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# MEMO TO COUNSEL

TO: All Counsel in Family Law Matters  
FROM: Justice P.J. Flynn  
RE: Opening Statements  
DATE: March 1, 2011

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As you may know, when a Family Law Matter is called for trial, the trial judge is only given the Trial Record.

The Trial Record is governed by Rules 23 (1) and 23 (2), which are attached to this memo.

The problem is that, in reviewing the Trial Record in preparation for the commencement of the trial, the trial judge may not be able to easily discern “what’s left” for trial, i.e.: what are the remaining contested issues.

Accordingly, effective immediately, when called for trial, all counsel are asked to prepare and deliver to the Trial Co-ordinator at Kitchener, by 4:30 p.m. on the court day before the trial commences, brief written opening statements.

These statements need not be long or follow any particular form or style – but they must be enough to convey to the trial judge the issues still in dispute together with a list of the witnesses to be called by each side and the reason for calling them.

P.J. Flynn J.  
Local Administrative Judge

Ontario Rules

[Ont. Reg. 114/99 — Family Law Rules \(Superior Court of Justice and Ontario Court of Justice\)](#)

[Rule 23 — Evidence and Trial](#)

**s 23.**

Ontario Current to Gazette Vol. 144-9 (February 26, 2011)

**23.**

**23(1) Trial Record**

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. [Repealed O. Reg. 6/10, s. 8(2).]

**23(2) Respondent May Add to Trial Record**

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.

**23(3) Summons to Witness**

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), together with the witness fee set out in subrule (4).

**23(4) Witness Fee**

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.