

PRESENTER



Chris Patterson, Barrister, Auckland

Chris was admitted in 1997. He joined the independent bars of New Zealand in 2001, NSW in 2003 and Tonga in 2021.

The statements and conclusions contained in this presentation are those of the author(s) only and not those of the New Zealand Law Society. This presentation has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

1. INTRODUCTION	1
2. INFORMATION MARSHALLING	3
3. INITIAL DEALINGS WITH DOCUMENTS	5
4. DOCUMENT ORDERING	7
FIGURE 1 – FOLDER STRUCTURE CIVIL	8
FIGURE 1A – FOLDER STRUCTURE CRIMINAL	9
FIGURE 2 – TRIAL FOLDER INDEX EXAMPLE	10
FIGURE 3 – TRIAL FOLDER EASTLIGHT LABEL EXAMPLE	11
5. CHRONOLOGIES	13
FIGURE 4 – CHRONOLOGY TEMPLATE	15
6. UNCOVERING THE FACTS – JUDICIAL APPROACH	17
7. UNCOVERING THE FACTS – INVESTIGATIVE ANALYSIS	19
SECURING EVIDENCE	19
THE INVESTIGATIVE PROCESS	21
<i>Deductive reasoning</i>	22
<i>Inductive reasoning</i>	22
<i>Abductive reasoning</i>	22
SOURCES OF INFORMATION	23
GROUPING OF EVENTS	23
8. DISCOVERY AND INSPECTION	25
FIGURE 5 – DISCOVERY CHECKLIST TEMPLATE	26
ELECTRONIC DISCOVERY	28
INTERROGATORIES AND DEPOSITIONS	29
9. PRE-TRIAL ISSUES (CRIMINAL)	31
FIGURE 6 – INTERROGATORIES CHECKLIST TEMPLATE	34
10. WITNESSES	37
11. EXPERT EVIDENCE	39
12. PREPARING FOR TRIAL	43
CLOSING SUBMISSIONS	43
PLEADINGS ANALYSIS	43
<i>Figure 7 – Pleadings analysis/consolidated pleadings table example</i>	44
TRIAL FOLDERS/BUNDLES	44
PLEADINGS BUNDLE	44
BRIEFS OF EVIDENCE (CIVIL) AND WITNESS STATEMENTS (CRIMINAL)	45
<i>Figure 8 – Witness summary example</i>	45
13. BRIEFING A WITNESS	47
COACHING VS BRIEFING	47
COMMON BUNDLE OF DOCUMENTS (CBD) (CIVIL)	49
<i>Figure 9 – Common bundle index example</i>	51
EXHIBIT LIST	52
<i>Figure 10 – Exhibit table example</i>	52
BUNDLE OF KEY DOCUMENTS (BoKD)	53
MEMORANDUM OF FACTS IN DISPUTE	53
BUNDLE OF AUTHORITIES	54
NOTES OF EVIDENCE FOLDER	54
14. ELECTRONIC BUNDLES	57
DIFFERENCES BETWEEN HIGH COURT AND COURT OF APPEAL EBS	57
A QUICK GUIDE TO PREPARING THE ELECTRONIC BUNDLES	57

<i>Figure 11 – EB Folder structures</i>	59
REMOTE HEARINGS AND PARTICIPATION.....	60
15. COSTS	63
16. CASE THEORY	65
EXAMPLE – THE MURDER OF BEN SMART AND OLIVIA HOPE – THE 26’ SLOOP/THE BLADE AND THE 40’ KETCH THEORIES.....	65
<i>Figure 12 – The Crown’s theory of the case</i>	67
<i>Figure 13 – The Defence’s theory of the case (Chart 1)</i>	68
<i>Figure 14 – The Defence’s theory of the case (Chart 2)</i>	69
17. CONCLUDING COMMENTS	71
FIGURE 15 – CHRONOLOGY RELATING TO THE IDENTIFICATION OF THE MYSTERY YACHT.....	73
FIGURE 16 – TRIAL CHECKLIST EXAMPLE.....	82
<i>Acting for the Plaintiff / Applicant</i>	82
<i>Acting for the Defendant / Respondent</i>	84
18. SUGGESTED FURTHER READING	87