EVIDENCE ISSUES IN FAMILY LAW[1]

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Introduction

This paper deals with some selected evidentiary issues that arise in family law trials and appeals. Evidence in a family law case matters. Knowing the rules of evidence can make a difference in the result of your case. Knowing when to object (and not object) to evidence is an important part of your advocacy.

Given the frequency with which evidentiary issues arise, it is advisable to always bring a copy of your Sopinka *Evidence*[3] text with you to trial.

1. The Rule in *Browne and Dunn*

This rule is best described as one of fairness in the examination and cross-examination of a witness.

Essentially, if a party intends to impeach a witness's credibility, the evidence by which the witness is to be impeached must be presented to that witness on cross-examination.

A clear illustration of how the rule operates can be found in the recent decision of the Court of Appeal for Ontario of *R. v. Quansah*.[4] As Justice Watt explained in *Quansah*, the rule is rooted in the following considerations of fairness[5]:

i. **Fairness to the witness whose credibility is attacked**: The witness is alerted that the cross-examiner intends to impeach his or her evidence and given a chance to explain why the contradictory evidence, or any inferences to be drawn from it, should not be accepted [citations omitted];

ii. **Fairness to the party whose witness is impeached**: The party calling the witness has notice of the precise aspects of that witness's testimony that are being contested so that the party can decide whether or what confirmatory evidence to call; and

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[1] This paper deals with evidentiary issues at trial. Rule 23 of the *Family Law Rules* sets out some of the procedural requirements to consider in a family law trial. Rule 23 is re-produced at Schedule "A".

[2] With the assistance of Richard Niman and Chloe Van Wirdum of Niman Gelgoot & Associates LLP.

[3] Sidney N. Lederman, Alan W. Bryant and Michelle K. Fuerst (Eds.), *The Law of Evidence in Canada*, 4th ed. (LexisNexis Canada, 2014).

[4] 2015 ONCA 237.

[5] *Ibid*. at para 78.

iii. **Fairness to the trier of fact**: Without the rule, the trier of fact would be deprived of information that might show the credibility impeachment to be unfounded and thus compromise the accuracy of the verdict.

Justice Watt also explained that "failure to cross-examine a witness at all or on a specific issue tends to support an inference that the opposing party accepts the witness's evidence in its entirety or at least on the specific point."[6] Counsel should bear this potential inference in mind when giving consideration to the issues upon which they plan to cross-examine (and not cross-examine).

Finally, while it is a "rule" of fairness, it is not fixed.[7] Justice Watt clarified that "the extent of its application lies within the sound discretion of the trial judge and depends on the circumstances of each case."[8]

In a related way, counsel should be cautious about the risk of evidence they do *not* call as there is a risk of an adverse inference being drawn by the court. This issue was very recently discussed by The Honourable Justice Stevenson in *McCabe v. Tissot*.[9]

2. The Proper Use of a Questioning Transcript at Trial

In many ways, questioning can serve as the foundation for the cross-examination at trial of an adverse party. Depending on the case, questioning can be used to "box in" a party to a version of events. Then, when the time comes for trial, the transcript of that evidence can be put to the witness for the purposes of impeaching their testimony or, more importantly, to obtain admissions previously provided at questioning.

What follows are some tips for putting the transcript to the witness at trial[10]:

a. Bring extra copies of the transcript to trial so the witness and the judge can read along;

b. Ensure the **exact** same question is asked at trial that was asked at questioning;

c. Before putting the transcript to the witness, ask the witness if she remembers giving her evidence at the questioning;

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[6] *Ibid*. at para 79.
[7] Some judges feel that the right of reply balances out any unfairness, although that remedy creates its own potential problems.
[8] *Ibid*. at para. 80.
[9] 2016 ONSC 2285 particularly at paragraph 275 onwards.
[10] This is far from a comprehensive list.

d. Put the transcript before her and allow her to review the portion you want to take her to;

e. Read aloud to the witness the questions and answers from the transcript;

f. Ask the witness whether she admits that the answer given at questioning was true when given at questioning.

3. Fresh Evidence on Appeal

The term "fresh evidence" refers to evidence which was not adduced at trial but is sought to be introduced on appeal by a party.

Appellate courts will only admit fresh evidence in very limited circumstances. Leave is required. The party seeking to admit the fresh evidence must satisfy the court that the evidence:

a. was not reasonably available at trial[11];
b. is reasonably credible; and
c. if believed, would affect the result at trial and bears on a potentially decisive issue.[12]

Section 134(4)(b) of the *Courts of Justice Act* addresses the provision of fresh evidence on appeal. The section permits courts to admit fresh evidence on appeal as follows:

> **134.(4)** Unless otherwise provided, a court to which an appeal is taken may, in a proper case, [...]
>
> **(b)** receive further evidence by affidavit, transcript or oral examination, oral examination before the court or in such other manner as the court directs; [...]
>
> to enable the court to determine the appeal.

Counsel should bear in mind the distinction between "new" evidence and "fresh" evidence. The former is evidence that arose after trial and is not properly considered "fresh" evidence on appeal. When "new" evidence or facts exist, it should make its way before a court on a variation application (assuming that the order itself is capable of variation). It appears that it is often easier to adduce "new" evidence on a parenting appeal.

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[11] This step has also been characterized as the evidence "could not have been obtained, by the exercise of reasonable diligence, prior to trial" in *Sengmueller v. Sengmueller,* [1994] O.J. No. 276 (C.A.)

[12] Harold Niman, *Evidence in Family Law* (Toronto: Canada Law Book, 2010) at page 10-4 quoting James G. McLeod and Alfred Mamo, *Annual Review of Family Law 2000* (Toronto: Thomson Carswell, 2000) .

4. Hearsay and Exceptions to Hearsay

Hearsay is probably the most common evidentiary issue that arises in family law trials. If evidence is hearsay, it may be admissible under an exception; however, it still must be tendered for some relevant purpose.

In seeking to admit hearsay, consider the following three questions:

(1) Is it hearsay? If not, then it is admissible.

> *What is hearsay*? Hearsay is any out-of-court statement introduced to prove the truth of the matter asserted therein. This is not only an issue during oral evidence but can also arise in affidavit evidence.[13]

(2) If it is hearsay, is it admissible under a traditional or categorical hearsay exception?

(3) If it is hearsay and not admissible under a traditional or categorical exception, is it admissible on the principled basis of necessity and reliability?[14]

Below is a summary of hearsay exceptions most commonly applicable to family law cases.[15]

- **a. Previous testimony**
- **b. Business records**
- **c. Business records (regularly-kept records)**
  - i. Common law exception
  - ii. Statutory exceptions
- **d. Past recollection recorded**
- **e. Child abuse hearsay**
- **f. Prior inconsistent statements used for truth**

Non-Hearsay Purpose

Another common issue in the hearsay context is hearsay evidence entered *not* for the truth of the contents of a statement. As indicated above, this evidence will only be admissible in limited circumstances as part of the 'narrative' in the case. As long as the statement is not being proffered to prove the *truth* of the statement and is relevant, it may be admissible.[16]

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[13] See *Family Law Rules* 14(18), 14(19) and 16(5).

[14] As a result of the Supreme Court of Canada's decision in *R. v. Khan*, [1990] 2 S.C.R. 531.

[15] Harold Niman, *Evidence in Family Law* (Toronto: Canada Law Book, 2010) at 9:40.10 9-9 (contributor: Prof. Rollie Thompson).

[16] You cannot skirt the rule by simply telling the trial judge that the evidence is not offered for its truth.

5. Improperly or Illegally Obtained Evidence

Improperly or illegally obtained evidence and the issues arising from it are quite prevalent in family law given the rise of technology and social media. Most people have more than one e-mail account and are active and present on social media including Facebook, Twitter, and Instagram. Examples of improper or illegally obtained evidence include: e-mails or other on-line information obtained through "hacking", video or tape recordings[17], personal diaries, and cards received from third parties.

Trial judges are more frequently faced with balancing the probative value of illegally obtained evidence with the policy considerations of excluding that evidence. Courts grapple with the admissibility of illegally obtained evidence in various contexts including surreptitiously recorded telephone conversations between parents or between parent and a child and "hacked" e-mail obtained by spyware or other illegal means.[18]

Even if a party in a custodial dispute is facing criminal charges relating to the recordings, some courts will admit the impugned evidence due to the overriding and primary concern of the best interests of the child.[19]

Conversely, some judges take a dim view of illegally obtained evidence and not only refuse to admit it but criticize the practice as a whole. In the 2006 decision of *Hameed v. Hameed*[20], Justice Sherr of the Ontario Court of Justice was clear about his view of this form of evidence:

> I ruled that this evidence was inadmissible. Surreptitious recording of telephone calls by litigants in family law matters should be strongly discouraged.
>
> There is already enough conflict and mistrust in family law cases, without the parties' worrying about whether the other is secretly taping them. In a constructive family law case, the professionals and the courts work with the family to rebuild trust so that the parties can learn to act together in the best interests of the child.

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[17] Recording of communications are permitted under s. 184(2)(a) of the *Criminal Code* only if an intended recipient of the communication consents to the recording (eg. an individual could record himself in a conversation with someone else because he himself has consented to conduct the recording; the other party's consent would not be required).

[18] *U.(A.J.) v. U.(G.S.)* 2015 ABQB 6 at paras 151-53. This case provides a helpful review of the way in which courts across Canada considered the admissibility of illegally obtained evidence in family law proceedings. Note as well the ultimate finding at paragraph 168 of the decision where the Court finds that "it is a rare case where illegally obtained evidence should be admitted". The consequence of that finding is that a "parenting expert should neither review nor consider evidence which is presumptively inadmissible."

[19] *Ibid*. at para. 158 discussing *Toope v. Toope*, 2000 CarswellNfld 185 (N.U.F.C.)

[20] 2006 ONCJ 274 at para. 11.

> Condoning the secret taping of the other would be destructive to this process.

More recently, Justice Spence of the Ontario Court of Justice was similarly blunt about the issue in *Scarlett v. Farrell*[21]:

> Although these cases may seem to take different approaches to the admissibility of surreptitious recordings of family conversations or events, in my view, all of the cases can be reconciled with one another.
>
> **All the cases recognize the general repugnance which the law holds toward these kinds of recordings. However, at the end of the day, the court must consider what the recordings themselves disclose.**
>
> And if the contents of those recordings are of sufficient probative value, and if, as Justice Sherr stated, the probative value outweighs the policy considerations against such recordings, then the court will admit them into evidence. It will do so having regard to the court's need to make decisions about the best interests of children based upon sufficiently probative evidence that may be available to the court.

In *Sordi v. Sordi*[22], the Court of Appeal for Ontario upheld the trial judge's refusal to admit legally taped conversations. While the recordings themselves were legal, they were done without the knowledge of the opposing party (and children). Justice Epstein endorsed the trial judge's decision in this regard and noted that "the trial judge relied on solid principles that took into account not only the sound public policy of trying to discourage the use of secretly recorded conversations in family proceedings but also his assessment of the probative value of the tapes in relation to the issues before him."[23]

Conversely, in 1999, the Court of Appeal found that a trial judge had properly admitted into evidence a conversation between the child and the mother which was secretly tape recorded by the father in *Behrens v. Stoodley*[24]. It should be noted that the Court of Appeal found that the recordings demonstrated "graphic and distressing evidence of venom directed towards the father and pressure exerted upon the child."[25] It is apparent that the

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[21] 2014 ONCJ 517 at para. 31 (bold emphasis added; underline in original).
[22] [2011] O.J. No. 4681 (C.A.)
[23] *Ibid*. at para. 12.
[24] [1999] O.J. No. 4838 (C.A.)
[25] *Ibid*. at para. 42.

Court prioritized the best interests of the child over any purported impropriety in the recordings.

The England and Wales Court of Appeal has commented on the issue of the admissibility of improperly (or illegally) obtained evidence in the 2010 matrimonial case *Tchenguiz and Imerman*.[26] The case addresses the evidentiary implications for parties who wrongfully take documents belonging to another party. In other words, as the Court states, "it remains the obligation of a wife who has obtained access to her husband's documents unlawfully or clandestinely to disclose that fact promptly, either if asked by her husband's solicitors or at the latest and in any event when she serves her Questionnaire."[27]

Despite this lack of a "protection" for parties who surreptitiously procure confidential documents, the ultimate holding in the case is consistent with the balancing provided for in the Canadian jurisprudence: "in [the equivalent of family court] proceedings, while the court can admit such evidence, it has power to exclude it if unlawfully obtained, including power to exclude documents whose existence has only been established by unlawful means." The Court directs that it will always be a balancing exercise – an exercise that will take into account "the importance of the evidence, 'the conduct of the parties', and any other relevant factors, including the normal case management aspects."[28]

6. Privilege Issues

Class Privilege vs. Case-by-Case Privilege

Courts have recognized two categories of privilege: class privilege and "case-by-case" privilege.

Class privilege has been defined as follows:

> "a privilege which was recognized at common law and one for which there is a prima facie presumption of inadmissibility (once it has been established that the relationship fits within the class) unless the party urging admission can show why the communications should not be privileged (i.e. why they should be admitted into evidence as an exception to the general rule.) Such communications are excluded not because the evidence is not relevant, but rather because, there are overriding policy reasons to exclude this relevant evidence."[29]

[26] [2010] EWCA Civ 908
[27] *Ibid*. at para. 42.
[28] *Ibid*. at para. 177.
[29] *R. v. Fosty*, [1991] 3 S.C.R. 263 at para. 34.

The justification for any class privilege was summarized by J.H. Wigmore into four criteria (the "Wigmore criteria"):

> (1) The communications must originate in a confidence that they will not be disclosed.
>
> (2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.
>
> (3) The relation must be one which in the opinion of the community ought to be sedulously fostered.
>
> (4) The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of the litigation.

Case-by-case privilege has been defined as follows:

> "The term 'case-by-case' privilege is used to refer to communications for which there is a prima facie assumption that they are not privileged (i.e. are admissible). The case-by-case analysis has generally involved an application of the "Wigmore test" . . . which is a set of criteria for determining whether communications should be privileged (and therefore not admitted) in particular cases. In other words, the case-by-case analysis requires that the policy reasons for excluding otherwise relevant evidence be weighed in each particular case."[30]

The most common example of class privilege is solicitor-client communications[31]. This type of privilege issue is commonly raised in family law cases when a party is trying to set aside a domestic contract whether it is a marriage contract or a separation agreement.[32]

A frequent example in family law of "case-by-case" privilege arises when parties seek to obtain counselling or therapy records in custody and access cases.[33] It appears that courts will generally prioritize a child's best interests when considering whether to admit privileged material.[34] In so doing, courts focus on the fourth Wigmore criteria stated above (injury of disclosure must be greater than potential benefit).

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[30] *Ibid*.

[31] There are both exceptions and waivers to this privilege although limited.

[32] Depending upon the basis of the claim to set aside the contract, the issue of waiver of privilege will arise. For a helpful review of the law on this issue, see: *Balsmeier v. Balsmeier*, 2014 CarswellOnt 15046 (S.C.J.); *Dymond v. Graham*, 2010 CarswellOnt10340 (C.J.); *Leopold v. Leopold*, (1999) 48 R.F.L. (4th) 388 (O.C.A.).

[33] Harold Niman, *Evidence in Family Law* (Toronto: Canada Law Book, 2010) at 8:20:10 (contributors: George Karahotzitis, Patrick Schmidt and Joanna Harris).

[34] See *M.(A.) v. Ryan*, [1997] 1 S.C.R. 157

Conclusion

In preparation for a Trial, you need to anticipate the evidentiary issues that will likely arise. Come prepared to argue the legal issues that you anticipate with the appropriate Brief of Authorities. While some evidentiary issues can arise spontaneously, a good advocate will anticipate the rulings that may be needed and streamline the evidence and preparation of witnesses accordingly.

SCHEDULE "A"

Courts of Justice Act

ONTARIO REGULATION 114/99
FAMILY LAW RULES

RULE 23: EVIDENCE AND TRIAL

TRIAL RECORD

23. (1) At least 30 days before the start of the trial, the applicant shall serve and file a trial record containing a table of contents and the following documents:

1. The application, answer and reply, if any.

2. Any agreed statement of facts.

3. If relevant to an issue at trial, financial statements and net family property statements by all parties, completed not more than 30 days before the record is served.

3.1 If the trial involves a claim for custody of or access to a child, the applicable documents referred to in rule 35.1.

4. Any assessment report ordered by the court or obtained by consent of the parties.

5. Any temporary order relating to a matter still in dispute.

6. Any order relating to the trial.

7. The relevant parts of any transcript on which the party intends to rely at trial.

8. Any evidence that is the subject of an order made under clause 1 (7.2) (g).

O. Reg. 114/99, r. 23 (1); O. Reg. 202/01, s. 6 (1, 2); O. Reg. 6/10, s. 8 (1, 2); O. Reg. 69/15, s. 9 (1).

RESPONDENT MAY ADD TO TRIAL RECORD

(2) Not later than seven days before the start of the trial, a respondent may serve, file and add to the trial record any document referred to in subrule (1) that is not already in the trial record. O. Reg. 114/99, r. 23 (2).

SUMMONS TO WITNESS

(3) A party who wants a witness to give evidence in court or to be questioned and to bring documents or other things shall serve on the witness a summons to witness (Form 23) by special service in accordance with subrule 6 (4), together with the witness fee set out in subrule (4). O. Reg. 114/99, r. 23 (3); O. Reg. 322/13, s. 13.

WITNESS FEE

(4) A person summoned as a witness shall be paid, for each day that the person is needed in court or to be questioned,

(a) $50 for coming to court or to be questioned;

(b) travel money in the amount of,

(i) $5, if the person lives in the city or town where the person gives evidence,

(ii) 30 cents per kilometre each way, if the person lives elsewhere but within 300 kilometres of the court or place of questioning,

(iii) the cheapest available air fare plus $10 a day for airport parking and 30 cents per kilometre each way from the person's home to the airport and from the airport to the court or place of questioning, if the person lives 300 or more kilometres from the court or place of questioning; and

(c) $100 per night for meals and overnight stay, if the person does not live in the city or town where the trial is held and needs to stay overnight. O. Reg. 114/99, r. 23 (4).

MEANING OF "CITY OR TOWN"

(4.1) For the purposes of subrule (4), a municipality shall be considered a city or town if it was a city or town on December 31, 2002. O. Reg. 92/03, s. 2.

CONTINUING EFFECT OF SUMMONS

(5) A summons to witness remains in effect until it is no longer necessary to have the witness present. O. Reg. 114/99, r. 23 (5).

SUMMONS FOR ORIGINAL DOCUMENT

(6) If a document can be proved by a certified copy, a party who wants a witness to bring the original shall not serve a summons on the witness for that purpose without the court's permission. O. Reg. 114/99, r. 23 (6).

FAILURE TO OBEY SUMMONS

(7) The court may issue a warrant for arrest (Form 32B) to bring a witness before the court if,

(a) the witness has been served as subrule (3) requires, but has not obeyed the summons; and

(b) it is necessary to have the witness present in court or at a questioning. O. Reg. 114/99, r. 23 (7).

INTERPROVINCIAL SUMMONS TO WITNESS

(8) A summons to a witness outside Ontario under the *Interprovincial Summonses Act* shall be in Form 23A. O. Reg. 114/99, r. 23 (8).

SETTING ASIDE SUMMONS TO WITNESS

(9) The court may, on motion, order that a summons to witness be set aside. O. Reg. 114/99, r. 23 (9).

ATTENDANCE OF A PRISONER

(10) If it is necessary to have a prisoner come to court or to be questioned, the court may order (Form 23B) the prisoner's custodian to deliver the prisoner on payment of the fee set out in the regulations under the *Administration of Justice Act*. O. Reg. 114/99, r. 23 (10).

CALLING OPPOSING PARTY AS WITNESS

(11) A party may call the opposing party as a witness and may cross-examine the opposing party. O. Reg. 544/99, s. 9.

ATTENDANCE OF OPPOSING PARTY

(11.1) A party who wishes to call an opposing party as a witness may have the opposing party attend,

(a) by serving a summons under subrule (3) on the opposing party; or

(b) by serving on the opposing party's lawyer, at least 10 days before the start of the trial, a notice of intention to call the opposing party as a witness. O. Reg. 544/99, s. 9.

OPPOSING PARTY DISOBEYING SUMMONS

(12) When an opposing party has been served with a summons under subrule (3), the court may make a final order in favour of the party calling the witness, adjourn the case or make any other appropriate order, including a contempt order, if the opposing party,

(a) does not come to or remain in court as required by the summons; or

(b) refuses to be sworn or to affirm, to answer any proper question or to bring any document or thing named in the summons. O. Reg. 114/99, r. 23 (12).

READING OPPOSING PARTY'S ANSWERS INTO EVIDENCE

(13) An answer or information given under rule 20 (questioning) by an opposing party may be read into evidence at trial if it is otherwise proper evidence, even if the opposing party has already testified at trial. O. Reg. 114/99, r. 23 (13).

READING OTHER PERSON'S ANSWERS INTO EVIDENCE

(14) Subrule (13) also applies, with necessary changes, to an answer or information given by a person questioned on behalf of or in place of an opposing party, unless the trial judge orders otherwise. O. Reg. 114/99, r. 23 (14).

USING ANSWERS — SPECIAL CIRCUMSTANCES

(15) Subrule (13) is subject to the following:

1. If the answer or information is being read into evidence to show that a witness's testimony at trial is not to be believed, answers or information given by the witness earlier must be put to the witness as sections 20 and 21 of the *Evidence Act*require.

2. At the request of an opposing party, the trial judge may direct the party reading the answer or information into evidence to read in, as well, any other

answer or information that qualifies or explains what the party has read into evidence.

3. A special party's answer or information may be read into evidence only with the trial judge's permission. O. Reg. 114/99, r. 23 (15).

REBUTTING ANSWERS

(16) A party who has read answers or information into evidence at trial may introduce other evidence to rebut the answers or information. O. Reg. 114/99, r. 23 (16).

USING ANSWERS OF WITNESS NOT AVAILABLE FOR TRIAL

(17) The trial judge may give a party permission to read into evidence all or part of the answers or information given under rule 20 (questioning) by a person who is unable or unwilling to testify at the trial, but before doing so the judge shall consider,

(a) the importance of the evidence;

(b) the general principle that trial evidence should be given orally in court;

(c) the extent to which the person was cross-examined; and

(d) any other relevant factor. O. Reg. 114/99, r. 23 (17).

TAKING EVIDENCE BEFORE TRIAL

(18) The court may order that a witness whose evidence is necessary at trial may give evidence before trial at a place and before a person named in the order, and then may accept the transcript as evidence. O. Reg. 114/99, r. 23 (18).

TAKING EVIDENCE BEFORE TRIAL OUTSIDE ONTARIO

(19) If a witness whose evidence is necessary at trial lives outside Ontario, subrules 20 (14) and (15) (questioning person outside Ontario, commissioner's duties) apply, with necessary changes. O. Reg. 114/99, r. 23 (19).

EVIDENCE BY AFFIDAVIT, OTHER METHOD

(20) A party may request that the court make an order under clause 1 (7.2) (i) permitting the evidence of a witness to be heard by affidavit or another method not requiring the witness to attend in person. O. Reg. 69/15, s. 9 (2).

(20.1) REVOKED: O. Reg. 69/15, s. 9 (2).

CONDITIONS FOR USE OF AFFIDAVIT OR OTHER METHOD

(21) Evidence at trial by affidavit or another method not requiring a witness to attend in person may be used only if,

(a) the use is in accordance with an order under clause 1 (7.2) (i);

(b) the evidence is served at least 30 days before the start of the trial; and

(c) the evidence would have been admissible if given by the witness in court. O. Reg. 114/99, r. 23 (21); O. Reg. 202/01, s. 6 (4); O. Reg. 69/15, s. 9 (3, 4).

AFFIDAVIT EVIDENCE AT UNCONTESTED TRIAL

(22) At an uncontested trial, evidence by affidavit in Form 14A or Form 23C and, if applicable, Form 35.1 may be used without an order under clause 1 (7.2) (i), unless the court directs that oral evidence must be given. O. Reg. 114/99, r. 23 (22); O. Reg. 202/01, s. 6 (5); O. Reg. 6/10, s. 8 (3); O. Reg. 69/15, s. 9 (5).

EXPERT WITNESS REPORTS

(23) A party who wants to call an expert witness at trial shall serve on all other parties a report signed by the expert and containing the information listed in subrule (25),

(a) at least 90 days before the start of the trial; or

(b) in the case of a child protection case, at least 30 days before the start of the trial. O. Reg. 6/10, s. 8 (4).

SAME, RESPONSE

(24) A party who wants to call an expert witness at trial to respond to the expert witness of another party shall serve on all other parties a report signed by the expert and containing the information listed in subrule (25),

(a) at least 60 days before the start of the trial; or

(b) in the case of a child protection case, at least 14 days before the start of the trial. O. Reg. 6/10, s. 8 (4).

SAME, CONTENTS

(25) A report provided for the purposes of subrule (1) or (2) shall contain the following information:

1. The expert's name, address and area of expertise.
2. The expert's qualifications and employment and educational experiences in his or her area of expertise.
3. The substance of the expert's proposed evidence. O. Reg. 6/10, s. 8 (4).

SUPPLEMENTARY REPORT

(26) Any supplementary expert witness report shall be signed by the expert and served on all other parties,

(a) at least 30 days before the start of the trial; or

(b) in the case of a child protection case, at least 14 days before the start of the trial. O. Reg. 6/10, s. 8 (4).

FAILURE TO SERVE EXPERT WITNESS REPORT

(27) A party who has not followed a requirement under subrule (23), (24) or (26) to serve and file an expert witness report, may not call the expert witness unless the trial judge allows otherwise. O. Reg. 6/10, s. 8 (4).