INTRODUCTION

Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) and the CLIENT FILE OPENING AND CLOSING (A-2) checklists. It focuses primarily on actions in the British Columbia Supreme Court. Counsel for the plaintiff or for the defendant may use this checklist, as many of the procedures are the same for each. Where a procedure applies specifically to the plaintiff or defendant, it is noted in the checklist. If a counterclaim or third-party proceeding is involved, refer to the procedures for the plaintiff or defendant, as appropriate. Keep in mind your client's best interests in the litigation. This checklist is intended to be comprehensive, but your client's interests may not be best served by adherence to all aspects of the checklist or full-scale litigation (that is, it may be preferable to recommend an early negotiated resolution of the dispute). The nature and scope of the litigation in each case is a matter for your own professional judgment. Unless otherwise indicated, any reference to a "Rule" or "Rules" is to the Supreme Court Civil Rules, B.C. Reg. 168/2009. The checklist is current to September 4, 2024.

LEGEND

☐		
Checkbox	**Important Reminder**	**Deadline or Limitation Date**

NEW DEVELOPMENTS

- **Supreme Court Civil Rules.**
  - **Remote commissioning of affidavits.** Effective September 9, 2024, affiants may swear or affirm affidavits by video conference (Supreme Court Civil Rules, Rule 22-2(6.1)). The affidavit must state, in its last numbered paragraph, that the person swearing or affirming the affidavit was not physically present before the other person but was before that person by video conference and is considered to have been sworn or affirmed in the presence, and at the location, of the person before whom the affidavit is sworn or affirmed.
  - **Applications.** Rule 8-1 was amended to: require applicants to provide an additional copy of the notice of application to the registry; provide that an application be removed from the hearing list, should the application record not comply with Rule 8-1(15); allow parties to apply for an order granting leave to permit late filing of an application record or reinstate an application to the hearing list; and authorize the application respondent to apply for an order for costs if they attend at the hearing of an application that has been removed from the hearing list.
  - **Petitions.** Rule 16-1 was amended to require petitioners to provide an additional copy of the filed petition to the registry, and provide that petitions be removed from the hearing list if the petition record does not comply with Rule 16-1(11).
  - **Vexatious litigants.** Rule 22-9 was amended, authorizing vexatious litigants to apply for leave to file a pleading, application, or other documents.
  - **Associate judges.** Each reference in the Rules to "masters" has been substituted with "associate judges".
  - **Gender-neutral language.** Gendered language in the Rules was substituted with gender-neutral language effective March 6, 2024.

- **Limits on expert reports.** Effective August 10, 2020, the *Evidence Act*, R.S.B.C. 1996, c. 124 imposes limits on expert evidence. The corresponding Disbursements and Expert Evidence Regulation, B.C. Reg. 210/2020 limits disbursements payable to a party, including the amount per expert report ($3,000), and the amount payable as a percentage of the total amount recovered in the action (6 per cent) (s. 5(1)(a)). Note that this limit on disbursements was found to be unconstitutional in *Le v. British Columbia (Attorney General)*, 2022 BCSC 1146, with reasons issued on July 8, 2022. The appeal was dismissed on May 17, 2023 (2023 BCCA 200). Subsequently, the Disbursements and Expert Evidence Regulation, B.C. Reg. 210/2020 was amended effective November 27, 2023, to implement both a 6 per cent rule for recovery of disbursements and to permit some judicial discretion to allow recoverable expert fees and expenses above the cap. A party must bring an application to tender more than three expert reports in an action, or to have disbursements excluded from the 6 per cent limit (ss. 5(8) and 5(9)).

- ***Court of Appeal Act* and Court of Appeal Rules.** Effective July 18, 2022, the new *Court of Appeal Act*, S.B.C. 2021, c. 6 and Court of Appeal Rules, B.C. Reg. 120/2022 came into force. Counsel should review the updated Act and Rules and familiarize themselves with the changes. See the Courts of British Columbia website for an Annotated Table of Concordance.

- **Updated practice directions for sealing orders and applications to commence proceedings anonymously.** Litigants seeking a sealing order in a civil or family law proceeding must follow the guidelines as set out in Supreme Court Civil Practice Direction PD-58—Sealing Orders in Civil and Family Proceedings. For the procedure to commence proceedings using initials or a pseudonym in civil or family law proceedings, see Supreme Court Civil Practice Direction PD-61—Applications to Commence Proceedings Anonymously. Practice Directions 58 and 61 were updated on August 1, 2023.

- **Forms of address.** The Supreme Court of British Columbia provides instruction on how counsel, litigants, witnesses, and others are to address a justice in a courtroom and provides clarification on how parties and counsel ought to introduce themselves with their preferred pronouns to be used in the proceeding. See Supreme Court Civil Practice Direction PD-64—Form of Address.

- **Communicating with the Court.** Supreme Court Civil Practice Direction PD-27—Communicating with the Court was updated on February 10, 2023 and sets out the guidelines for appropriate communications with the court for the limited circumstances in which it is permitted.

- **Motor vehicle claims.** The *Attorney General Statutes (Vehicle Insurance) Amendment Act, 2020*, S.B.C. 2020, c. 10, came into force on May 1, 2021, setting out significant changes to B.C.'s auto insurance scheme, including a move to a "case-based" model for accident compensation. Under this model, compensation for injuries will be dictated by amounts and categories set by regulations and policy. The Civil Resolution Tribunal has jurisdiction to resolve all motor vehicle personal injury disputes and accident benefits relating to accidents occurring on or after May 1, 2021.

OF NOTE

- **Law Society of British Columbia.** For changes to the Law Society Rules and other Law Society updates and issues "of note", see LAW SOCIETY NOTABLE UPDATES LIST (A-3).

- **Additional resources.** See also *British Columbia Civil Trial Handbook,* 6th ed. (CLEBC, 2021); *Civil Appeal Handbook*, 2nd ed. (CLEBC, 2023–); *British Columbia Motor Vehicle Accident Claims Practice Manual*, 3rd ed. (CLEBC, 2012–); *British Columbia Creditors' Remedies: An Annotated Guide,* 2nd ed. (CLEBC, 2018–); *Discovery Practice in British Columbia*, 2nd ed. (CLEBC, 2004–); *Expert Evidence in British Columbia Civil Proceedings*, 6th ed. (CLEBC, 2021); *Introducing Evidence at Trial: A British Columbia Handbook*, 4th ed. (CLEBC, 2020); *Practice Before the Registrar* (CLEBC, 1992–); *Provincial Court Small Claims Handbook* (CLEBC, 1997–); *Supreme Court Chambers Orders: Annotated*, 2nd ed. (CLEBC, 1995–); *Civil Jury Instructions,* 2nd ed. (CLEBC, 2009–); and *Public Guardian and Trustee Handbook*, 4th ed. (CLEBC, 2009–).

CONTENTS

1.	INITIAL CONTACT	
1.1	Arrange the initial interview.	☐
1.2	Conduct a conflicts of interest check and complete the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	☐

1.3	Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Law Society Rule 3-110).	☐
	.1 If the client is injured and has not already received treatment, advise the client to attend hospital or see a doctor. In appropriate circumstances, advise the client to make a police report, ensuring that the client records what is written in the narrative section of the police report (the narrative section is not included in the copy of the report given to the client). Ensure that the client promptly reported the accident to any relevant insurer(s).	
	.2 Ask the client to bring all relevant records and notes and to prepare a memorandum of the facts, including a sketch or photographs, and where appropriate, to prepare and keep a daily diary of symptoms, medication, and doctor's visits.	
	.3 Ask the client to note all potential witnesses and, if possible, to obtain full names, addresses, and telephone numbers.	
	.4 Advise the client to keep all receipts (e.g., medical expenses, taxi charges).	
	.5 Ensure that the client has not consulted another lawyer, and that an action has not already been started.	
	.6 Where applicable, advise the client not to speak with insurance adjusters (the client should tell adjusters that, if appropriate, a statement will ultimately be provided) and not to sign anything (e.g., releases).	
1.4	Find out when and where the cause of action arose, and determine whether there are any jurisdiction or limitation problems (e.g., *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13 ("*WESA*"), s. 61; *Local Government Act*, R.S.B.C. 2015, c. 1, ss. 735 and 736; *Vancouver Charter*, S.B.C. 1953, c. 55, s. 294(1) and (2); out-of-province limitations; see also item 3.3 in this checklist).	☐
1.5	If representing a defendant against whom an action has been commenced:	☐
	.1 Find out the name of the plaintiff's lawyer.	
	.2 Check the date, time, and manner of service of the notice of civil claim. Check the date the notice of civil claim was issued in relation to service to ensure the notice of civil claim has not expired.	
	.3 Promptly contact the plaintiff's lawyer and advise of your possible retainer. Request that the plaintiff's lawyer refrain from taking steps in default before an agreed date, or without first notifying you. If the period for entering a response has expired, request an extension. Diarize any extensions, and confirm them in writing.	
	.4 Diarize that the third party notice, if any, must be filed within 42 days after filing of the response to civil claim (Rule 3-5(4)(b), or with the leave of court, if more than 42 days have elapsed since the filing of the response (Rule 3-5(4)(a)).	
	.5 Advise the client to give prompt notice to any insurer(s), if the matter may fall within coverage limits.	

	.6 Obtain copies of all pleadings.	
1.6	Prepare a brief overview of the law, to confirm your general understanding of the subject matter.	☐

2.	**INITIAL INTERVIEW**	
2.1	Discuss and confirm your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Obtain written authority to act, signed by the client. Provide the client with a written contract or terms of retainer. If a contingent fee agreement is entered into, see item 3.1 in this checklist.	☐
2.2	Determine the client's objectives and expectations. Be aware that criminals posing as clients may attempt to launder proceeds of crime by filing claims using fabricated documents to mispresent transactions or claim an interest in property. For example, make sufficient enquiries when a client seeks to retain you to assist with the recovery of money in relation to a private loan (secured or unsecured), a builder's lien claim, a claim of recovery of an investment, a claim for defective goods, a claim for an unpaid invoice for equipment, or wrongful termination. Be aware of "Fraud 101 for Lawyers" (*Benchers' Bulletin*, Fall 2021). See *BC Code* rules 3.2-7 and 3.2-8 regarding dishonesty, crime, or fraud by a client, the duty to make reasonable inquiries, and the duty to make a record of the results of the inquiries.	☐
2.3	Discuss strategy and the risks of litigation. Explain the litigation process, including the various stages (reasons for each, information required, timing, etc.), the overall length, and the estimated cost. Advise the client that there is no guarantee of success, and inform the client that one risk of being unsuccessful is having to pay the other party's costs. 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 defendant, give a preliminary opinion on defences and, if possible, quantum.	☐
2.4	In the case of a strata corporation, consider requirements under *Strata Property Act*, S.B.C. 1998, c. 43, Part 10. Also consider who will be paying the accounts, who will give instructions, and to whom reports are to be made. Consider obtaining personal guarantees from principals, if the solvency of a corporate client is an issue. Consider conducting a corporate search to ensure that the client is in good standing and not in receivership.	☐
2.5	If the client is an infant or mentally incapacitated, a litigation guardian is required (Rule 20-2). Unless the court otherwise orders or an enactment otherwise provides, a person ordinarily resident in British Columbia may be a litigation guardian without being appointed by the court. If the claim is under the *Family Compensation Act*, R.S.B.C. 1996, c. 126, it must be brought in the name of the personal representative or, in special circumstances, the person who would benefit from the action (*Family Compensation Act*, s. 3(1) and (4)).	☐
2.6	If the case is complex, unusual, or outside your usual area of practice, consider consulting other counsel, referring the file, or declining to act. Note definition of competence in *BC Code,* rule 3.1-1.	☐

2.7	Obtain particulars of any settlement proposals made by the potential opposing party, insurance adjuster, or counsel. Note that *BC Code*, rule 3.2-4 requires lawyers to encourage compromise or settlement.	☐
2.8	Complete an INITIAL INTERVIEW checklist appropriate for the type of action (for an example, see the PERSONAL INJURY PLAINTIFF'S INTERVIEW OR EXAMINATION FOR DISCOVERY (E-3) checklist). In addition, obtain information on matters such as:	☐
	.1 Any other details relevant to the type of action.	
	.2 Insurance (including extended benefits and long-term disability).	
	.3 Facts that gave rise to the action:	
	(a) Full particulars of what happened, when, and where.	
	(b) Parties to the action. If representing the plaintiff, identify all potential defendants. If representing the defendant, determine whether the defendant is insured under its own or any other policy (e.g., an "umbrella", "wrap up" or excess policy). Determine whether there is a right of indemnity or contribution, or some other right to add others as third parties (e.g., there may be an indemnity or "hold harmless" clause in a contract between the defendant and others or, alternatively, a cause of action for contribution and indemnity pursuant to the *Negligence Act*, R.S.B.C. 1996, c. 333 or other relevant common law, contractual, or statutory obligations owed to the defendant by other defendants or third parties). If you are acting for two or more clients, see *BC Code,* rules 3.4-1 to 3.4-9 and the joint retainer letter, which can be used to comply with the rules, on the Law Society website at www.lawsociety.bc.ca.	
	(c) Determine whether the claim is against a motorist insured out-of-province, or a non-vehicle tortfeasor, or is otherwise covered by the *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27 ("*HCCRA*"). If you are representing the plaintiff and the *HCCRA* applies, determine the applicable deadlines for providing notice to government under s. 4 and (in due course, if settlement is to occur) s. 12. If you are representing the defendant and the *HCCRA* applies, determine the applicable deadline for providing notice to government (in due course, if settlement is to occur) under s. 13, and for seeking to obtain consent of the Minister under s. 13. If representing an insurer and the *HCCRA* applies, determine the applicable deadline for providing notice to government under s. 10. See "*Health Care Costs Recovery Act*—Ethical Issues" in the Spring 2014 *Benchers' Bulletin*, p. 15, available at www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/BB_2014-01-Spring.pdf?ext=.pdf.	
	(d) Witness names and contact information.	
	(e) Evidence, such as: statements, sketches, photographs, videos, copies of the police report and/or ambulance report, contracts, or transactional records or documents.	

	.4 Damages sustained by the plaintiff:	
	(a) Physical and psychological injury (for guidelines, see items 5 and 6 in the PERSONAL INJURY PLAINTIFF'S INTERVIEW OR EXAMINATION FOR DISCOVERY (E-3) checklist).	
	(b) Economic loss (past or anticipated future).	
	(c) Incidental expenses or anticipated expenses.	
	(d) Health care services under the *HCCRA*.	
	(e) Other, such as accelerated vehicle depreciation	
	.5 Damages sustained by the defendant, and any right of set-off or counterclaim.	
	.6 Any criminal or quasi-criminal charges against any of the parties (note ss. 215 to 215.51 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 deals with breath samples and roadside suspensions, and s. 194 of the *Motor Vehicle Act* deals with motorcycles).	
	.7 Obtain particulars of all dealings with insurance adjusters and copies of correspondence, statements given, authorizations signed, documents received under authorizations, etc.	
	.8 Find out whether there are any coroner's inquests or inquiries resulting from the incident.	
	.9 Advise the client to keep a diary of pain and suffering and medical appointments. Also advise the client to notify you of any change in their condition.	
2.9	Consider workers' compensation claims or bars to action (see *Workers Compensation Act*, R.S.B.C. 2019, c. 1, Part 3, Division 3 for limitations), and criminal injuries compensation claims.	☐
2.10	Consider jurisdictional bars to action, including matters arising under a collective agreement and under the exclusive jurisdiction of the Labour Relations Board, matters subject to contractual dispute resolution/arbitration provisions, or whether another jurisdiction is the more appropriate venue for the claim. Consider whether the Civil Resolution Tribunal (the "CRT") has jurisdiction in light of the recent significant changes to the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25 (the "*CRT Act*") and associated regulations.	☐
2.11	Consider the possibility of retaining experts; discuss the expense with the client and emphasize the necessity of expert support in appropriate cases. Obtain instructions. Keep in mind the limit on expert reports as set out in the "New developments" section of this checklist.	☐
2.12	Consider obtaining executed authorization forms for release of information such as:	☐
	.1 Medical information (including Medical Services Plan ("MSP") and PharmaNet records and an *HCCRA* printout).	
	.2 Hospital records.	

	.3 Employment information.	
	.4 Education records.	
	.5 Tax return.	
	.6 Financial information.	
	.7 Insurance records.	
	.8 WorkSafeBC records.	
	.9 Freedom of information and protection of privacy requests.	
	.10 Any other information where an authorization may be required.	
2.13	Ask the client to provide any other documentary evidence that is, or may be, relevant. Ask for originals. Explain the duty to disclose all relevant, or possibly relevant, documents.	☐
2.14	Discuss employing an investigator, if appropriate.	☐
2.15	Advise the client on preserving evidence (all physical evidence should be preserved, as soon as possible after the accident) and keeping expense receipts. Consider giving notice to the opposing party to ensure that physical evidence in that party's possession is preserved.	☐
2.16	Advise the client that they may be subject to video surveillance. If you are acting for the defendant, consider whether video surveillance is appropriate.	☐
2.17	If you are not in a position to act, advise the client. Make a record of the advice given, and file your notes. Send a non-engagement letter (for samples, see the Law Society website at www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-resources/).	☐

3.	**AFTER THE INITIAL INTERVIEW**	
3.1	Confirm your retainer. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Note that contingency fee contracts must be in writing, they must be fair and reasonable, and there is a maximum remuneration (i.e., percentage) in personal injury actions. Interest cannot be charged on unpaid accounts without an express agreement signed by the client (*BC Code,* s. 3.6 and rule 3.6-1, commentaries [2] and [3]; *Hutchison v. Victoria Golf Club*, 2008 BCSC 55, affirmed 2009 BCSC 644). Note the requirements in the *Legal Profession Act* (ss. 64 to 68), the Law Society Rules (8-1 to 8-4), and *BC Code*, rule 3.6-2 regarding contingency fee agreements. See *BC Code*, rule 3.6-2, commentary [2], according to which "a lawyer cannot withdraw from representation for reasons other than those set out in rule 3.7-7 (Obligatory withdrawal) unless the written contingency contract specifically states that the lawyer has a right to do so and sets out the circumstances under which this may occur."	☐
3.2	Open the file. Place the checklist in the file and make entries in your diary and bring forward ("BF") systems.	☐

3.3	Determine the limitation periods and diarize them in your BF systems. (References to the *Limitation Act* below are to the current *Limitation Act*, S.B.C. 2012, c. 13 unless otherwise indicated.) Consider the *Limitation Act* and its transitional provisions, including whether there has been confirmation of the cause of action or postponement. Some of the relevant limitation periods for personal injury (motor vehicle accident) litigation are listed below, but be sure to check the relevant limitation periods for each action. (Note: on other insurance matters, consider whether the general or specific provisions of the *Insurance Act*, R.S.B.C. 2012, c. 1 apply.) See the UBC Law Review *Table of Statutory Limitations*, updated annually, for a list of limitation periods in British Columbia and in other provincial jurisdictions. See also the Lawyers Indemnity Fund's "Limitations and Deadlines Quick Reference List" at "http://www.lif.ca/risk-management/limitations-and-deadlines/#quick" (last updated in June 2014—with later updates noted within the text).	☐
	.1 *Limitation Act*, s. 6: basic limitation period is two years (note that the former *Limitation Act* applies to some cases, so review the transition guidelines, s. 30).	⏰
	.2 *Limitation Act*, ss. 8 to 19: rules for when a claim is discovered (note the ultimate limitation period of 15 years in s. 21).	⏰
	.3 *Limitation Act*, ss. 10, 11, 18, and 19: claims by minors and persons under a disability.	⏰
	.4 *Limitation Act*, s. 16: third-party proceedings for claims for contribution or indemnity.	⏰
	.5 *WESA*: provides 180-day limitation periods for claims against the estate (s. 146) and for variation of a will (s. 61), and provides in s. 150 for proceedings by and against the estate.	⏰
	.6 *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, s. 24(2): hit and run; notice to ICBC "as soon as reasonably practicable" and, in any event, within six months.	⏰
	.7 *Local Government Act*, s. 735; *Vancouver Charter*, s. 294(1): six months to commence action against the municipality.	⏰
	.8 *Local Government Act*, s. 736; *Vancouver Charter*, s. 294(2): notice within two months.	⏰
	.9 *Workers Compensation Act*, s. 128(2): election within three months.	⏰
	.10 *Insurance Corporation Act*, R.S.B.C. 1996, c. 228, s. 30(1): actions against ICBC under a policy must be commenced within one year of claim or filing of proof of loss.	⏰
	.11 Insurance (Vehicle) Regulation, B.C. Reg. 447/83, Part 7: 30 days to file notice of accident and 90 days to file proof of claim for no-fault benefits (s. 97); two years to commence action for Part 7 benefits (s. 103).	⏰
	.12 *HCCRA*, ss. 4 and 22, and Health Care Costs Recovery Regulation, B.C. Reg. 397/2008, s. 7: notice in prescribed form, including filed copy of notice of civil claim, delivered by the plaintiff to the Attorney General within 21 days after commencing a legal proceeding.	⏰

	.13 *HCCRA*, s. 10, and Health Care Costs Recovery Regulation, s. 7: notice in prescribed form by the insurer to the Ministry of Health within 60 days after learning that the act or omission of the insured may have caused or contributed to the personal injury or death of a beneficiary.	
	.14 *HCCRA*, s. 12, and Health Care Costs Recovery Regulation, s. 7: notice in prescribed form by the plaintiff to the Ministry of Health at least 21 days before entering into a settlement.	
	.15 *HCCRA*, s. 20: payment to the Minister responsible for the *Financial Administration Act*, R.S.B.C. 1996, c. 138, of judgment amount or settlement amount designated for health care services claim within 30 days of recovery of that amount by the plaintiff.	
	.16 Note s. 7 of the Health Care Costs Recovery Regulation with respect to service of notices prescribed for ss. 4, 10, 12, and 13 of the *HCCRA*.	
3.4	If suing an insurer on an insurance policy, determine whether the policy requires an action to be commenced within a specific time.	☐
3.5	If the opposing party has not retained counsel, urge the party in writing to get independent legal representation and to report the matter to their insurer. Make it clear that you are not protecting their interests and that you are acting exclusively in the interests of your client (see *BC Code*, rule 7.2-9).	☐
3.6	Send a letter to the insurance adjuster or opposing counsel:	☐
	.1 Advise of your involvement and, if dealing with ICBC, enclose a copy of your written authority to act.	
	.2 Request copies of any statements or other documents signed by the client.	
	.3 Revoke previously signed authorizations prepared by others, if appropriate. Request copies of all documents obtained under those authorizations.	
	.4 Ask if there are any outstanding matters to address (e.g., *Insurance (Vehicle) Regulation*—see item 3.3.11 in this checklist).	
3.7	Conduct searches and obtain certified copies of documents, for example:	☐
	.1 Company searches for all corporate parties:	
	(a) at or about the time the notice of civil claim is filed.	
	(b) at the date when the events occurred, or the date when the contract that gave rise to the action was entered into.	
	(c) at the time a party is added.	
	.2 If acting for the defendant, a court registry search to assess the status of the action.	
	.3 Land Title Office searches.	
	.4 Record of previous convictions.	

	.5 Vehicle records searches at ICBC.	
	.6 Credit bureau or court registry searches for other actions involving the same party. Credit bureau searches of individuals may be done prejudgment, if consent is given.	

4.	**COMMENCEMENT OF PROCEEDINGS—PLAINTIFF**	
4.1	Before starting a proceeding and as early as possible after seeing the client:	☐
	.1 Determine whether there are any conditions precedent to an action, such as contractual conditions precedent, a need for consent to sue, any assignment of cause of action, or requirements to give notice. Ensure that these are fulfilled. If the claim involves a contract, review the contract for choice-of-law, jurisdiction, and arbitration clauses as well as any waivers, indemnities, or limitations of liability.	
	.2 Consider any need to search the Office of the Superintendent of Bankruptcy (Innovation, Science and Economic Development Canada) to determine if leave to bring action is required.	
	.3 Send demand letters to potential defendants, if appropriate. Consider the limits imposed by *BC Code* rules 7.2-6 and 7.2-6.1 (only approaching, communicating, or dealing with a person represented by a lawyer with the lawyer's consent), rules 5.1-2(n) and 3.2-5 (prohibit threatening criminal or disciplinary proceedings for the collateral purpose of enforcing the payment of a civil claim or securing any other civil advantage), rule 5.1-2(a) (instituting proceedings that, although legal, are clearly motivated by malice and are brought solely for the purpose of injuring the other party), and rule 5.1-2(b) (knowingly assists or permits a client do anything that the lawyer consider to be dishonest or dishonourable).	
	.4 Send letters to other involved parties (e.g. insurance adjusters), if appropriate.	
	.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) Send letters, with authorization forms where required, requesting information, documents, or both.	
	(b) Collect and review witness statements and any statements made by the potential defendants. Note the court's views on the impropriety of taking statements in sworn form before trial (see *Staaf v. Insurance Corp. of British Columbia*, 2014 BCSC 1048). Also see *BC Code*, rules. 5.3 and 5.4 on interviewing and communication with witnesses.	
	(c) When acting for a plaintiff in a personal injury case, arrange interviews with doctors treating the plaintiff, if necessary. Consider whether it is necessary to obtain clinical records where a medical-legal report may suffice.	

	(d) For a tort action, consider attending the scene of the tort and/or conducting a Google Maps search, including Google Street View.	
	(e) Consider whether access to Facebook, Instagram, or other social networking sites is appropriate and consider any steps to capture the contents of these in a more permanent fashion.	
	(f) Arrange for any photographs or other steps needed to preserve evidence.	
	(g) Request that police retain any hard evidence.	
	(h) Consider making a request or seeking an order for detention, preservation or recovery of hard evidence (Rule 10-1).	
	(i) Retain necessary experts.	
	(j) Gather information through Internet searches, including searches of Google Maps, accident site views, and information on individual and corporate parties.	
	(k) As applicable, review any and all contracts and transactional records or documents, and relevant correspondence to determine causes of action, quantum of claim, and liable parties.	
	.6 Study the relevant law to identify all causes of action.	
	.7 Consider whether Rule 15-1 (Fast Track Litigation) applies.	
	.8 If this is a motor vehicle action, consider Notice to Mediate Regulation, B.C. Reg. 127/98.	
	.9 For non-motor vehicle actions, consider Notice to Mediate (General) Regulation, B.C. Reg. 4/2001, which expands the Notice to Mediate process to include a wide range of civil actions in the Supreme Court.	
	.10 If applicable, consider Notice to Mediate (Residential Construction) Regulation, B.C. Reg. 152/99, under the *Homeowner Protection Act*, S.B.C. 1998, c. 31.	
4.2	Commence proceedings and exchange pleadings:	☐
	.1 Identify the defendants and determine, if possible, the defendant's ability to pay a judgment. Consider conducting land title and *Personal Property Security Act*, R.S.B.C. 1996, c. 359 ("*PPSA*"), searches in this regard.	
	.2 Decide in which court or forum to bring action (both in terms of jurisdiction and strategy):	
	(a) Administrative tribunal.	
	(b) Federal Court (consult Federal Court Rules).	
	(c) British Columbia courts, or courts of other provinces or countries.	
	(d) B.C. Supreme Court or B.C. Provincial Court (Small Claims Division).	
	(e) Civil Resolution Tribunal.	

	.3 Determine all possible causes of action and available evidence to support them. If you are instructed to allege fraud or defamation, have the client confirm facts giving rise to such allegations and obtain instructions, in writing. Note that in motor vehicle litigation, the tort claim and no-fault benefit claim involve different parties and must be commenced and tried as separate actions.	
	.4 Decide on the forum according to the nature of the proceeding: notice of civil claim, petition, or requisition (see Rules 2-1 and 3-1). (Note: this checklist deals with an action commenced by notice of civil claim in British Columbia Supreme Court.)	
	.5 Draft and file the notice of civil claim. Note that the notice of civil claim must set out the entirety of the claim. Consult references such as *British Columbia Practice*, 3rd ed. (LexisNexis Butterworths, 2006–), also called "McLachlin and Taylor," and its companion volume *British Columbia Court Forms*, 2nd ed. (LexisNexis Butterworths, 2005–). Ensure the pleadings reflect the actual fact pattern. Plead sufficient material facts to establish a cause of action and the relief sought. Ensure that it complies with Rules 3-1 (Notice of Civil Claim), 3-7 (Pleadings Generally), and 9-5 (Striking Pleadings), and includes all material facts, every possible cause of action, damages, the specific relief claimed, and the proposed place of trial. Ensure that it complies with the *HCCRA*, if that Act applies.	
	.6 Note that *BC Code,* rule 5.1-2, commentary [1], requires a lawyer representing a party in civil litigation who has made or is a party to an agreement made before or during the trial by which a plaintiff is guaranteed recovery by one or more parties, notwithstanding the judgment of the court, to immediately reveal the existence and particulars of the agreement to the court and to all parties to the proceedings.	
	.7 Note when the notice of civil claim expires and diarize in your "BF" systems (for renewing it, if required) (see Rule 3-2). Although the Supreme Court Civil Rules set time limits for various steps, they are not true limitation dates as under the *Limitation Act* and other statutes. It is common practice for counsel to agree to extensions of time for taking certain procedural steps under the Rules, subject to obtaining instructions from their clients. (Note: expiry of a notice of civil claim is one limitation date that counsel cannot overcome by agreement.) *BC Code,* rule 7.2-1, commentary [4] states, "A lawyer should agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities, and similar matters that do not prejudice the rights of the client."	
	.8 Serve defendants and anyone else required to be served or notified (e.g., ICBC, municipality, Ministry of Justice (*Constitutional Question Act*, R.S.B.C. 1996, c. 68, s. 8, and *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, s. 8), Ministry of Health (*HCCRA*)):	
	(a) Comply with requirements of service (in general, see Rules 4-1 to 4-7). Consider special service requirements:	
	(i) corporations (Rule 4-3(2)(b) and *Business Corporations Act*, S.B.C. 2002, c. 57, s. 9);	
	(ii) unincorporated associations (Rule 4-3(2)(c));	

	(iii) deceased persons (*WESA*, s. 150; and service requirements in Rules 25-1(3) and 25-2);	
	(iv) municipalities (Rule 4-3(2)(b));	
	(v) Province of British Columbia (*Crown Proceeding Act*, s. 8);	
	(vi) infants (Rule 4-3(2)(e) and *Infants Act*, R.S.B.C. 1996, c. 223, s. 48);	
	(vii) mentally incompetent persons (Rule 4-3(2)(f));	
	(viii) ICBC (*Insurance (Vehicle) Act*, s. 22);	
	(ix) partnerships (Rule 20-1(2));	
	(x) Royal Canadian Mounted Police.	
	(b) If an alternative method of service is required, seek an order (usually by desk order (Rule 4-4)), effect service, and file proof of this alternative method of service in court (Rule 4-4).	
	(c) If service out of the jurisdiction is required, determine whether leave of the court is required and, if so, make a chambers application, seek an order, and effect service (Rule 4-5). Ensure that notice of civil claim is endorsed for service *ex juris*.	
	.9 Note the date for filing a response (21 days after service of notice of civil claim if resident of Canada; see Rule 3-3 for dates for response if served outside Canada) and diarize them in your "BF" systems.	
	.10 If the defendant fails to enter a response to civil claim, and no extension has been requested, consider applying for default judgment (Rule 3-8). A lawyer who knows that another lawyer has been consulted in the matter must not proceed by default without inquiry and reasonable notice (*BC Code* rule 7.2-1, commentary [5]).	
	.11 If the *HCCRA* applies, note the date for providing notice to Attorney General in the prescribed form, along with a filed copy of the notice of civil claim:	
	.12 Examine the response to civil claim and consider:	
	(a) Whether the defence is sound in law, and if not, consider a motion to strike (Rule 9-5).	
	(b) Whether there are scandalous, vexatious, or embarrassing allegations, and if so, consider a motion to strike (Rule 9-5).	
	(c) Any admissions made by the defendant.	
	(d) What evidence will be needed to support the defendant's allegations, and whether it is available.	
	(e) Whether a demand for particulars should be made (Rule 3-7(23)).	
	.13 If the response raises new facts that call for reply, consider filing a reply (Rule 3-6).	

	.14 Consider applying for summary judgment (Rule 9-6) or summary trial proceedings (Rule 9-7; see item 11 in this checklist), bearing in mind the risk of the applicant's case being finally dismissed on a summary trial application.	
	.15 Amend pleadings as required (Rule 6-1). Add, substitute, or remove parties as required (Rule 6-2).	
	.16 Set trial date (see item 9 in this checklist and Rule 12-1), but be aware that unless all parties of record consent, the plaintiff must obtain leave of the court to discontinue a proceeding after a trial date has been set (Rule 9-8(2)). Also, once a trial date is set or a case planning conference is held, there can be no amendment to pleadings under Rule 6-1(1) without consent of all parties or leave of the court.	
	.17 Consider issuing a notice requiring trial by jury, and note the limitation period for issuing the notice (21 days after notice of trial; Rule 12-6(3)).	⏰
	.18 Consider whether there is an underinsured motorist protection ("UMP") claim if there are insufficient insurance limits and insufficient tortfeasors' assets. This is done by way of a separate process (arbitration), which is commenced by giving notice to ICBC (see Insurance (Vehicle) Regulation, ss. 148.1 to 148.4). Note that notice of an action brought against an underinsured motorist must be given to ICBC immediately, with a copy of the notice of civil claim: s. 148.1(10).	

5.	**COMMENCEMENT OF PROCEEDINGS—DEFENDANT**	
5.1	Advise the client and obtain instructions to defend the action. Determine whether liability will be admitted. If an insurer is involved, confirm coverage. If admitting liability, obtain prior agreement of the insured, preferably in writing. (Note: ICBC has a statutory right to admit liability on behalf of its insured (Insurance (Vehicle) Regulation, s. 74.1)).	☐
5.2	Conduct Internet searches as needed (see item 4.1.5(e) and (j) in this checklist).	☐
5.3	Ensure that the defendant is correctly named in the notice of civil claim (especially if the defendant is a company). Consider advising the plaintiff if the defendant is not correctly named. Ensure that service was properly effected.	☐
5.4	If necessary, send a letter to plaintiff's counsel stating that you are investigating the matter to be able to prepare a response. Request that default proceedings not be taken without reasonable notice.	☐
5.5	If representing the insurer, and if the *HCCRA* applies, note the date for providing notice to the Ministry of Health in prescribed form.	☐
5.6	Consider whether Rule 15-1 (Fast Track Litigation) applies.	☐
5.7	If this is a motor vehicle action, consider whether the CRT has jurisdiction.	☐
	Also, consider a Notice to Mediate (see item 4.1.8 in this checklist).	

5.8	For other Supreme Court actions, consider the Notice to Mediate (General) Regulation and the Notice to Mediate (Residential Construction) Regulation. (See items 4.1.9 and 4.1.10 in this checklist.)	☐
5.9	Consider whether to file a response if it appears that the process is invalid or has expired, the purported service of the process is invalid, or the court has no jurisdiction (Rule 21-8). Note the date for filing and serving a response: for a defendant resident in Canada, 21 days after process service (Rule 3-3(3)), and diarize it in your "BF" systems.	⏰
5.10	If the client is a foreign defendant, consider the risk of attorning to a particular jurisdiction and the consequences of not defending.	☐
5.11	Consider whether the court has jurisdiction over the defendant as a result of contractual provisions, subject matter, and the monetary amount. Consider filing a jurisdictional response (Form 108). Otherwise, consider an application to strike under Rule 21-8, but do not attorn to the jurisdiction. Take care in any subsequent steps in the proceeding to avoid a deemed attornment.	☐
5.12	Examine the notice of civil claim and consider:	☐
	.1 Whether the action was brought in time (i.e., within the applicable limitation period).	
	.2 Whether it discloses a cause of action, and, if not, consider an application to strike (Rule 9-5).	
	.3 Whether there is sufficient information to enable you to respond properly. If not, consider making a demand for particulars, backed up (if necessary) by an application for particulars and an extension for filing the response (see Rule 3-7(23) and (24)).	
	.4 Whether there are scandalous, vexatious, or embarrassing allegations, and if so, consider an application to strike all or a portion of the pleading (Rule 9-5).	
	.5 Any admissions made by plaintiff.	
	.6 What evidence will be needed to support the plaintiff's allegations, and whether it is available.	
	.7 Any presumptions of law that work for or against you.	
	.8 Whether to apply for security for costs.	
	.9 Whether the cause of action is covered by any contractual indemnity, waiver, or limitation of liability to the benefit of the defendant.	
5.13	Rule 3-3(2) requires that for each fact set out in the notice of civil claim, the response to civil claim must indicate whether the fact is (a) admitted; (b) denied; or (c) outside the knowledge of the defendant. If any fact is not responded to, it is deemed to be outside the knowledge of the defendant (Rule 3-3(8)). Consider making all appropriate admissions. Consider the content of the response, including:	☐

	.1 Any risk of providing a basis for an application for summary judgment or an application to strike.	
	.2 All possible defences (including contributory negligence, failure to mitigate, or a limitation defence). Note the limits imposed by *BC Code* rules 5.1-1 to 5.1-2.	
	.3 Whether the defence is sufficient in law and addresses any matters that must be specifically pleaded (e.g., estoppel, failure to mitigate).	
	.4 Whether evidence will be available to support the defence.	
	.5 In a motor vehicle action, plead *Insurance (Vehicle) Act*, s. 83, allowing the defendant to reduce the plaintiff's claim to the extent of any benefits the plaintiff obtains, claims, or is entitled to claim from ICBC. Plead *Insurance (Vehicle) Act,* ss. 98 and 100, where appropriate.	
	.6 Whether it is necessary to specifically plead statutory provisions such as the *Law and Equity Act*, R.S.B.C. 1996, c. 253, or others.	
	.7 Whether negligence of others, including co-defendants or unknown parties, should be pleaded.	
5.14	Consider whether there is a counterclaim against the plaintiff. If so, a counterclaim must be filed within the time set out for filing a response under Rule 3-3(3). A counterclaim must be in Form 3 and accord with Rule 3-7.	☐
5.15	Consider whether there is a claim against a third party. If so, consider third-party proceedings and the time limit for commencing: without leave of the court, if within 42 days of filing the response to civil claim (Rule 3-5(4)). Note the necessity to file third-party proceedings where contribution or indemnity is claimed (Rule 3-5(1)). Claims for contribution and indemnity must be commenced within two years of the discovery of the claim, as defined by the *Limitation Act*, s. 16.	⏰
5.16	Prepare, file, and serve the response to civil claim within the specified period: if the defendant resides in Canada, 21 days from service of notice of civil claim (Rule 3-3(3)), unless an extension is obtained. Ensure that it complies with Rules 3-3 and 3-7 and deny all allegations you are unable to admit.	⏰
5.17	Diarize 42 days from filing the response to civil claim as the deadline for filing a third party notice without leave of the court.	⏰
5.18	Diarize dates for responding to any counterclaim or third-party notice in your "BF" systems (see Rules 3-4(4)(b), (5), and (6) and 3-5(9), (10), and (11)).	☐
5.19	Set a trial date (see item 9 in this checklist and Rule 12-1). Consider trial by jury and note the limitation period for issuing the notice (21 days after notice of trial: see item 4.2.6 in this checklist and Rule 12-6(3)). Note that payment of jury fees is due 45 days before trial (Rule 12-6(3)(a) and (b)). Note that certain causes of action must be heard by judge alone (Rule 12-6(2)).	⏰

6.	CASE PREPARATION	
	The following discussion is based on the usual deadlines imposed by the Supreme Court Civil Rules. In some circumstances—such as case planning conference orders or fast-track litigation—the requirements or deadlines may differ.	
6.1	Continue to prepare, review, and report:	☐
	.1 Create and continuously update a working trial brief. Include a checklist of tasks, plan of trial, theme, chronology of facts, pleadings, applications and orders, document lists, affidavits, statements, reports, discovery of documents, examination for discovery, analysis, law, and summation.	
	.2 Periodically review the thoroughness of your preparation and its results; for example:	
	(a) Check for new case law.	
	(b) Consider any need for additional investigation on any aspect of the case.	
	(c) Reconsider the relationship between various aspects of case.	
	(d) Consider any possible change in the position of the parties (e.g., based on pleadings, discovery).	
	(e) Identify evidence that will be needed at trial, and how it will be introduced.	
	(f) Confirm availability of witnesses, including experts (see items 6.9 and 6.10 in this checklist).	
	(g) Consider whether testimony by videoconferencing is needed.	
	(h) Consider whether the action was commenced in the appropriate court. Rule 19-1 and Small Claims Rule 7.1 govern transfer of an action from the Provincial Court (Small Claims Division) to the Supreme Court. *Supreme Court Act*, R.S.B.C. 1996, c. 443, s. 15 governs transfer from the Supreme Court to the Provincial Court (Small Claims Division).	
	(i) Consider whether the action, or part of the action (i.e., determination of minor injury) comes within the jurisdiction of the CRT.	
	.3 Report to the client regularly.	
6.2	Consider the necessity or desirability of any of the following preliminary steps:	☐
	.1 Notice to admit facts or authenticity of documents (Rule 7-7).	
	.2 Issuing a demand for particulars (Rule 3-7(23)).	
	.3 Statement of a special case for the opinion of the court (Rule 9-3); obtain consent or apply for an order.	
	.4 Proceedings on a point of law arising from the pleadings (Rule 9-4); obtain consent or apply for an order.	

	.5 Inquiry, assessment or accounting before an associate judge, registrar, or special referee (Rule 18-1).	
	.6 Production, inspection, detention, preservation or recovery of property (Rules 7-6 and 10-1); make request and, if refused, apply for order.	
	.7 Injunction (Rule 10-4). Advise the client of the requirement to post an undertaking to pay damages if the injunction is granted.	
	.8 Pre-judgment garnishing order (see item 5.1 in the COLLECTIONS PROCEDURE (E-4) checklist; *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, s. 3).	
	.9 Charging order.	
	.10 Preservation of assets order ("Mareva injunction"). B.C. Supreme Court Practice Direction PD-47 prescribes the use of model forms of order for a variety of applications, including preservation of assets. It provides a link to a page on the court's website where model orders are available: www.courts.gov.bc.ca/supreme_court/practice_and_procedure/model_orders.aspx.	
	.11 Appointment of a receiver (Rule 10-2).	
	.12 Certificate of pending litigation (*Land Title Act*, R.S.B.C. 1996, c. 250, s. 215).	
	.13 Discontinuance by plaintiff (Rule 9-8(1) and (2)).	
	.14 Withdrawal of defence (Rule 9-8(3)).	
	.15 Consent order (Rule 13-1(10)).	
6.3	Research the law and prepare a memorandum of law, including the basis of the action, defences, possible arguments, damages, etc.	☐
6.4	Organize documents:	☐
	.1 Collect all documents (and all copies of them) including electronic documents from the client. Ensure that the client understands the scope of the disclosure required (see item 6.7.3 in this checklist). Mark all documents and copies with a unique serial number. If the client needs the documents back, make copies.	
	.2 Review the documents and determine their relevance. Segregate documents that appear to be irrelevant.	
	.3 Organize the documents using a logical classification system, but consider the integrity of the client's files (it may be best to not rearrange files).	
	.4 Consider using a software document management system, particularly where documents are extensive.	
	.5 Make a summary list, indicating file location and general description of documents.	
	.6 Make a chronological list, indicating the file location of documents.	
	.7 Determine which documents are privileged; segregate and clearly mark them; and make a list.	

	.8 Preserve originals that may become exhibits at trial (e.g., do not hole punch or mark them).	
6.5	Document use and follow-up:	☐
	.1 Obtain originals, if possible. Check authenticity and verify, if necessary.	
	.2 Follow up any leads coming from documents. Consider searching for follow-up documents (e.g., answer to a letter, receipt evidencing a payment).	
	.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 documents.	
	.6 Consider whether you want to use social media evidence at trial, and whether such evidence will be admissible.	
6.6	Consider sending a notice to admit concerning key documents (see item 6.8 in this checklist).	☐
6.7	Discovery of documents (Rule 7-1):	☐
	.1 Discovery of documents of other parties:	
	(a) Each party of record to an action must, within 35 days after the close of pleadings, prepare a list of documents in Form 22 (Rule 7-1(1)).	⏰
	(b) Diarize the 35-day period in your "BF" system and, if the list is not received by then, consider what steps are appropriate, including applying for dismissal (Rule 22-7(5)). (Note: this is an exceptional order, case law should first be consulted. See, for example, *Kondori v. New Country Appliances Inc.*, 2017 BCCA 164.) Ensure that you prepare your client's list of documents within the 35-day period.	⏰
	(c) Send the client copies of list(s) of documents you receive.	
	(d) Review list(s), possibly with the client, and compare lists, including the client's list, to see if there are any omissions.	
	(e) Write to counsel of the disclosing party and request delivery of any documents disclosed in Parts 1 through 3 of their list of documents, preferably in electronic form.	
	(f) If the list is not complete, a party may demand further production (Rule 7-1(10) and (11)). If no further production is received within 35 days of the written demand, a party may make an application to require the listing party to comply with the demand (Rule 7-1(13) and (14)).	⏰
	(g) Consider whether a request for access to a party's Facebook account or other social networking sites is appropriate.	

	(h) Consider whether to challenge a claim of privilege over documents.	
	(i) Inspect documents. Check originals for authenticity, handwritten notes, text on the backs of pages, etc.	
	(j) Consider whether there is a basis for requesting an affidavit verifying the list of documents and, if refused, apply to court for an order (Rule 7-1(8)).	
	(k) If appropriate, consider requesting an amended list of documents and, if one is received, scrutinize the list, obtain copies, and inspect the documents.	
	(l) Keep a set of copies for marking up, making counsel notes, etc.	
	(m) Remember that pursuant to the implied undertaking rule, an opponent's documents may only be used in the case in which they were obtained (you may be in contempt of court if documents are used for some other, improper, purpose). A parallel but separate action is not the same action, so consider whether it is necessary to obtain a waiver of the implied undertaking by reaching an agreement with all parties in the other separate action, or obtain a court order. Note Form 22, which requires the notation of the implied undertaking to the court that other parties will not use documents produced except for the purposes of the litigation.	
	.2 Documents in possession or control of a non-party (e.g., hospital records). Note that a special procedure is required to obtain records of financial institutions (*Evidence Act*, R.S.B.C. 1996, c. 124, s. 34(6) and (7)). Otherwise, send a letter requesting documents, accompanied by the client's signed authorization, if needed; if your request is refused, apply for an order (Rule 7-1(17), (18), and (19)). It may be possible to obtain police records by consent order and obtain documents from government-related organizations through the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 requests. Note that the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, and the *Personal Information Protection Act*, S.B.C. 2003, c. 63 require organizations (including the private sector) to obtain consent when using or disclosing personal information (see www.priv.gc.ca and www.oipc.bc.ca).	
	.3 When preparing your client's list of documents:	
	(a) Ensure that the client understands the importance of disclosing all documents (consider use of standard form letter). Obtain all of the client's documents and decide which are (even possibly) relevant. Rule 7-1(1) requires the list to include all documents that are or have been in the party's possession or control and that could, if available, be used by any party of record at trial to prove or disprove a material fact, and all other documents to which the party intends to refer at trial.	
	(b) Keep a record of all the client's documents.	

	(c) Consider making a claim of privilege. Consider resisting disclosure because of trade secrets. Consider whether portions of documents should be edited for confidential or personal information unrelated to the matter in question. A court order may be necessary. Note that documents for which privilege is claimed must be described in a manner that, without revealing information that is privileged, will enable other parties to assess the validity of the claim (Rule 7-1(7)).	
	(d) Consider whether certain documents are prohibited from production, such as certain internal quality improvement documents in a health care setting (*Evidence Act*, s. 51).	
	(e) Prepare a draft list of documents and send it to the client to check for accuracy and completeness.	
	(f) Send the list to other parties within the 35-day time limit or such other date as agreed upon.	⏰
	(g) Prepare and send an affidavit verifying the list, if ordered.	
	.4 The same document discovery rules apply to Rule 15-1 (Fast Track Litigation).	
	.5 An appointment to examine for discovery requires that the party bring all relevant documents to the examination (Rule 7-2(16)).	
	.6 Note the ongoing obligation to produce documents. Advise the client. Produce an amended list if you obtain further documents (Rule 7-1(9)).	
6.8	Admissions (Rule 7-7).	☐
	.1 Consider sending a notice to admit the truth of facts or authenticity of documents to opposing counsel. Diarize the 14-day period in your "BF" systems.	⏰
	.2 On receipt of a notice to admit, respond within the time limit, or the facts will be deemed admitted. Failure to deny facts specifically may be deemed an admission (Rule 7-7(2)). Note the costs consideration where there is an unreasonable refusal to admit (Rule 7-7(4)).	
6.9	Witnesses (see also item 6.10):	☐
	.1 Compile a list of all prospective witnesses.	
	.2 With respect to treating medical practitioners, note that commencing an action amounts to waiving a duty of confidentiality that would be owed to the plaintiff. Write to practitioners requesting an interview (copying plaintiff's counsel) and note the decision in *Swirski v. Hachey* (1995), 16 B.C.L.R. (3d) 281 (S.C.). Enclose a copy of the case.	
	.3 Consider who will conduct 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 either conduct or attend the interview; consider using an investigator or adjuster.	

	.4 Contact each prospective witness and attempt to arrange an interview. Consider *BC Code* rules 5.2-1, 7.2-8, and 5.3 and if the witness has counsel, seeking that counsel's consent to contact the witness. In the opinion of the Ethics Committee, a lawyer must notify an opposing party's counsel when the lawyer is proposing to contact an opposing party's expert.	
	For the full opinion, see the Summer 2014 *Benchers' Bulletin*, p. 13. Notification promotes discussion about the permissible scope of such contact at law, including the applicability of solicitor-client privilege. Formal examination of an opposing party's expert is governed by the Supreme Court Civil Rules; see especially Rules 7-5(2) and 11-7.	
	.5 If a prospective witness refuses an interview, consider sending a written request documenting the refusal and alerting the witness to a possible court application if the witness persists in refusing. Consider *BC Code,* s. 5.3 and rule 7.2-9.	
	.6 Apply for court order, if necessary (Rule 7-5), but note the exception set out in Rule 7-5(2) on expert witnesses. Also, note that the court may order an examining party to pay reasonable costs (application and examination).	
	.7 Prepare for the interview:	
	(a) Collect any previous statements and any documents on which the witness may be able to give evidence.	
	(b) Review pleadings.	
	(c) Prepare outline of questions to ask.	
	(d) If not conducting the interview personally, instruct the interviewer.	
	.8 For a Rule 7-5 examination:	
	(a) Obtain an appointment from the court reporter.	
	(b) Serve a court order and subpoena on the witness and all parties of record at least seven days before the date appointed for examination (Rule 7-5(7)). Tender conduct money.	
	(c) Inform the parties of the appointment, and confirm with the reporter.	
	.9 Interview or examine the witness. The interviewer/examiner should question thoroughly, and also:	
	(a) Find out if the witness has made any previous statements.	
	(b) Try to identify other potential witnesses.	
	.10 After the interview/examination, the interviewer/examiner should, in consultation with you:	
	(a) Record an assessment of the person's strengths and weaknesses as a witness.	

	(b) If there was an interview, consider preparing a written statement and having the witness review and sign it. Note the court's views on the impropriety of taking statements in sworn form before trial (e.g., see *Staaf v. Insurance Corp. of British Columbia*, 2014 BCSC 1048). If any witness testimony is to be by affidavit, an application should be made pursuant to Rule 12-5(59), and the affidavit must be served at least 28 days prior to the date of the application being heard (Rule 12-5(60)).	
	(c) If there was an examination under oath (Rule 7-5), order and obtain a transcript.	
	.11 Review the statement. Note inconsistencies. Compare it to other statements and documents. Consider the impact of the statement on the case.	
	.12 Determine if further interviews are required.	
	.13 Determine who you are going to call as witnesses at trial, and for what purposes. Consider whether you will be calling an adverse party as a witness (Rule 12-5(20)).	
	.14 For those who will be witnesses:	
	(a) Ask them to advise you of any updated contact information.	
	(b) Advise them of the trial date, and diarize to send reminders. Notify them of any changes, settlement, withdrawal of defence, etc.	
	(c) Serve subpoena with conduct money (Rule 12-5(32) to (35) and Schedule 3, Appendix C).	
	.15 Closer to trial, for those who will be witnesses:	
	(a) Discuss courtroom procedures, how to dress, and how to answer questions.	
	(b) Advise them of areas you intend to examine on, and go over some sample questions of examination and cross-examination. Advise them of the possibility of re-examination and when it might occur.	
6.10	Experts:	☐
	.1 Determine whether you need expert evidence on any issue. The Rules provide for three categories of expert witnesses: (1) joint experts (Rule 11-3); (2) a party's "own" expert witness (Rule 11-4); and (3) court-appointed experts (Rule 11-5).	
	(a) A joint expert under Rule 11-3 may be retained by adverse parties, either by agreement of the parties or by court order (pursuant to Rule 5-3(1)(k)(i)). Rule 11-3 sets out the detailed procedure for selecting, instructing, and paying the expert.	

		(b) A party may retain their own expert under Rule 11-4, but if a case planning conference has been held, expert opinion evidence must not be tendered to the court at trial unless provided for in the case plan order applicable to the action or with leave of the court (Rule 11-1(2)). This rule relates to expert evidence generally and not to any specific expert.	
		(c) A court may appoint an expert on its own initiative under Rule 11-5(1).	
	.2	If this is a motor vehicle action, be mindful of the recent amendments to the *Evidence Act*, which limit a party to three experts at trial, require consent of the parties or a court order to tender additional expert evidence. Also note the corresponding Disbursements and Expert Evidence Regulation, B.C. Reg. 210/2020, discussed at "New developments" in this checklist.	
	.3	For actions governed by Rule 15-1 (Fast Track Litigation), parties are limited to one expert and one report (s. 12.1 of the *Evidence Act*).	
	.4	Select experts. It may be prudent to conduct research on potential experts before retaining one, including whether there is adverse judicial comment on the potential expert. Be mindful of the prescribed limits to the number of experts permitted in motor vehicle actions set out in the *Evidence Act*. See also the restriction under Rules 11-1(2) and 11-4 (described in item 6.10.1 in this checklist) as to when each party may retain its own experts.	
	.5	At the outset, confirm that the expert does not have a conflict. If an expert opinion has already been given, write to ensure that the expert is aware that an action has been commenced, informing the expert of your involvement, and advising that expert to retain records. Ensure that the expert will be available on the date of trial.	
	.6	Discuss the expert's fees with the client, including who is to pay the expert's account.	
	.7	Initial interview with expert:	
		(a) Discuss the expert's qualifications, publications, and court experience.	
		(b) Discuss the case and the issues.	
		(c) Draft an instruction letter: set out questions, or what you want the expert to determine; set parameters; indicate assumptions you want the expert to make. Ensure that the expert has all the necessary facts, documents, and reports, keeping in mind the expert's entire file may be producible at trial. Note the many requirements for expert reports under Rule 11-6(1).	
		(d) Ensure that the expert understands the need to write a report or give testimony in ordinary words, and to avoid technical language where possible. Advise the expert in writing of the trial date (Rule 11-6(9)).	

	(e) Discuss the expert's role in the case. Make sure the expert understands that their role is to provide an independent and objective expert opinion on areas within their expertise. Advise the expert of the duty to assist the court and not to be an advocate for any party (Rule 11-2(1)). If a report is being prepared, advise the expert that they must comply with the certification in Rule 11-2(2). Review with your expert the requirements of their report (Rule 11-6(1)). Explain that the expert may be cross-examined and may be compelled to produce their entire file. Consider carefully what should be in the expert's file. Inform the expert that being served with a subpoena is a possibility, and discuss privilege. Advise the 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 subject to privilege.	
	(f) Ask the expert to suggest resources that will improve your knowledge of the area, or may be used to cross-examine the opposing party's expert.	
	(g) Determine whether other experts will be needed.	
	(h) Assess the expert's strengths and weaknesses as a witness.	
	(i) Make arrangements for the expert to attend trial, if necessary.	
	(j) Make arrangements for payment, clarifying the terms of the retainer in writing, including specifying the fees, the nature of the services to be provided, and the person responsible for payment. If you do not intend to pay the expert's fees yourself, clearly indicate in writing that you are not taking on this personal obligation. See *BC Code*, rule 7.1-2.	
	.8 Furnish the expert with all relevant reports and records that might affect the opinion, whether supportive or contrary.	
	.9 Monitor progress if appropriate (e.g., if the report will be completed in stages).	
	.10 Consider whether to obtain a report at all if the opinion is not helpful to your case.	
	.11 Obtain report or prepare summary of opinion evidence and review with the expert in detail, considering how it will affect the case. Cross-examine on it.	
	.12 Decide whether you will use the expert's report or use the expert as a witness. Consider the restrictions on calling the expert as witness at trial. (See Rules 11-1(2), 11-4, and 11-7, and *Evidence Act*, ss. 10 and 11.)	
	.13 If you intend to submit the report in evidence, deliver a copy of it to the other parties, along with the expert's qualifications, at least 84 days before the scheduled trial date (Rule 11-6(3)). Rebuttal reports must be served at least 42 days before the scheduled trial date (Rule 11-6(4)). Consider making an agreement with opposing counsel to exchange expert reports at an earlier date.	
	.14 Reconfirm the trial date with the expert when the report is served (Rule 11-6(9)).	
	.15 If calling 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 the possibility of re-examination and when it might occur.	
	.16 Conduct research on the opposing party's expert. Search cases in which that expert's opinion has been considered. Look at that expert's publications and compare them to the expert's stated opinion. Be cautious about contacting your opponent's experts without giving notice to counsel so that counsel can advise the expert on matters not to be disclosed because they are subject to legal professional privilege (see item 6.9.4 in this checklist).	
	.17 A party who served an expert report must promptly provide to any party of record who requests it: (i) any written statement or facts upon which the expert's opinion is based; (ii) a record of any independent observations made by the expert in relation to the report; (iii) any data compiled by the expert in relation to the report; and (iv) the results of any test conducted by or for the expert (Rule 11-6(8)(a)).	
	.18 A party served with an expert report must, within 21 days of being served, notify the serving party if the expert will be required to attend at trial for cross-examination (Rule 11-7(2)). See item 12.2.8 in this checklist for time limits affecting any objection to admissibility.	⏰
	.19 A party may ask to review an expert's file relating to the preparation of the opinion set out. If a request is made, the party tendering the expert must provide the file material of the expert at least 14 days before the scheduled trial date (Rule 11-6(8)(b)).	⏰
6.11	Medical evidence (in a personal injury action):	☐
	.1 For plaintiff:	
	(a) Consider sending the client to expert medical specialists. Advise these experts that they may be required to give evidence, of the trial date, and of the need to have a report 84 days before trial.	⏰
	(b) Consider whether to obtain a report from each treating doctor and medical practitioner (e.g., physiotherapist, chiropractor) whom the client has seen. Obtain medical records as required.	
	(c) Obtain updated reports periodically, and one 90 to 120 days before trial.	⏰
	(d) Obtain hospital records and ensure they meet the admissibility requirements of *Hospital Act*, R.S.B.C. 1996, c. 200, s. 51(2).	
	(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 that you will likely have to produce your expert reports at the same time.	
	(f) If using treating doctors as witnesses, see item 6.10 in this checklist on experts.	

	(g) Consider obtaining WorkSafeBC records.	
	(h) Consider obtaining any short- or long-term disability files, including Canada Pension Plan files and Employment Insurance disability files.	
	.2 For defendant:	
	(a) Obtain all doctor and medical practitioner records (physiotherapist, chiropractor, etc.), WorkSafeBC and hospital records, either by agreement or by court order (Rule 7-1(18) and (19)). Consider whether full medical records are required.	
	(b) Obtain MSP printout, PharmaNet records, and *HCCRA* printout.	
	(c) Consider one or more independent medical examinations. If refused, apply for an order (Rule 7-6(1)). Direct the expert's attention to specific areas of concern. Study the report and supply a copy of its narrative, or the whole report, to your opponent, usually in exchange for plaintiff's reports.	
	(d) Decide whether to use that doctor or practitioner as an expert witness and, if so, see item 6.10 on experts.	
	(e) Consider obtaining any file from the plaintiff's disability insurer, or any Canada Pension Plan benefits file.	
	.3 For all parties: See item 6.10.2 and .3 in this checklist regarding the Rule on limits of expert reports in personal injury claims and fast track actions.	
6.12	Other evidence:	☐
	.1 Consider whether it is necessary to obtain depositions to preserve evidence that may not be available at trial (e.g., due to absence, infirmity, possible death; Rule 7-8). Rule 12-5(45) requires that deposition evidence be presented in full unless otherwise agreed by the parties or set by court order.	
	(a) Send a letter to the parties requesting consent.	
	(b) Failing consent, apply for a court order.	
	(c) Deliver a subpoena to any witness and to all parties of record.	
	(d) Arrange an examination with a reporter.	
	(e) Arrange for visual recording (if desired).	
	(f) Prepare thoroughly for examination. Have an outline of questions.	
	(g) Conduct the examination.	
	(h) Order a transcript and diarize to check that it is received.	
	.2 Collect all evidence as to existence and quantum of damages. Consider using an accountant, economist or other expert.	
	.3 Where valuation of property is an issue, consider using an expert such as an appraiser, market researcher, or quantity surveyor.	

	.4 Consider the use of statistical and other studies to prove the existence of an economic situation or fact.	
	.5 Consider use of demonstrative evidence.	
	(a) Photographs. Ensure that a witness will be available at trial who will be able to verify that it is a reasonable representation of the subject as of the time in question.	
	(b) Records (e.g., hospital records) or portions of records.	
	(c) Sketches, diagrams, models, computer reconstructions. Ensure they will assist the witness and the court. (Rule 12-5(10) requires parties to have an opportunity to inspect at least seven days prior to trial.)	⏰
	(d) Demonstration of plaintiff's injuries (e.g., scars, impaired functioning).	
	(e) Film/videotape. Be prepared to lead evidence about the taking, development, and projection of the film. Ensure that the witness will be able to verify it as accurately depicting events. Give opposing counsel the opportunity to preview it. Give at least seven days' notice before trial starts (Rule 12-5(10)).	⏰
	(f) Social media. Consider using Facebook, LinkedIn, Twitter, or other forms of social media as evidence.	
6.13	Interrogatories (Rule 7-3):	☐
	.1 Interrogatories can only be served if the court grants leave or a party consents (Rule 7-3(1)).	
	.2 Consider whether interrogatories might be useful in issues involving extensive research, precise chronologies, exhaustive lists or inquiries of representative parties. This issue should be addressed by agreement or at the case planning conference (Rule 5-3(1)(h)).	
	.3 Consider whether serving interrogatories may assist in obtaining an extension of time of the number of hours permitted at examination for discovery. If interrogatories are served and answers are refused, the refusal may be used as a basis for an application to extend the examination for discovery beyond seven hours. Similarly, serving a notice to admit and having a party unreasonably refuse to admit certain facts may be used to support an application to extend the examination for discovery.	
	.4 In ordering that a party must answer interrogatories, a court may set terms and conditions including the number and length of interrogatories; the matters covered by interrogatories; the timing of any response to interrogatories; and the notification, if any, to be given to the other parties of record respecting the interrogatories (Rule 7-3(3)).	
	.5 The person to whom interrogatories are directed must serve an answer by affidavit within 21 days, or such other period as is ordered by the court (Rule 7-3(4)). Consider whether the interrogatories are precise enough to be answered in part or in whole. Diarize the 21-day limitation period in your "BF" systems.	⏰

6.14	Examination for discovery (Rule 7-2):	☐
	.1 Examination for discovery of opposing party:	
	(a) Consider timing (e.g., early examination versus waiting until all documents have been collected and analyzed, and answers to any interrogatories or notices to admit have been received and analyzed).	
	(b) Determine the parties to be examined. Consider whether to identify a representative of a corporate party to be examined, or write to counsel for an opposing corporate party requesting names of knowledgeable persons to be examined (Rule 7-2(5)). Confer with your client and choose the best person who has first-hand knowledge of the issues in dispute. This may include a former employee or manager. Note the provisions in Rule 7-2 regarding examination of various parties such as infants, mentally incompetent persons, bankrupts, etc.	
	(c) Contact counsel for the party to be examined, arrange convenient dates, determine where and how the examination will take place, and whether conduct money is needed or waived. Seek an agreement on use of photocopies.	
	(d) Consider whether to conduct the examination virtually or in-person, and weigh the potential convenience and cost savings of virtual discoveries against the potential benefits of in-person proceedings. Discuss this beforehand with the opposing party.	
	(e) Where there are multiple parties or multiple related actions, note that special considerations may apply, including:	
	(i) waiver of the implied undertaking of confidentiality so parties can share documents and attend examinations for discovery;	
	(ii) agreement where adverse parties adopt the examination for discovery of other parties; and	
	(iii) coordinating examinations for discovery so individual parties are not subjected to multiple examinations for discovery at different times	
	(f) Obtain appointment from court reporter; diarize date.	
	(g) Serve notice of appointment on, and send conduct money (if required) to the party to be examined or to that party's counsel.	
	(h) Deliver a copy of the notice of appointment to all other parties.	
	(i) Send a letter to the court reporter with a copy of the appointment.	
	(j) Arrange for an interpreter, if needed, and send written confirmation of arrangements.	
	(k) If your examination will be assisted by the presence of an advisor (e.g., an accountant), try to arrange this with opposing counsel and, if unsuccessful, consider applying to court for authorization.	

	(l) Determine from your expert whether they would be assisted by any specific facts or documents that you could obtain at the examination.	
	(m) Plan the examination and prepare a brief, including pleadings, documents you will cover, and a checklist of areas you propose to examine on. For an example of discovery questions for a plaintiff in a personal injury action, see the PERSONAL INJURY PLAINTIFF'S INTERVIEW OR EXAMINATION FOR DISCOVERY (E-3) checklist.	
	(n) Consider applying to court for an exclusion order if you think the presence of other parties at the examination may negatively affect another party's evidence. Note, however, the heavy onus on the applicant to establish that a violation of an essential of justice would be threatened if exclusion is not directed (*Bronson v. Hewitt*, 2007 BCSC 1477; *Saltman v. Sharples Contracting Ltd.*, 2018 BCSC 883).	
	(o) Conduct the examination for discovery. Note limits on examination for discovery (seven hours under Rule 7-2(2) unless the court otherwise orders or the person examined consents). If the party being examined cannot answer questions or supply documents, obtain their undertaking to inform themselves or to provide the documents. State for the record any agreement regarding copies or exhibits. Obtain documents identified and reach agreement on identification (e.g., by reference to list of documents) or mark as exhibits for identification. Keep a list of exhibits and ensure you have copies of all exhibits. If opposing counsel objects to a question posed, state the question clearly for the record, in the event it is necessary to bring a chambers application to compel an answer. Note that the spousal communication privilege in *Evidence Act*, s. 8 currently applies only to married spouses, and that in the *Canada Evidence Act*, R.S.C. 1985, c. C-5, s. 4(3) applies only to heterosexual married spouses. The extension of the common-law rule of spousal testimonial competence and immunity to common-law relationships has been inconsistent as between provinces.	
	(p) If a corporate representative cannot satisfactorily inform themselves of the matters in issue, seek consent (or apply for an order) to examine a second person on behalf of the corporation.	
	(q) Decide whether to order a transcript, and if you do, diarize to check that it is received.	
	(r) Send a letter to counsel for the party examined, confirming requests for outstanding information and documents.	
	(s) Prepare a précis of the discovery and a brief of exhibits marked at discovery (do not hole punch or mark original documents).	
	(t) Arrange for a continuation, if required.	
	(u) Consider sending a summary of the examination for discovery to the client, and sending the other party's subsequent responses to requests for information that were made at the examinations.	

	(v) If there are ongoing losses or symptoms, consider a follow-up examination for the purpose of an update.	
	(w) Consider applying to the court for a ruling on objections made during the discovery, but only where the issue is important.	
	.2 On receipt of notice of appointment for discovery of other parties, decide whether you or your client should attend. Determine whether to order a transcript, particularly if not attending.	
	.3 Examination for discovery of your client:	
	(a) Determine where and how the examination of your client will take place and if conduct money will be needed or waived.	
	(b) Where the party to be examined is or was a director, employee, etc. of a party, consider whether it would be appropriate to apply to have a different person examined (Rule 7-2(5)).	
	(c) Advise the client of the appointment.	
	(d) Fully prepare the client for the examination:	
	(i) Make sure the client understands what an examination for discovery is, its purpose, who will be there, what roles each person has, the manner in which the examination will take place, how to dress, and how to present testimony. If the examination takes place via video, consider testing the client's video and sound functions beforehand. Advise the client not to answer any questions to which you object. Ensure that the client is aware of the consequences of a discrepancy between evidence at examination and at trial, and understands the need to be truthful.	
	(ii) Review with the client the type of questions likely to be asked, and review documents. In a personal injury case, see the PERSONAL INJURY PLAINTIFF'S INTERVIEW OR EXAMINATION FOR DISCOVERY (E-3) checklist	
	(e) Make appropriate and clear objections to questions as required.	
	(f) Note any requests for the client to provide information or documents. Note and obtain documents marked as exhibits.	
	(g) Decide whether to order a transcript, and if you do, diarize to check that it is received.	
	(h) Ensure that client provides information and documents as agreed.	
	(i) Prepare a précis of the discovery, and a brief of the exhibits marked at discovery.	
	(j) If any corrections to discovery answers are needed, promptly write to opposing counsel giving corrections or possibly offering an opportunity for re-examination. If there are reporting errors, promptly contact the reporter and opposing counsel to make corrections.	

	.4 Examinations for discovery must not exceed seven hours in total (or any greater period agreed to by consent or ordered by court) (Rule 7-2(2)). Note that breaks in the examination for discovery do not count towards this limit (see *Manson v. Mitchell*, 2022 BCSC 617); only time spent in examination on the record is counted.	
	.5 If the proceeding is under Rule 15-1 (Fast Track Litigation), examinations for discovery must not exceed two hours in total (or any greater period agreed to by consent) (Rule 15-1(11)) and must be completed at least 14 days before trial (Rule 15-1(12)).	⏰
	.6 An application can be made seeking a court order to extend the length of any examination for discovery (Rule 7-2(2) and (3)).	

7.	**APPLICATIONS**	
7.1	Interlocutory applications (Rule 8-1) are by notice of application, and written submissions are not permitted except where the application is longer than two hours (Rule 8-1(16)). Note the dates specified by Supreme Court Scheduling to book applications longer than two hours.	☐
7.2	All affidavits must be filed with the notice of application or application response, unless the parties consent or the court otherwise orders (Rule 8-1(14)).	☐
7.3	Note the time limits for serving and setting down applications, and for filing an application response (Rule 8-1).	⏰
7.4	For the purpose of trial, if any witness testimony is to be by affidavit, make an application pursuant to Rule 12-5(59) and serve the affidavit at least 28 days prior to the date of the application being heard (Rule 12-5(60)).	⏰

8.	**NEGOTIATION AND SETTLEMENT**	
8.1	A lawyer must advise and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and must discourage the client from commencing or continuing useless legal proceedings. Consider alternative dispute resolution options and inform the client of them, taking steps to pursue options as appropriate. See *BC Code* rule 3.2-4. For plaintiff: consider whether it is appropriate to settle early if the client has not fully recovered.	☐
8.2	Consider all relevant factors on liability and quantum (e.g., as to liability, it may be necessary to wait until after examinations for discovery, reports from experts and doctors, or witness statements; as to quantum, it may be necessary to assess what portion of judgments and settlements may be taxable or deductible, considering the tax implications of payments for costs, personal injury awards, structured settlements, and resolution of partnership and shareholder disputes). Address costs and scale of costs, if appropriate.	☐
8.3	Evaluate the case (law, facts, evidence, parties, witnesses, contributory negligence, injuries, etc.).	☐

8.4	Form an opinion on liability and contributory negligence, and arrive at the minimum settlement you can recommend as being acceptable.	☐
8.5	Interview the client (possibly together with close relatives, especially if you are representing the plaintiff) and explain the case in detail, discussing the advantages and disadvantages of settlement. When you reach agreement as to a figure or range, obtain written instructions.	☐
8.6	Decide on your negotiation strategy, including the use of mediation and other forms of alternative dispute resolution. Note that settlement does not always have to include all parties; partial settlements may be achievable, including those of the *BC Ferries* type (see *British Columbia Ferry Corp. v. T&N plc* (1996), 16 B.C.L.R. (3d) 115 (C.A.)).	☐
8.7	Where an infant or person under a disability is involved, settlement is subject to the approval of the Public Guardian and Trustee. Note that such settlements over $50,000 require court approval (*Infants Act*, s. 40(4) and (5)).	⏰
8.8	If the *HCCRA* applies, the plaintiff must notify the Ministry of Health in the prescribed form at least 21 days before the parties enter into a settlement (s. 12); the defendant must notify the Ministry of Health of proposed terms of settlement, in prescribed form, and obtain the Ministry's consent to any settlement (s. 13).	⏰
8.9	For plaintiff: send a demand letter on a "without prejudice" basis to all defendants, or invite the defendants to make an offer.	☐
8.10	For defendant: make a proposal on a "without prejudice" basis, or invite or wait for a demand. Where there are multiple defendants, consider whether a joint offer is appropriate.	☐
8.11	Keep the client informed as negotiations continue, and obtain further instruction as necessary.	☐
8.12	Be clear on the agreement reached (i.e., does it cover all aspects of the claim, including whether the whole or part of the action will be dismissed by consent and/or discontinued, whether a release will be provided, including a mutual release by all parties or other specific terms such as an indemnity, costs, health care costs, and mediators' fees, is it subject to the approval of the Ministry of Health, and does it include all parties (or potential parties)?).	☐
8.13	If agreement is reached:	☐
	.1 Inform the client, including the insured, if applicable.	
	.2 Send written confirmation to other counsel.	
	.3 If the *HCCRA* applies, obtain the consent of the Minister to the proposed settlement as required by s. 13 of that Act.	
	.4 Advise the court registry, trial division, witnesses, and experts that the matter has settled.	
	.5 Prepare settlement documents—usually a consent dismissal order and a release. (Note: if acting for an insurer as statutory third party, a consent to judgment, rather than consent dismissal order, may be appropriate.)	

	.6 Prepare a bill of costs, if part of the agreement.	
	.7 File and serve (or receive) an appointment to tax, if required.	
	.8 Execute and file a certificate of costs.	
8.14	If negotiations are unsuccessful, consider:	☐
	.1 Offer to settle (often referred to as a formal offer to settle):	
	(a) For plaintiff: serve offer to settle (Rule 9-1(1)).	
	(b) For defendant: serve offer to settle (Rule 9-1(1)).	
	(c) Discuss with the client offers to settle and costs consequences.	
	(d) Consider withdrawing the offer to settle before it is accepted, where appropriate.	
	.2 If offer is accepted:	
	(a) Obtain any special approval required for settlements involving infants or persons under a disability (Rule 20-2(17)); e.g., consider need for a letter from the Public Guardian and Trustee, apply for court approval of settlement and dismissal of action if necessary.	
	(b) If the *HCCRA* applies, obtain consent of the Minister to proposed settlement under s. 13 of that Act.	
	(c) Advise the court registry of settlement; file and serve necessary requisition.	
	(d) Advise other parties, witnesses, and experts that the matter has been settled.	

9.	**SET DOWN FOR TRIAL**	
9.1	A party must file a notice of trial in Form 40 (Rule 12-1(2) and (3)).	☐
9.2	Contact the registry to determine available dates according to its booking schedule, then consult with parties and witnesses.	☐
9.3	Reserve trial date with registry.	☐
9.4	Serve the notice of trial on all parties of record promptly (Rule 12-1(6)). Send notice of trial to client and witnesses.	☐
9.5	Prepare trial record, including material set out in Rule 12-3(1) and the trial brief (AN-13). If a party is served with a notice of trial and objects to the trial date, the party must, within 21 days of service, request a case planning conference or make application to court to have the trial rescheduled (Rule 12-1(7)). File the trial record not less than 14 days, but not more than 28 days before trial, and deliver the trial record forthwith after filing to all parties of record (Rule 12-3(3)).	⏰

9.6	Where election is available, decide whether you want a jury trial (Rule 12-6(2) and (3)). If so, file and serve notice in Form 47 to all parties of record within 21 days after service of notice of trial and not less than 45 days before trial, and pay jury fees not less than 45 days before trial.	⏰
9.7	If a notice of trial by jury is received, decide whether jury trial is inappropriate and, if so, apply within seven days to have trial without jury (Rule 12-6(5)). It is common to file the application within the required time and then reach agreement to have the application heard at a later date.	⏰
9.8	File trial certificate not more than 28 days and not less than 14 clear days before trial date, in Form 42 (Rule 12-4(1) and (2)). If the trial certificate is not filed within the time frame specified, your trial will be removed from the list.	⏰
9.9	List of witnesses with time estimates for direct and cross-examination must be prepared and served by the time of the trial management conference or at least 28 days before the scheduled trial (Rule 7-4).	⏰
9.10	The party that files the notice of trial or filed documents to set the hearing must pay hearing fees. For civil cases before the B.C. Supreme Court, there are no civil hearing day fees for the first three days of a proceeding; for days four to 10, the fee is $500 per day, and for each day beyond 10, the fee is $800 per day.	☐

10.	**CASE PLANNING CONFERENCE, SETTLEMENT CONFERENCE, AND MEDIATION**	
10.1	Case planning conference (Rule 5-1):	☐
	.1 Determine whether, and when, a case planning conference will be useful, and make request.	
	.2 A party of record to an action may, at any time after the pleading period has expired, request a case planning conference (Rule 5-1(1)). A party requesting a case planning conference must serve a filed notice of case planning conference on the other parties at least 35 days before the first conference take place at any stage of the action after the pleading period has expired (Rule 5-1(2)).	⏰
	.3 Prior to the first case planning conference, and after service of the filed notice of case planning conference, the party of record who requested the case planning conference and filed the notice of case planning conference has 14 days to file and serve its case plan proposal; the other parties must, within 14 days after receipt of that case plan proposal, file and serve their own case plan proposal(s) (Rule 5-1(5)). The contents of the case plan proposal are set out in Rule 5-1(6).	⏰
	.4 Consider all issues you want to raise. Prepare thoroughly, and organize relevant documents.	
	.5 Where there are multiple actions arising from the same set of facts, consider whether issues in all actions can be addressed at one case planning conference.	

	.6 The judge or associate judge who presides at the case planning conference has wide discretion to make orders in respect of the action, whether or not on the application of a party. A list of potential issues and orders that a judge or associate judge may address is listed in Rule 5-3(1); note that a judge or associate judge must not hear an application supported by affidavit evidence pursuant to Rule 5-3(2). A judge or associate judge conducting a case planning conference must make a case plan order (Rule 5-3(3)). An application may be made to amend a case plan order (Rule 5-4).	
	.7 Consider whether an order sought in a party's case plan proposal would be better heard as an application in chambers, where affidavit evidence can be brought to the court's attention and costs awards, including for costs thrown away, can be pursued.	
10.2	Trial management conference: see item 12.1 in this checklist.	☐
10.3	Settlement conference: At any stage of an action, the parties of record may request, or a judge or associate judge may direct, that the parties attend a settlement conference. The parties must attend before a judge or associate judge who must, in private and without hearing witnesses, explore all possibilities of settlement of the issues that are outstanding (Rule 9-2(1)).	☐
10.4	Consider alternate dispute resolution, including mediation or arbitration. (See items 4.1.8 to 4.1.10 in this checklist.)	☐
10.5	If proceeding under Rule 15-1 (Fast Track Litigation), a party must not serve on another party a notice of application or affidavit in support of an application unless a case planning conference or a trial management conference has been conducted in relation to the action (Rule 15-1(7), subject to exceptions listed under Rule 15-1(8)).	☐

11.	**SUMMARY TRIAL (RULE 9-7)**	
11.1	A party may apply for summary trial under Rule 9-7 on an issue or generally, any time after a response has been filed (Rule 9-7(2)). Note that summary trials must be heard no later than 42 days before trial (Rule 9-7(3)).	⏰
11.2	Determine whether a summary trial is desirable, bearing in mind that it may lead to a final determination of one or more issues as against the applicant. Note that summary trial may not be appropriate where the issues to be decided require findings as to credibility or where the application may be characterized as litigating in slices.	☐
11.3	Prepare, serve, and file application, supporting affidavits, and any expert reports in accordance with Rules 8-1 and 9-7(5) to (8); for petition proceedings, see Rule 16-1. Give notice if you intend to rely on discovery evidence (Rule 9-7(9)).	☐
11.4	Note orders under Rule 9-7(15) and diarize.	☐
11.5	If judgment is granted, either on the whole action or an issue in the action, notify the relevant witnesses and experts.	☐

12.	FINAL PREPARATION FOR TRIAL	
12.1	A trial management conference must be held if:	☐
	(a) more than 15 days have been reserved for the trial;	
	(b) a party is unrepresented;	
	(c) the trial is to be heard with a jury; or	
	(d) a party of record requests the trial management conference 42 days before the trial.	⏰
	A trial management conference must also be held if it is required by order of the court (Rule 12-2(1)(a)). Note recent changes to Rule 12-2, made effective on September 1, 2023, pursuant to B.C. Reg. 176/2023, Sch. 1. The trial management conference must take place at least 28 days before the scheduled trial date, unless the court otherwise orders (Rule 12-2(1.1)).	⚡
	.1 The plaintiff must file and serve a trial brief on all other parties of record at least 56 days before the scheduled trial date (Rule 12-1.1(1)). All other parties of record must file and serve a trial brief at least 49 days before the scheduled trial (Rule 12-1.1(2)). Note the new changes to Rule 12-1.1, effective September 1, 2023.	⏰
	.2 The timelines are strictly imposed. A weekend or holiday does not lengthen the time for filing a trial brief.	
	.3 The judge or associate judge presiding at the trial management conference has wide discretion to make orders in respect of the action, whether or not on the application of a party. A list of potential issues and orders that a judge or associate judge may address is listed in Rule 12-2(9).	
	.4 The judge or associate judge presiding at the trial management conference may order costs against a party that fails to file and serve a trial brief pursuant to Rule 12-1.1.	
	.5 A judge or associate judge at a trial management conference must not hear any application for which affidavit evidence is required, or make an order for final judgment except by consent (Rule 12-2(11)).	
	.6 Unless the court otherwise orders, a trial must be removed from the trial list if no trial brief has been filed pursuant to Rule 12-1.1(5).	
12.2	Ensure compliance with the requirement for filing a trial certificate to keep the trial date. Send out notices and subpoenas as required, including:	☐
	.1 Subpoena in Form 25 (with conduct money) to appear at trial and bring a document or physical object (Rule 12-5(36)).	
	.2 Notice to produce document or physical object at trial: at least two days before trial, in Form 43 (Rule 12-5(8)).	⏰
	.3 Notice to call adverse party as witness (Rule 12-5(21)): at least seven days' notice, in Form 45; include conduct money.	⏰

	.4	Notice of plans, photographs or objects, and opportunity to inspect: at least seven days before trial (Rule 12-5(10)).	⏰
	.5	Notice that certified copies of certain official records may be offered in evidence: at least 10 days before trial (*Evidence Act*, s. 41).	⏰
	.6	Notice that copies, not originals, of certain written instruments used in business may be given in evidence: at least five days before trial; must also give an opportunity to inspect (*Evidence Act*, s. 43).	⏰
	.7	Copy of expert's report: served at least 84 days before the scheduled trial date (Rule 11-6(3)). For rebuttal reports: served at least 42 days before the scheduled trial date (Rule 11-6(4)).	⏰
	.8	Notice that an opposing party's expert will be required for cross-examination must be provided within 21 days of service of the report (Rule 11-7(2) and (3)). Any objections to an opposing party's expert evidence must be given on the earlier date of the trial management conference and the date that is 21 days before the scheduled trial date (Rule 11-6(10) and (11)).	⏰
	.9	Witness list filed (see item 9.9 in this checklist).	
	.10	In limited circumstances discovery evidence of parties may be tendered at trial by an adverse party. Notice must be given at least 14 days before trial (Rule 12-5(47)).	⏰
	.11	If notice of examination for discovery "read in" is served by the opposing party, consider requiring the attendance of that deponent for cross-examination (Rule 12-5(48)).	
12.3		If trial is by judge and jury, ensure that jury fees are paid not less than 45 days before trial (Rule 12-6(3)(b)).	⏰
12.4		Review pleadings, as circumstances may have changed since the time of original pleading. Consider amendments, if appropriate.	☐
12.5		Make applications as required, complying with Rules 8-1 and 8-2, or, for petition proceedings, Rule 16-1.	☐
	.1	Application for order for attendance of witness in custody (Rule 12-5(37)).	
	.2	Application for order that evidence may be given by affidavit (Rule 12-5(59)).	
	.3	Application for order that evidence of a fact be presented by statement on oath of information and belief, by documents or by copies of documents, or by specified publications (Rule 12-5(71)).	
	.4	Application for a court-appointed expert (Rule 11-5).	
12.6		If not directed to at a trial management conference on one or more of these issues, consider entering into agreements with opposing counsel:	☐
	.1	Agreed statement of facts.	

	.2	Document agreement: e.g., deemed that documents were sent and received by the persons named therein, that those persons had authority to send and receive, that business records were prepared in the normal course of business, and that copies may be used, usually subject to certain rights of parties to prove otherwise or demand production of originals. Note: counsel should be clear as to the use of any opinions stated in business records, especially medical records.	
	.3	Use of documents by electronic means.	
	.4	Joint brief of documents.	
	.5	Common brief of authorities.	
12.7	Make final arrangements:		☐
	.1	Arrange for witnesses: timing, arrival, lodging.	
	.2	Arrange for translators, and send letter confirming trial arrangements.	
	.3	Arrange for viewing of physical evidence (e.g., videos, television, chart stand).	
	.4	If you are calling a witness who will attend and testify remotely, contact the registry to make arrangements.	
12.8	Conduct final interviews with client and witnesses.		☐
12.9	Prepare briefs and statements for use at trial.		☐
	.1	Review and ensure completeness of the trial brief.	
	.2	Collect and review exhibits.	
	.3	Prepare brief of documents, either for your client or jointly with opposing counsel. Make copies for judge, jury members, witnesses, and opposing counsel. If it is not a joint brief, send to opposing counsel prior to trial to ensure there are no objections or delays.	
	.4	Prepare list of questions from examination for discovery to be read into the record. Make copies for judge and opposing counsel (see Rule 12-5(47)).	
	.5	Consider preparing a layperson's glossary of any technical terms that will be used. Make copies for the judge and opposing counsel; send it to opposing counsel prior to the trial, to ensure there are no objections.	
	.6	Prepare your opening address (written is best); consider your closing address.	
	.7	Prepare for examination-in-chief or cross-examination of each witness.	
	.8	Consider any evidentiary issues that may arise during the trial. Collect applicable case law.	
	.9	Prepare questions for the jury.	
	.10	Prepare written closing argument.	

	.11 Prepare brief of authorities and make copies of any authorities to be relied on during trial.	

13.	**TRIAL**	
13.1	See *BC Code*, Chapter 5 regarding various aspects of courtroom behaviour. Subject to the direction of the court, a lawyer must observe *BC Code*, s. 5.4 regarding communication with witnesses giving evidence. Note *BC Code*, s. 5.5 (relations with jurors).	☐

14.1	**POST-TRIAL**	
14.1	Once the trial result is known, notify the client of the outcome, provide a copy of the reasons for judgment, and address issues such as costs and appeal.	☐
	.1 Consider whether any part of the decision needs to be clarified or addressed, including a *Motor Vehicle Act*, s. 83 application for deduction of "no fault" benefits paid or payable. Make arrangements to appear before the trial judge.	
	.2 Draft final order.	
14.2	Take any other steps, as necessary, including:	☐
	.1 Make submissions on costs.	
	.2 Notify key witnesses or experts as to the result.	
	.3 Obtain exhibits filed with the court at trial.	
	.4 If representing a defendant who is obliged to pay a judgment amount or a settlement amount for a health care services claim under the *HCCRA*, advise the client that that amount is a debt due to the government (*HCCRA*, s. 20(2)).	
	.5 If representing a plaintiff who has recovered an amount designated by the court for a health care services claim under the *HCCRA*, or for whom an amount is designated in a settlement for a health care services claim under the *HCCRA*, advise the client that they hold that amount in trust for the government and must, within 30 days of receiving it, submit that amount to the Minister responsible for the *Financial Administration Act*, R.S.B.C. 1996, c. 138 (*HCCRA*, s. 20(3)).	
14.3	If appealing the decision, ensure that the notice of appeal is filed and served on time (*Court of Appeal Act*, S.B.C. 2021, c. 6, s. 15). For a "limited appeal order", the party bringing the appeal must apply for leave (Court of Appeal Rules, B.C. Reg. 120/2022). See *BC Code,* rule 5.2-2 regarding restrictions on a lawyer appearing as an advocate in an appeal when the lawyer was a witness in the lower court proceeding. For discussion of amendments to the *Court of Appeal Act* and Rules, refer to "New developments" of this checklist.	☐

15.	CLOSING THE FILE	
15.1	Prepare a reporting letter and account as soon as practicable after closing.	☐
15.2	Close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	☐