

What is Divisional Court?

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About this guide:

The information contained in this guide is simply an overview of the relevant legislation and rules of procedure. It is not intended to be a substitute for the *Rules of Civil Procedure*, which should be examined for specific information. Nothing contained, expressed or implied in this guide is intended as, or should be taken or understood as, legal advice. If you have any legal questions, you should see a lawyer.

Special thanks to the Divisional Court, whose [Appeal Information Package](#) provided valuable information for this series of Guides.

Ce guide est également disponible en français.

Where to get more information:

The Ministry of the Attorney General has a series of **guides** to Divisional Court procedures which are available at court offices and the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca:

What is Divisional Court?

Guide to Appeals in Divisional Court

Guide to Serving Documents in Divisional Court Appeals

What can I do if my appeal to the Divisional Court is dismissed for delay or dismissed as abandoned?

Guide to Fees in Divisional Court Appeals

The guide entitled “What is Divisional Court?” includes a helpful overview of Divisional Court services, as well as a glossary of legal terms you may find helpful when reading the other guides.

Content of forms under the *Rules of Civil Procedure* is available at the following website: www.ontariocourtforms.on.ca. Please note the forms must be formatted in accordance with the *Rules of Civil Procedure*. You can find tips on completing forms at the end of this guide.

The staff behind the counter at any Divisional Court office are helpful. They will answer your questions about Divisional Court procedures, but keep in mind they cannot give legal advice and they cannot fill out your forms for you.

For more detailed information, you should refer to the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. It is a regulation made under the authority of the *Courts of Justice Act*. To view the *Rules* on-line, go to www.e-laws.gov.on.ca and follow these steps:

- Choose English or French
- Click on “Current Consolidated Law”
- Click on the letter “C”
- Click on the plus sign to the left of “Courts of Justice Act”
- Click on “Rules of Civil Procedure”

Introduction

The Divisional Court is a branch of the Superior Court of Justice of Ontario. It is an appeal court, not a trial court. It hears appeals and applications for judicial review. Please note this series of guides addresses appeals in the Divisional Court. It does not address applications for judicial review.

We encourage you to read this guide if you are thinking of bringing an appeal to the Divisional Court, or if you are already involved in an appeal. It answers questions about the court and provides general information about Divisional Court appeals. For more detailed information about appeal procedures, refer to the list of guides at the front of this guide.

What types of appeals are heard by the Divisional Court?

It is your responsibility to ensure the Divisional Court has jurisdiction over your appeal. If you are unsure if your appeal should go to the Divisional Court, you should seek legal advice.

The Divisional Court may hear the following types of appeals:

1. Appeals from Final Orders of Judges

Under sections 19(1) and 19(1.2) of the *Courts of Justice Act*, an appeal goes to the Divisional Court from a "final order" of a judge of the Superior Court of Justice:

- for a single payment of \$50,000 or less, excluding costs;
- for periodic payments that amount to \$50,000 or less for the 12 months starting on the date the first payment is due, excluding costs;
- dismissing a claim for \$50,000 or less; or
- dismissing a claim for more than \$50,000 where the judge or jury indicates that if the claim had succeeded, they would have awarded \$50,000 or less.

2. Appeals from Interlocutory Orders

Interlocutory orders are orders that are not final. Under section 19(1) of the *Courts of Justice Act*, an appeal from an interlocutory order of a judge of the Superior Court of Justice goes to the Divisional Court only after the party who wants to appeal gets "leave" (permission) of the court to do so. A motion must be brought asking the court for permission to bring the appeal. Refer to Rule 62.02 of the *Rules of Civil Procedure*. The **Guide to Appeals in Divisional Court** provides information on how to bring a motion for leave to appeal.

3. Appeals from Masters' Orders

Under section 19(1) of the *Courts of Justice Act*, an appeal from a final order of a master or case management master goes to the Divisional Court.

4. Combined Appeals from the Superior Court of Justice

Under section 19(2) of the *Courts of Justice Act*, an appeal to the Superior Court of Justice and an appeal to the Divisional Court within the same proceeding may be combined and heard by the Divisional Court. If an appeal has been started in the Superior Court of Justice, a motion may be brought to transfer it to the Divisional Court for the purpose of a combined appeal.

5. Appeals from a Final Order of the Small Claims Court

Under section 31 of the *Courts of Justice Act*, an appeal goes to the Divisional Court from a final order of the Small Claims Court in an action:

- for the payment of money in excess of \$500, excluding costs; or
- for the recovery of possession of personal property exceeding \$500 in value.

6. Statutory Appeals

The appeals described above are provided for in the *Courts of Justice Act*. However, other Ontario legislation also provides for appeals to the Divisional Court from the decisions of various tribunals and statutory decision makers. For example:

- [*Compensation for Victims of Crime Act*](#),
- [*Health Insurance Act*](#),
- [*Residential Tenancies Act, 2006*](#)

Many statutes relating to professional disciplinary matters also provide for appeals to the Divisional Court. For example:

- [*Architects Act*](#),
- [*Ontario College of Teachers Act, 1996*](#),
- [*Police Services Act*](#),
- [*Regulated Health Professions Act, 1991*](#)

It is necessary to read the specific legislation before deciding whether an appeal to the Divisional Court is the correct appeal route.

7. Appeals from the Family Court

The Family Court is a branch of the Superior Court of Justice and is located in various centres across the province. A list of the Family Court locations can be found on the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca.

Appeals of interlocutory orders of the Family Court go to the Divisional Court. The person seeking to appeal the order must first bring a motion asking the court for leave to appeal the interlocutory order. This is the rule described in section 2, Appeals from Interlocutory Orders, above. Appeals of final orders of the Family Court go to the Divisional Court, without the need to bring a motion for leave, except where the order was made under the *Divorce Act (Canada)*, in which case the appeal goes to the Court of Appeal.

Who hears Divisional Court appeals?

In general, the Divisional Court sits in panels of three judges of the Superior Court of Justice. However, in some circumstances, Divisional Court hearings may be held before a single judge. These circumstances can include:

- motions in the Divisional Court, including motions for leave to appeal;
- urgent or expedited matters;
- appeals from a final order of a master or case management master; or
- appeals from a final order made in Small Claims Court.

What is “leave to appeal”?

Leave to appeal is the *permission* of the court to bring an appeal. See the **Guide to Appeals in Divisional Court** for more information on seeking leave to appeal, including when you need leave before you can bring an appeal.

How much will it cost me to bring or respond to an appeal in Divisional Court?

You must pay a fee to file a Notice of Appeal and for most steps in a proceeding, such as filing a motion or filing a cross appeal. The number of steps in an appeal varies from case to case.

A party—usually the successful party—can ask the court to order the other party to pay his or her costs, including court fees.

A fee waiver process has been introduced for persons who may be denied access to justice because of their financial circumstances. Refer to the **Guide to Fees in Divisional Court Appeals** for more information about fees and fee waiver.

How long do I have to bring my appeal?

There are time limits for how long you have to bring an appeal. If you are uncertain about what period of time applies in your case, you should consult a lawyer.

Generally, an appeal of a final order is started by serving the required documents within **30 days** after the order that you are appealing was made, unless a statute or rule provides otherwise: see Rule 61.04(1) of the *Rules of Civil Procedure*. Refer to the **Guide to Appeals in Divisional Court** for more information about starting an appeal.

Where is the Divisional Court?

The Divisional Court, a branch of the Superior Court of Justice, sits in eight regional centres throughout the province. They are listed in the chart below, which also indicates some of the locations served by each regional centre.

<p><u>Central East Region</u> Divisional Court, Superior Court of Justice 50 Eagle St. West Newmarket, ON L3Y 6B1 Tel: 905-853-4823 x 2 Fax: 905-853-4880</p> <p>*Serving locations including: Newmarket, Barrie, Bracebridge, Cobourg, Lindsay, Peterborough, Whitby</p>	<p><u>Central South Region</u> Divisional Court, Superior Court of Justice 45 Main St. East, 1st Floor, Suite 110 Hamilton, ON L8N 2B7 Tel: 905-645-5252 x 3813 Fax: 905-645-5372</p> <p>*Serving locations including: Hamilton, Brantford, Cayuga, Kitchener, St. Catharines, Simcoe</p>	<p><u>Central West Region</u> Divisional Court, Superior Court of Justice 7755 Hurontario Street Brampton, ON L6W 4T6 Tel: 905-456-4878 Fax: 905-456-4836</p> <p>*Serving locations including: Brampton, Guelph, Milton, Orangeville, Owen Sound, Walkerton</p>	<p><u>East Region</u> Divisional Court, Superior Court of Justice 161 Elgin St. Ottawa, ON K2P 2K1 Tel: 613-239-1071 Fax: 613-239-1028</p> <p>*Serving locations including: Ottawa, Belleville, Picton, Brockville, Cornwall, Perth, Kingston, L'Orignal, Napanee, Pembroke</p>
<p><u>North East Region</u> Divisional Court, Superior Court of Justice 155 Elm St. Sudbury, ON P3C 1T9 Tel: 705-564-7756 Fax: 705-564-7890</p> <p>*Serving locations including: Sudbury, Cochrane, Gore Bay, Haileybury, North Bay, Parry Sound, Sault Ste. Marie, Timmins</p>	<p><u>North West Region</u> Divisional Court, Superior Court of Justice 277 Camelot St. Thunder Bay, ON P7A 4B3 Tel: 807-343-2700 Fax: 807-343-2704</p> <p>*Serving locations including: Thunder Bay, Fort Frances, Kenora</p>	<p><u>South West Region</u> Divisional Court, Superior Court of Justice 80 Dundas St. East London, ON N6A 2P3 Tel: 519-660-3026 Fax: 519-660-3053</p> <p>*Serving locations including: London, Chatham, Goderich, St. Thomas, Sarnia, Stratford, Windsor, Woodstock</p>	<p><u>Toronto Region</u> Divisional Court, Osgoode Hall 130 Queen St. West Room 174 Toronto, ON M5H 2N5 Tel: 416-327-5100 Fax: 416-327-5549</p>

*** Note: This list is not intended to be exhaustive.**

If the final order you intend to appeal was made by a court or tribunal in a location other than those shown in the chart above, please contact the Superior Court of Justice office nearest you to find out where you should file your documents. Court addresses and phone numbers can be viewed online at www.attorneygeneral.jus.gov.on.ca.

Where do I file my appeal documents?

Generally, Divisional Court appeals are filed in the region where the hearing or other process took place. This may not be the case if the parties agree otherwise. See section 20(1) of the *Courts of Justice Act*.

The court office where you file your appeal documents varies by region according to whether your appeal will take place before a single judge or before a panel of judges. If your appeal will be heard by a single judge, you should check with your local Superior Court of Justice court office to find out where to file your appeal documents. If your appeal will be heard by a panel of judges, you should check with the regional centre court offices listed above to find out where to file your appeal documents.

Where will my appeal be heard?

Where your appeal will be heard varies by region according to whether your appeal will take place before a single judge or before a panel of judges.

Appeals before a single judge of the Divisional Court are heard in the regions at the direction of each Regional Senior Judge as follows:

- Central East, Central South, East, North East, and South West Regions: any Superior Court of Justice location
- Toronto Region: Osgoode Hall only
- Central West Region: Brampton Courthouse only
- North West Region: Thunder Bay Courthouse only

Appeals before a panel are heard at the regional centres listed in the chart above.

Do I have to know "legal language"?

There are a few legal words you will need to understand. At the end of this guide you will find a short glossary which will explain some important terms.

What laws, rules and forms should I know about?

Depending on the nature of your case, any number of statutes or regulations may be important. Ontario's statutes and regulations are available online at www.e-laws.gov.on.ca.

The *Rules of Civil Procedure* are contained in a regulation under the *Courts of Justice Act*. The *Rules* govern procedure, including required forms, in the Divisional Court.

The content of forms under the *Rules of Civil Procedure* is available at the following website: www.ontariocourtforms.on.ca. Please note the forms must be formatted in accordance with the *Rules of Civil Procedure*. You can find tips on completing forms at the end of this guide.

For appeals of orders made in family law cases, some of the timelines set out in the *Rules of Civil Procedure* are modified by the *Family Law Rules*, the special rules of procedure for family law cases. The *Family Law Rules* are set out in a regulation made under the authority of the *Courts of Justice Act*.

Do I need a lawyer to represent me in Divisional Court?

In Divisional Court, you may represent yourself or be represented by a lawyer. It is recommended that you hire a lawyer or, at a minimum, seek legal advice.

How do I find a lawyer?

If you wish to hire an Ontario lawyer, you can contact the Lawyer Referral Service operated by the Law Society of Upper Canada. The Lawyer Referral Service will provide the name of a lawyer who practices in the relevant legal area and will provide a free half-hour consultation. The telephone number for the service is 1-900-565-4577. Please note there is a charge of \$6.00 to use this service. If you are calling from outside the province, you can reach the Lawyer Referral Service by dialling 1-416-947-3330. Advise the operator you are calling from outside the province. A free half-hour consultation is not guaranteed if you do not have an Ontario phone number.

If you are not in a financial position to retain the services of a lawyer, you may wish to contact the Legal Aid Ontario office closest to you to see if you qualify for legal aid. For more information you may visit Legal Aid Ontario's website at: <http://www.legalaid.on.ca>.

What if I need an interpreter?

An interpreter translates communication from one language to another.

For information about the rights of French-speaking individuals in the Ontario justice system, refer to the brochure [Justice in Both Languages](#), available in French and English on the Ministry of the Attorney General website at: www.attorneygeneral.jus.gov.on.ca.

The court office will pay for "in-court" interpretation in any language other than French only if you apply for and are given a fee waiver certificate. For more information about fee waiver, refer to the **Guide to Fees in Divisional Court Appeals**.

Translation of written documents from English to any other language and vice versa must be arranged for, and paid by, the party who requires the service.

What if I need a publication (for example a guide or form) in a different format?

Section 7 of the *Ontarians with Disabilities Act* provides:

"Within a reasonable time after receiving a request by or on behalf of a person with disabilities, the Government of Ontario shall make an Ontario Government publication available in a format that is accessible to the person, unless it is not technically feasible to do so."

If you want to request a publication in a different format, please contact Publications Ontario at:

Publications Ontario
50 Grosvenor Street
Toronto, ON
M7A 1N8
Tel: 416-314-3086
Fax: 416-326-4648

A short glossary of some important terms

Here are some key definitions of words you will need to understand if you are making or responding to an appeal in Divisional Court.

Affidavit	A written statement or declaration of facts that are sworn or affirmed to be true.
Appeal Book and Compendium	A bound volume(s) that is a collection of the documents relating to your appeal.
Appellant	A person who brings an appeal. The word “appellant” may refer to either party from the lower proceeding (e.g. plaintiff or defendant, applicant or respondent), depending on who appealed the decision.
Book of Authorities	A bound volume(s) of any legal cases or other authorities (e.g. legislation) which are relevant to the appeal. The passages to which the party intends to refer must be marked in some manner by either highlighting, underlining or using sidebars.
Certificate of Perfection	A document certifying that the Appeal Book and Compendium, the Exhibit Book, the transcript (if any) and the Appellant’s Factum have been served and filed. It includes the name, address and telephone number of the appellant(s) and respondent(s) or of his/her lawyer.
Certificate of Stay	A document certifying that an order of a court or tribunal has been stayed (i.e. postponed) by an appeal to the Divisional Court.
Deponent	A person making a statement under oath.
Exhibit Book	A bound volume(s) containing copies of exhibits from the original hearing necessary for the consideration of an appeal.
Grounds	The reasons or basis upon which the appellant claims the appeal should be allowed.
Factum	A bound document containing a concise summary of the facts, the law and the arguments made in support of, or in response to, an appeal.
Interlocutory Order	An order that is not final. An order is interlocutory if it does not finally dispose of the rights of the parties. In family law matters, a temporary order is an interlocutory order.
Judgment	A decision made by a court or tribunal resolving a dispute.

Jurisdiction	The power of the court to hear a particular matter. The <i>Courts of Justice Act</i> provides for the appellate jurisdiction of the Divisional Court. However, provisions of other statutes governing particular litigation may modify the general provisions of the <i>Courts of Justice Act</i> .
Motion	A motion is a court procedure that is used to obtain certain kinds of orders from a judge. Examples include: <ul style="list-style-type: none"> • motions for leave (permission) to appeal, and • motions to obtain directions on how to proceed in a case.
Order	A decision made by a court or tribunal. An order made by a court or tribunal resolving a dispute can also be called a judgment.
Party	A litigant, usually an appellant or a respondent.
Perfecting an Appeal	An appeal is perfected when all the documents necessary for the hearing of the appeal have been served and filed with the court within the time periods set out in the Rules. Once the appeal is perfected, the Divisional Court can list the appeal for hearing.
Person	A human being or an entity (such as a corporation) that is recognized by law as having the rights and duties of a human being.
Relief Sought	What you are asking the court to do.
Respondent	A person who <i>responds</i> to an appeal. In an appeal, the word “respondent” may refer to either party from the lower proceeding (e.g. plaintiff or defendant, applicant or respondent), depending on who appealed the decision.
Service/Serving	Getting a document to another person in the way the rules of court require or allow.
Solicitor	In Ontario, a solicitor is a lawyer and vice versa.

Tips on Completing Forms in Divisional Court

1. **BE NEAT.** These are court documents. All court forms must be typed, handwritten or printed legibly. It may cause delays if your forms cannot be read.
2. Content of forms under the *Rules of Civil Procedure* is available at the following website: www.ontariocourtforms.on.ca. This content is not formatted. It is your responsibility to ensure that the form complies with the *Rules of Civil Procedure* (see for example Rule 4.01 with respect to formatting). Many of the *Rules of Civil Procedure* forms contain the phrase "General heading." General headings are separate forms under the *Rules of Civil Procedure* and must be inserted where this phrase appears, with the proper content.
3. How to **COUNT DAYS FOR TIMELINES** in the *Rules of Civil Procedure*:

When calculating timelines in the *Rules of Civil Procedure*, count the days by excluding the first day and including the last day of the period; where a period of less than seven days is prescribed, holidays (including Saturdays and Sundays) shall not be counted; if the last day of the period of time falls on a holiday, the period ends on the next day that is not a holiday.

Holidays include:

- any Saturday or Sunday
- New Year's Day
- Family Day
- Good Friday
- Easter Monday
- Victoria Day
- Canada Day
- Civic Holiday
- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day
- Boxing Day
- any special holiday proclaimed by the Governor General or the Lieutenant Governor

NOTE: If New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday. If Christmas Day falls on a Saturday or Sunday the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday.

4. You can **FILE** your documents by mail or in person. It is best to file documents in person, because if any are incomplete, the clerk may inform you, and you can avoid wasting time mailing the documents back and forth. If you file documents by mail, the date of filing will be the date the documents are stamped upon receipt by the court office. If the court office does not receive the documents, they will be considered not to have been filed, unless the court orders otherwise (see Rule 4.05). **All applicable fees and proof of service must be included with the documents when you mail them.** Documents **cannot** be faxed or e-mailed to the court. Keep a copy of all original documents you forward to the court for your records.
5. Once court staff gives you a **COURT FILE NUMBER**, make sure it is written on the upper right-hand corner of **ALL** your documents.
6. Make enough **COPIES** of your completed forms/documents. Usually you will require one copy for each party who must be served and one copy for your own records. There is a fee to have copies made at the court office. Refer to the **Guide to Fees in Divisional Court Appeals** for more information.
7. **COURT FEES** must be paid to issue and file specific documents. A listing of Superior Court of Justice and Court of Appeal fees can be viewed at the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca or you can refer to the **Guide to Fees in Divisional Court Appeals**. Fees are payable in Canadian funds, and can be paid by cash, cheque or money order payable to the Minister of Finance.
8. An **AFFIDAVIT** can be sworn or affirmed before:
 - a Divisional Court staff member who is a commissioner for taking affidavits (there is a fee for this service);
 - a lawyer who is entitled to practise law in Ontario;
 - a notary public; or
 - a person who has been appointed a commissioner for taking affidavits and who is authorized to commission the affidavit.

The affidavit must be signed in the presence of the commissioner, lawyer or notary public before whom it is sworn or affirmed.

NOTE: It is a criminal offence to knowingly swear or affirm a false affidavit.