: Record of Appeal MUST contain Memorandum of Appeal.			
4.13	Serve Record of Appeal and Chronology of Events within time limit for filing Record of Appeal on all parties served with the Notice of Appeal.			
4.14	Follow up with the Registry of Court of Appeal to fix hearing date.			
4.15	Commence preparation of skeleton arguments for filing.			
4.16	KIV receipt of letter notifying you of date fixed for hearing or case management appointment.			
4.17	Diarise date for hearing or case management appointment.			
4.18	KIV preparation for hearing at least two months prior to hearing date.			
4.19	File skeleton submissions within time limit fixed either in letter from Court of Appeal or at case management appointment.			
4.20	Attend hearing.			
Upon completion of Appeal, if a further appeal to Federal Court is necessary, see Appendix IV.				
5.	Appeals to Court of Appeal for Respondent			
5.1	Upon receipt of Notice of Appeal, inform client.			
5.2	Consider if appeal has been filed in time or if leave should have been obtained.			
5.3	Consider an application to strike-out the appeal if filed out of time or if prior leave not obtained.			
5.4	Consider an application for security for costs.			
5.5	Await receipt of draft order and draft index to Record of Appeal.			
5.6	Await receipt of Record of Appeal. Check for procedural compliance. (ie has Memorandum of Appeal been filed, has sealed/draft order been included).			





APPENDIX III (continued)		Date DUE	Date DONE	Remarks
5.7	Consider an application to strike-out the appeal for procedural non-compliance.			
5.8	Consider filing a cross-appeal (at any time but not later than days after service of the Record of Appeal). Note: Consider also applying for leave to adduce further evidence.			
5.9	Await notification of hearing date by letter from Court of Appeal or of case management appointment.			
5.10	Diarise hearing date or case management appointment.			
5.11	KIV preparation for hearing at least two months prior to hearing date.			
5.12	File skeleton submissions within time limit fixed either in letter from Court of Appeal or at case management appointment (usually one month before hearing date).			
5.13	Attend hearing.			
Upon completion of Appeal, if a further appeal to Federal Court is necessary, see Appendix IV.				





APPENDIX IV		Date DUE	Date DONE	Remarks
6. Appeals to Federal Court				
6.1	Consider if decision is appealable under Section 96 Courts of Judicature Act 1964.			
6.2	Leave to appeal is necessary unless otherwise prescribed by law. Consider an application for stay together with the application for leave.			
6.3	File draft order and KIV extraction of sealed order. Write to Court of Appeal to request grounds of judgment of the Court of Appeal.			
6.4	File application for leave to appeal within one month of decision/order/judgment (Section 96 Courts of Judicature Act 1964). File additional copy with the Court of Appeal and serve Respondent at least seven clear days. Consider applying for an urgent hearing where necessary.			
6.5	File six copies Notice of Appeal within time prescribed by order granting leave to appeal together with court deposit (Rule 56, Rules of Federal Court).			
6.6	Serve Notice of Appeal within time limited.			
6.7	Prepare and file Record of Appeal within six weeks of filing Notice of Appeal. (Rule 56(6), Rules of Federal Court) together with Chronology of Events.			
6.8	Serve Record of Appeal and Chronology of Events within time limited for filing the Record of Appeal on all parties served with Notice of Appeal.			
6.9	Await notification of hearing date.			
7. Appeals to Federal Court for Respondent				
7.1	Diarise hearing date for application for leave to appeal.			
7.2	Consider need for leave to file cross appeal.			
7.3	Upon receipt of Notice of Appeal, inform client.			
7.4	Consider if appeal has been filed in time.			
7.5	Consider an application to strike-out the appeal if filed out of time.			
7.6	Consider an application for security for costs.			





APPENDIX IV (continued)		Date DUE	Date DONE	Remarks
7.7	Await receipt of draft order and draft index to Record of Appeal.			
7.8	Await receipt of Record of Appeal. Check for procedural compliance.			
7.9	Consider an application to strike-out the appeal for procedural noncompliance.			
7.10	Consider filing a cross-appeal (at any time but no later than 10 days after service of the Record of Appeal).			
7.11	Await notification of hearing date by letter from Federal Court or of case management appointment.			
7.12	Diarise hearing date or case management appointment.			
7.13	KIV preparation for hearing at least two months prior to hearing date.			
7.14	File skeleton submissions within time limit fixed either in letter from Court of Appeal or at case management appointment (usually one month before hearing date).			
7.15	Attend hearing.			





POINTS TO NOTE

1. Keep in mind the client's best interests in relation to the litigation.
2. Remember to cater for any amendments to the law or Court procedures, after this Checklist was last updated.
3. It may not be in your client's interest to adhere to all aspects of the Checklist.
4. Consider recommending against initiating an action, or to seek settlement or other dispute resolution processes like arbitration, expert determination, conciliation or mediation.
5. The nature and scope of the litigation in each case is a matter for your own professional judgment. Do not make the litigation more complicated than necessary.
6. Whether preparing for trial or interlocutory applications, **keep it simple.**
7. After the initial stages, this Checklist proceeds on the basis that the action has been commenced by **Writ endorsed with a Statement of Claim and filed in the High Court.**
8. Some of these procedures are applicable with necessary modifications to other forms of originating process.
9. This Checklist can be modified to use for actions commenced in the Subordinate Courts as appropriate subject to limits on jurisdictions and nature of relief available.
10. Claims relating to motor vehicle accidents, landlord and tenant, and distress must be commenced in the Subordinate Courts, regardless of the value of the claim. Personal injury and fatal accident claims not arising from motor vehicle accident may be brought in the High Court or Subordinate Courts. Consequently, any reference to procedures relating to personal injuries or death should be read accordingly.

Any decision of a Registrar is appealable to the Judge in Chambers and any decision made by a Judge whether in Chambers or in Open Court is appealable to the Court of Appeal subject to Section 68 Courts of Judicature Act 1964. (Also, note High Court Practice Direction No 2 of 2008 pertaining to Striking-Out and Summary Judgment applications.)

Any decision of a Magistrate or Sessions Court Judge is appealable to the High Court and the Court of Appeal but subject to Sections 28 and 68 Courts of Judicature Act 1964.

